Mr. Speaker: The question is:

"That leave be granted to introduce a Bill further to amend the Reserve Bank of India, Act, 1934."

The motion was adopted.

Shri A. C. Guha: I introduce *the Bill.

HINDU SUCCESSION BILL—*contd.*

Mr. Speaker: The House will now take up the Hindu Succession Bill. The hon. Minister may continue his reply to the debate. The motion for consideration of the Bill will be disposed of by about 1 P.M. Thereafter the House will take up clause by clause consideration of the Bill for which 20 hours have been allotted.

The Minister of Legal Affairs (Shri Pataskar): Sir, this is one of the most important Bills and I can say with a clear conscience that I have devoted as much thought to the provisions of this Bill as my ability could permit me to do. This is, no doubt, a measure of the highest social importance and it is not desirable that, because a matter is important, it should also be shunted off. On the previous occasion, I had gone into the details of the process through which this legislation has passed during the last twenty years, if not more, and it is needless for me again to repeat the same thing.

This Bill, after it was discussed in this House for four days was referred to a Joint Committee of both Houses. If I may say so, that Joint Committee had very thoroughly and exhaustively considered this matter from all points of view. It may be that the result they have produced does not satisfy every member of section of this House; but that is inevitable in a measure of this nature. After the report of the Joint Committee, the Bill was again considered for several days in the Rajya Sabha and there also it underwent some changes and it is now placed before this House in the form in which it was passed by the Rajya Sabha.

Some hon. Members have levelled a charge against this Bill that it is being hastily put through. Well, it is difficult for me to reply to such a charge which is not based on a correct statement or appreciation of facts. The hon. Member Shri V. G. Deshpande, in the course of his speech said:

पुराने शास्त्रों पर मेरा विश्वास है ।

Some other hon. Members have also expressed their feelings in the same way. I can only say that it is no argument to say that because a man believes in the *shastras*, this Bill is not justified. After all, our *shastras* have varied from time to time. The same member said that he believed in Manu, that he believed in Yajnavalkya, that he believed in Jimutavahana and that he believed in many others. I would only point out to him that what Manu said and laid down was useful for his time and consistent with the then conditions; that what Yajnavalkya said some six centuries later was also consistent with the then existing conditions of society, and that various other sages who either proceeded or followed them have been laying down rules of conduct consistent with the conditions prevailing in the then existing society. But what does the hon. Member want to convey by saying :

मनू क्या कहता है, याज्ञवल्क्य क्या कहता है,
जीमुतवाहन क्या कहते हैं ।

It would be interesting and useful to know what they said and did from a historical point of view; but, if anyone were to try to apply what they said and did in the existing conditions of today, the least I can say is that it will be highly improper, because they themselves would not be saying the samething now. Centuries separate them from us. Does the hon. Member know that what Manu said was applicable to Kritayuga; what Gautama said to Trethayuga, and what Sankhya said to Dwaparayuga? Does he know that what was to be applicable to the present Kaliyuga is what Prasar had said:

कृतों तु मानवोधर्मा
त्रेतायां गौतमस्यच ।
द्वापारे शंखलिखित :
कलौ पराशर स्मृति : ।।

The sages have laid down different rules for diflerent ages. Unifortunately for many of these great sages, they had no idea that in the distant future, there would be some people who would try to emulate them in this manner.

I have been told that this Bill will affect not only Hindu religion, but also Hindu culture. It is interesting to note that the word 'Hindu' itself is not mentioned in any of the *Shastras* on which some of the hon. Members opposite relied, and that it came to be applied to

*Introduced with the recommendation of the President.

the inhabitants of Aryavarta some time in the eighth century A. D. by our Arab neighbours when they first had occasion to come here.

There is nothing like a Hindu religion in the sense of its being a form of worship. India had always been a country of tolerance where various forms of worship prevailed and prospered from time to time. There were periods in our history when Buddhism prevailed on a very large scale; there were periods when Jainism prevailed on a much larger scale than even now, and there have been numerous other forms of worship prevailing at different times in different parts of our country. They still exist in our country today. The followers of all these faiths have been and are Hindus in the sense of their being inhabitants of this ancient land inheriting the common culture of the people of this country. Some of our friends commit the mistake of equating Hinduism with religion and then land themselves into innumerable conclusions and contradictions. Hinduism may certainly be called a culture, a synthesis of different faiths in our land; and that is common to all irrespective of their differing forms of worship. This culture was never static. It has been developing and has developed through centuries past. I am proud of this culture and I am convinced that there is nothing in this Bill which is going in any way to affect that culture, adversely. This culture is not confined to any particular part of our country, but as I said earlier, it is a synthesis of all the varied beliefs, customs and practices of different people.

The debate in this House could easily give an impression as if the essence of our culture was confined to what we now understand as our law of Mitakshara. That also is not the original Mitakshara law. Does not the Indian culture include those who are governed by Dayabhaga, those who are governed by customary law and even those who are governed by a different system of inheritance, namely the matriarchal system with all the variations it has undergone in course of time?

The hon. Member, Pandit Thakur Das Bhargava, who is all for restoring equality of status to women shudders at the thought of an unmarried daughter being given a share in the property of her father. I know his strong feelings in this matter. But, I was pained at the emotional approach which even he had to this question. He said that this legislation was going to affect 31 crores of people. I do not know on what basis he has made this calculation. He felt that by this Bill, the ideals of Sita and Savitri will vanish. This theme was taken by some other Members who spoke in favour of or against the Bill. After all, the Sitas and Savitris of the past lived in conditions where Ram and Satyavan flourished. Can the Sita of today wear *valkalas* which are not available? Can a woman as virtuous as Sita be condemned because she now wears a sari and not a *valkala*? These are merely outward forms. What is to be continued and cultivated is the virtue of Sita. Was it the essence of the culture of Sita that she did not inherit her father's property? I would like to ask my friends this question. Is there anything to suggest that in those days women had no right of inheritance? I do not know; I tried to do some research but I could not get any definite information. I fail to understand how a woman of today imbibing all the virtues of Sita would degenerate if she would get a share in her father's property.

The hon. Member, Shri Tandon, for whom I have the highest respect, very rightly said :

देश परिवर्तनशील है । मैं रूढीवादी नहीं हूं । मैं बुद्धिवादी हूं, युक्तिवादी हूं ।

I agree with this approach of his. But, I beg to differ from him as to what is necessary and proper in this matter. By whatever name you call it, *buddivad* or *yuktiyad* implies that the followers of this approach, with all their differences which are inherent—because *buddivadis* cannot think in the same way—must respect each others views and try to adjust them. I, on my part, respect his views and I have tried my best to adjust his views with mine. I would request him to look at this humble effort of mine from that angle of view.

A very pointed question was put to me by the hon. Member :

क्या हिन्दू मां-बाप लड़की की कद्र नहीं करते हैं ?

I would readily concede that parents all over the world are bound to have regard for the welfare of their offspring whether son or daughter. If women are

[Shri Pataskar]

suffering today, it is not as if men have suddenly developed hostility to them. They are suffering because in conformity with social and economic changes, their position in law has not changed. Customs and practices have a tendency to persist even when they become outmoded and that is where the law has to step in to make the necessary adjustment and that is what this Bill proposes to do.

The main feature of this Bill to which exception is being taken is the right given to a daughter and similar heirs even in Mitakshara joint family property. Sir, it was an independent Member, Shri G. V. Deshmukh, who first made an attempt in 1937 to give such a right of inheritance to all lineal descendents, irrespective of their sex by introducing a Bill in this House. In that Bill he wanted to provide inheritance also to daughters and other female heirs along with the widow and other male heirs. In the conditions then existing,—I will not dilate upon that point—he could only succeed in giving the widow the right of inheritance in her husband's property. Dr. Deshmukh is a person who avowedly professes his faith in Hindu religion and Hindu culture as much as some of the hon. Members opposite do. This is what Shri Deshmukh then said regarding the question of giving inheritance to a woman even in joint family property :

> "The joint Hindu family does not exist. What is really existing is this coparcenary family which is purely a creation of the law. What is a joint Hindu family ? The great law-giver Manu himself divided his property amongst his sons. That shows what regard the great Manu himself had for the joint Hindu family, because if he had it, he would not have divided the property himself. If it is supposed that under the joint Hindu family, women cannot inherit, *(Dr. Deshmukh proceeds to)* say, "I will quote the instance of the great Yajnavalkya, the greatest sage that Hinduism has produced, whose philosophy has perhaps . circulated the name of India all over the world better than any person, the great author of the Brihadaranyaka Upanishad. What does he do? When the time comes for his going to forest, he takes his property and divides it between his two wives Gargi and Maitreyi. In the face of all this, when Hindus of these generations say that women do not deserve a share—that was again the argument advanced at the time of that Bill—when your own law givers have given such examples and have actually divided their property among their wives, it seems to me that the Hindus are hugging something as Hinduism which is certainly not Hinduism."

That was the opinion expressed by a very eminent gentleman who virtually advanced the cause of Hinduism.

It is thus clear that the wrong interpretation of some of the texts from some of the old shastras and the engrafting and mixing of some ideas entirely alien to them have gone to form the basis of what has now come to be regarded as Hindu law. Under the influence that has crept from outside which has gradually degenerated and disintegrated Hindu law itself, women has been deprived of her right of property. That is the analysis which that eminent protagonist of Hindu culture has made. Almost 20 years have passed since then.

Shri Bansal (Jhajjar-Rewari): Who is this eminent man?

12 NOON

Shri Pataskar: Shri G. V. Deshmukh who introduced a Bill in this House in 1937 which for the first time gave the widow the right of inheritance. At that time he could not naturally succeed in giving the right to the daughter also.

Shri Bansal: Do you agree with him?

Shri B. D. Pande (Almora Distt.—North-East) : He is a new Yagnavalkya.

Shri Pataskar: Of course, I do agree with some of the quotations. What has happened since the passing of that Bill? About 20 years have elapsed. A new Constitution has come in. We have taken the pledge of assuring the dignity of the individual. We have started on a programme of establishing a socialist pattern of society. Is not the time ripe now for treating the daughter on a par with the son in the matter of inheritance? That is the question Is really the position of the daughter today as secure in society as it was once under different social and economic conditions. I am not one of those who say that the joint family did not serve any useful purpose, probably in the hoary past. That is a different matter. The question is ; what is the position now? I grant that so far

as daughters are concerned, naturally they still continue to have the love of their parents.

Shri D. C. Sharma (Hoshiarpur): But not the property.

Shri Pataskar: And also they have the regard of the society. The question was asked yesterday if the daughters are not treated with respect. Certainly they are. But is that enough? Has not the position of Hindu widows improved since the passing of the Deshmukh Act of 1937? When I go through the proceedings I find almost the same arguments were advanced then. I would like every hon. Member to lay his hand on his heart and say whether he thinks or does not think that the position of the widow has improved since the passing of the Deshmukh Act in 1937. I would not like to argue with people. Let them judge for themselves. Those who prophesy a disaster to Hindu society now prophesied a similar disaster if the right of inheritance was given to the widow. They also did it then in the name of same Mitakshara law. My predecessor, Shri N. N. Sarkar, and Shri Deshmukh had to meet almost the same objections which are now being raised here.

Shri D. C. Sharma: They might have read those very proceedings.

Shri Pataskar: Shri Deshmukh was then right in saying that the position of Hindu women deteriorated with the position of Hindu men in the recent past. It is not because, as I said earlier, the Hindu men have done something wrong or developed the wrong tendencies but because there was a deterioration of their position, the position of women also suffered. I am glad that we have fortunately emerged since 1946 out of that past when we were helpless spectators of what happened, and that is why we have to think anew of these problems. Even Shri N. N. Sarkar then said :

> "As Hindu men decayed and became slaves, the only slaves they could think of were their womankind."

Of course, that is what he said.

Shri Bansal: You do not agree with him?

Shri Pataskar: Leave it to me to say, but I would like to know what you think.

Shri Bansal: I do not agree with that at all.

Shri Pataskar: Shri Dwarkanath Mitter in his able exposition in the book *Position of women in Hindu Law* has ably shown what the position of women really was under Mitakshara. I would like those of the Members who are eminent scholars—some of them are—to look in to this great treatise to see what really was contained in the original Mitakshara and what we are hugging to as a result of misinterpretation. I would not like to take up that matter further. We will have to think about it more when we come to the clauses of the Bill.

When that Bill was passed without giving a share to the daughter in the inheritance, Shri Sarkar had to admit that justice was not being done to the daughter. He regarded that measure as an initial measure for redressing the wrong which had been done to women. I am glad there are few amongst us, if any, who in their cooler moments will not agree that the position of Hindu women for the last few centuries had been a deplorable one.

You might be aware, Sir, that there has been an increase in the incidence of suicides among women in Saurashtra which had assumed alarming proportions. I am now very seriously trying to draw the attention of hon. Members and I hope they will listen to this part which I think is very important.

Shri M. S. Gurupadaswamy (Mysore): Are there no suicides of men?

Shri V. G. Deshpande (Guna): After the Bill was introduced or before?

Shri Pataskar: If he has patience, he can ask me questions at the end, but to interrupt me means that you do not want to allow me to proceed.

The Government of Saurashtra had to set up a committee to enquire into the cases of this unhappy phenomenon and suggest remedial measures. There is a report in the press as recently as 20th March, 1956 that the committee investigated about 110 such cases of suicide and have come to the view that most of the women who put an end to their lives did so because of ill-treatment both physical and psychological by their parents-in-law. The women were completely illiterate or just literate. I would like to point out to hon. Members that

[Shri Pataskar]

they were not the modern educated women. There, they are very backward. Amongst other measures, that committee, it is reported, has suggested measures to secure social and economic freedom for women. I would appeal to hon. Members, whatever their party or persuasion, to take a dispassionate view of this measure which is an attempt to restore to men and women both, the same position of dignity and status in a free India so that both may march together to attain the goal which we have set before us in our Constitution and prevent the development of this alarming social disease which has broken out in Saurashtra. I am not referring to anything very, very past, but only to recent events, and the report appeared in the press only on 20th March, 1956. I would appeal to the hon. Members of this House, I would appeal also to Tandonji if I can make an appeal to him. I am one of those who would like to respect our hoary past and always to think and dream of the glorious future, but at the same time let us also not forget the facts as they stare us in the face and demand a solution.

Shri C. C. Shah (Gohilwad-Sorath) : This is a social disease in every part of the country.

Shri Pataskar: Therefore, this problem has to be solved. I am referring to Saurashtra only because I have got some written record. Let not the Saurashtra people think I have selected them for special treatment. Far from it. I am sure if only hon. Members will search their hearts and look around with a little more sympathy, they will find the disease is there in many quarters besides Saurashtra. The problem is not one of mere theoretical discussion. The problem is one which calls for a solution and an immediate one. As to what the form should be, we might have differences, but that is a different matter.

With respect to this measure, there are hon. Members who are dissatisfied because it does not go far enough. There are other hon. Members who say that it exceeds all limits. I would like to say briefly what has been my approach to this question. I have deliberately chosen the path of effecting change in Hindu law by the process of evolution. After all, legislation is a process of evolution. If we have to reach our goal not by the method of sudden and violent revolution with unforeseen consequences and developments, but by the process of evolution which a legislative process is, I would appeal to hon. Members to look at this attempt of ours from that point of view.

The law of Mitakshara as now understood is not the same as that of the days of Yajnavalkya. It has got mixed up with idea of survivorship, reversioners, limited estate and such other extraneous matters introduced by judicial decisions during the last century and a half for reasons which it would not be now profitable to go into. This judge-made law what all its defects has produced some developments in the structure of our social life. If we suddenly change this law and abolish immediately the system that has come to be known as Mitakshara law, it will immediately affect the status of all such joint families and upset suddenly the existing state of things. I have deliberately tried to avoid doing this in this Bill.

As is known, the lapsed Hindu Code had been considered by the Select Committee of the Provisional Parliament, of which you were one of the Members, and the report of that committee was before that Parliament, when it was dissolved in 1951. That code, in the form in which it was passed by the Select Committee, contained provisions relating to intestate succession, which were different in material particulars from those that obtain in the present Bill as passed by the Rajya Sabha. I shall try to point out briefly the difference in those provisions, because there is some misunderstanding.

The former Bill provided that the joint family system known as the Mitakshara system of Hindu law would disappear immediately from the date of the passing of that Bill. The present Bill does not abolish this joint family system. On the contrary, this Bill positively provides in clause 6 that:

> "When a male Hindu dies after the commencement of this Act, having at the time of his death an interest in a Mitakshara coparcenary property, his interest in the property shall devolve by survivorship upon the surviving members of the coparcenary and not in accordance with this Act:".

Thus are preserved for the male members of such a joint family, the right by birth and the corresponding right by survivorship, the two basic features of such a joint family.

This Bill also does not take away the right of a Hindu male coparcener in such a joint family to claim partition and have his interest in the coparcenary property separated as before. Thus, the law governing the members of a Hindu coparcenary, who are necessarily males, will continue in force even after the passing of this. Under the former Hindu Code, all such Mitakshara joint families would have been immediately converted into joint Hindu families of the Dayabhaga type, with no right by birth and no right by survivorship, the members of such a joint family being merely tenants in common. Therefore, it must be noted that by the passing of this Bill, the Hindu joint family of the Mitakshara type is not going to be immediately abolished. This is the most important feature of this Bill, which distinguishes it from the former Bill, and I would like all hon. Members of this House to take this into account.

What is tried to be done, however, by this Bill is that in fairness to female heirs, corresponding to present male heirs like sons, son's sons etc., they are given a share by way of inheritance, even in the interests of a coparcener in such a Hindu joint family along with the male heir. This means that after the passing of this Act, even in respect of a Mitakshara joint Hindu family property, a daughter, for example, will have a share in the property of her father as a heir along with a son. However, the female heir, in the above case, the daughter, will only be an heir whose rights will come into existence after the death of the father and she has not been made a coparcener along with the son, in such a joint family. This has been done by adding a suitable proviso to clause 6. I am not going into the details to reply to the objections that have been raised against this clause, for when we come to the clauses, I am sure everyone will have an opportunity to speak on them.

The main objection to the right of succession being given to a daughter is based on the ground that this will lead to outsiders coming into the joint family, or becoming sharers therein, to the detriment of the interest of the joint family. A daughter who passes by marriage into another family is, according to the prevailing sentiments, an outsider in the family of the father.

At present, a Hindu coparcener has no right to make a will with respect to his interest in the joint family property. By clause 32 of this Bill, a Hindu coparcener has been given a right to make a will even in respect of his interest in such property. This is a very important provision.

I would like to illustrate the effect of the present provisions in clauses 6 and 25. For example, let us take the case of one A, who along with his brothers B and C forms a joint Hindu family of the Mitakshara type. 'A' has one son, S-1, another sons S-2 and a daughter D.

As a result of the passing of this Act, what will be the result on such a joint family? There will be no change in such a family or its status or the rights of the members of such a coparcenary, and the family will continue as before. That is one important change which has to be noted, as compared with the previous Bill.

Secondly, even during the life-time of A, the son S-1 may separate from the family, even as he can do now under the present law. I am told that in certain parts of India, even in such families a son has not got the right to claim a partition. Well, when we come to the clauses, we shall try to accommodate those friends also, who might be suffering from a different treatment on that ground.

Thirdly, A may continue in the joint family with his other son S-2, as he can do now.

Fourthly, the daughter D is not a coparcener in the joint family. Nothing happens so long as the father is alive; she has no interest, and she is not a coparcener till then. She has no interest in the joint family property during the life-time of the father A. The same position will be occupied by her even under the provisions of this Bill.

Supposing the daughter D has been married, and the marriage expenses had been incurred out of the joint family funds, and that daughter is well placed, A can under the new provision contained in clause 32 of this Bill make a will in respect of his interest in the joint family property, and provide that she shall have no share in his interest. Supposing A dies ten years after passing of this Act, that is in 1966, then in this case, the joint family will continue as before even after A's death, without being affected in any way by any of the provisions of this Act.

[Shri Pataskar]

It is thus clear that those who want to be governed only by the existing rules of the Mitakshara system even after the passing of this Act have been given the choice to do so.

There is a strong body of opinion which is in favour of the immediate abolition of the Mitakshara system of Hindu family. It is true that this system is disappearing under the stress of social and economic changes in the social life of the country, but it is much better to effect a gradual change in such matters by resorting to the process of evolution.

This is not a hybrid form. What I am trying to do is not to revolutionise the whole thing so that there may be dislocation anywhere and everywhere. It is a process of evolution which I am trying to introduce so that nothing will happen immediately: but only gradually, as I would put it, this joint family system may have to disappear.

I am sure, coupled with the forces of social and economic changes in society, the natural sentiments of love and affection will play their part, and the right of inheritance given to a daughter will be free from the present prejudice against her.

There are many hon. Members in this House who feel that if once this right to will is given coupled with the right to partition which the son enjoys, it may defeat the purpose of this legislation. But as I have been always saying, I have got at least better faith in human nature, and I think the father, whether he is governed by the present system or by the system which will operate in future, will have equal regard both for the son and the daughter. Questions have been raised as to whether a share should be given to a married daughter and also an unmarried daughter. To my mind, the point is very simple. It may be that an unmarried daughter is educated, is capable of earning her living, and is better off. It may be that the married one has lost her husband, has got a few children, probably her husband was a poor man, and she is in a helpless condition. So, can we lay down a hard and fast rule by which we can exclude either the married daughter or the unmarried daughter? After all, it is much better to leave it to the judgment of the father, and I think he is bound to exercise it in a fair and equitable way. Whom else, excepting the father, can you trust to achieve this purpose? It is from that point of view that I thought that when an inroad was being made into the Mitakshara system of law by giving inheritance to a daughter, it was fair and proper that the father also, at least so far as his share was concerned, should be given the right to decide as to the person to whom that share will go, and in what proportion and to what extent.

There is another argument also which is advanced, namely that wills are not common amongst us. I would request hon. Members to look back a little as to why wills are not common. Under the law as it now stands, the members of the joint family have not got the right to will, and that is the reason why wills have not been common. But with the changing conditions, already there is a tendency, at least with respect to separate properties which are now becoming more and more separate, to make a will and to make a disposition, because it is the inherent right of the person who is the owner of that property, and who possesses that property, to decide as to whom it should go. Because the wills are not made on a large scale now, therefore the same state of things will continue under different conditions; I think this is not a correct appreciation of the thing.

Some criticism has been made that in passing this personal law of succession, we must be careful to see that we do not affect adversely the agricultural economy of our country. I yield to none in my desire that that must be our objective. I am in agreement with this view. But I am not prepared to go to the length of discriminating between man and woman, between son and daughter, in order to maintain the *status quo* in this matter; nor is it necessary to do so. We would like to achieve the same object without trying to make a discrimination of this nature.

As regards agricultural holdings, the problem of land reforms is being solved by different States in different ways. Land tenures differ not only from State but also from area to area in the same State. At any rate, I know that in the present multilingual State of Bombay, there are so many tenures. A common land policy has yet to be evolved. Under the Constitution, land, in all its aspects, in a State subject and any legislation, whether existing or future, will not be affected in any way by the provisions of this Bill. Even now, there are some

States which have enacted legislation for the prevention of fragmentation or for the fixation of ceilings in respect of agriculture holdings. Some other States may soon pass legislation for this purpose, and such laws may undergo suitable changes from time to time in the general interests of the agricultural economy of our country. There are many States where the zamindari system was in vogue. That system has now been abolished and there have been created various classes of tenants or holders of agricultural lands which once formed part of the estates of the zamindars. Laws have been enacted in such States which provide for the devolution of the rights in respect of such holdings. These laws, being property laws, apply to all, whether Hindu or non-Hindu. The present law is what is known as the personal law and it cannot override the provisions of a property law enacted in the interests of the agricultural economy of the country.

To avoid any wrong interpretation and to ensure the vast section of our rural population, which subsists on their small agricultural holdings, that this law will not adversely affect them, provision has been made in sub-clause (2) of clause 4 of this Bill. If, however, we find during the course of the discussion of the clauses that something more is needed to carry out the purpose and object with which this clause has been put in, we will consider it at that stage.

It would thus be seen that every effort has been made in this Bill to safeguard the legitimate interests of our rural population in respect of their agricultural holdings and to see that no provision of this law will come in conflict with whatever legislation may have to be passed in the interests of rural economy and in pursuance of the developing land policy.

After these few general observations, I have to say that during the course of the discussion, several of the clauses have also been criticised. I would avoid giving a reply to all these matters at this stage because we are going to consider the Bill clause by clause and it would be proper for me at that stage to reply to whatever criticism has been offered during the general discussion or will be offered at the clause by clause consideration stage.

There is one small point which remains. In a matter of this type when we are dealing with social legislation, all attempts at rhetoric should, as far as possible, be avoided, because they fail to give us a very correct picture which a dispassionate consideration of the same would give us. For instance, I was told that if I were to go and ask the women themselves, I would get a reply which probably would be opposed to this Bill. Well, I do not know whom I am expected to address. But I can say one thing, that the All-India Women's Conference which consists more of educated women than uneducated women—a state of affairs for which, unfortunately, women also are responsible, and even men are responsible—has expressed a certain view....

Shri Tek Chand (Ambala-Simla): Does it represent the women of India.

Shri Pataskar: It is a fact that due to many causes, a large number of women are illiterate, but that does not detract from the fact that there is an All-India Women's organisation which is capable of thinking what is in the best interests of women as a whole. I can say that their united view is that no time should be lost to enact a measure of this nature. In fact, I have been receiving numerous telegrams and representations from all corners of the country that no time should be lost to put this legislation on the Statute-book.

Shri Bansal: The difficulty is that there is no all-India men's organisation.

Shri Pataskar: There may be a cause for their lack of education, but there is no cause not to think of the problem dispassionately.

After all, as my hon. friend, Shri S. S. More, said yesterday—and I agree with him—at the time when we abolished *sati*, they wanted to put a question to the married women as to whether they wanted *sati* or not. Under the conditions which existed then, the terror and the way in which they lived at that stage, we would not have got an answer that they did not want *sati*. Therefore, are you going to say that *sati* should not be abolished? Similar is the case with widow remarriage. It is very difficult, even now after the passing of this Bill, for widows to get married, for different reasons. Would it be right to say, 'No, ask all the widows in the country whether they would remarry, and then pass this Bill?' We have to do things which we think just.

Shri V. G. Deshpande: Gandhiji was wrong, according to him.

Shri Pataskar: Therefore, my own suggestion is: let us not go by this sort of argument. Let us think of the problem dispassionately, free from all such prejudices. I am not one of those who would consider only this and not that. It is for you to solve the problem differently. But knowing the women as they are, situated at present as they are, we do not want to take advantage of their illiteracy, we do not want to take advantage of their economic dependence, and try to put forward arguments like these.

I would appeal to hon. Members to rise above these petty, little things. Of course, I would say that this is not the final word. I do not claim that this is perfect in every respect, because human things are bound to have something which is not perfect. That is a different matter altogether. But it will be open to us to discuss this matter at the proper time.

I would make a last appeal to all men Members of this House—I would like to appeal to the lady Members also; I do not make a distinction between the two.—But unfortunately for me, even some of the lady Members take a different view, somehow or other—I do not know for what reason. I would not like to put it as a question of man *versus* woman or woman *versus* man (*Interruptions*). I look at the question from the point of view of social justice, and do what is just and right. I would appeal to all hon. Members of this House again to look at this question from that point of view and to arrive at a correct decision, which, I hope, we will do. I commend this motion to the unanimous acceptance of the House.

Mr. Speaker: The question is:

"That the Bill to amend and codify the law relating to intestate succession among Hindus, as passed by Rajya Sabha, be taken into consideration".

The motion was adopted.

Clause 2—(*Application of Act*)

Shri Sivamurthi Swami (Kushtagi): I beg to move :

(i) Page 1, line 10—

for "a Lingayat" *substitute* "(a Lingayat)".

(ii) Page 1, line 10—

after "a Virashaiva" *insert* "or"

Mr. Speaker: Amendments moved:

(i) Page 1, line 10—

for "a Lingayat" *substitute* "(*a Lingayat*)".

(ii) Page 1, line 10—

after "a Virashaiva" *insert* "or"

Shrimati Kamlendu Mati Saha (Garhwal Distt.-West *cum* Tehri Garhwal Distt. *cum* Bajnor Distt.-North) : I wanted some clarification from the hon. Minister.

Mr. Speaker: Later. Let those hon. Members who have moved amendments speak first.

There are a number of amendments to clauses 3, 4, 5, 6 etc. As one hon. Member goes on speaking, those hon. Members who want to move amendments to clauses may hand over the numbers of their amendments at the Table saying that they would like to move them as and when those clauses are taken up.

Pandit Thakur Das Bhargava: Have we to hand over the numbers of our amendments to all the clauses or only to particular clauses?

Mr. Speaker: Let us see up to clause 6.

Shri Venkataraman (Tanjore): May I say that this procedure be adopted up to clause 5, because clause 6 is most controversial. We may consider amendments to clause 6 separately.

Mr. Speaker: I am not putting them together now. I only want hon. Members to pass on to the Table the numbers of the amendments to the various clauses which they would like to be treated as moved. I will take up clause 6 separately. I am going clause by clause. Now we have taken up clause 2.

Shri Bansal: Shri Venkataraman's suggestion is that amendments up to clause 5 may be handed over, and amendments to clause 6 may be handed over later.

Mr. Speaker: I am not fixing any time-limit now so far as handing over chits is concerned.

Shri Bansal: There is another point. We do not have—as we normally have in such cases—consolidated list of

amendments. We have lists Nos. 1 to 9 and it is getting difficult for us to follow all these amendments in all their details.

Mr. Speaker: Whatever might be the lists under which an amendment is included, all amendments are numbered serially. Therefore, there is no difficulty about it. A key has been circulated to all hon. Members—hon. Members will kindly verify this—gathering amendments under each clause. Therefore, they can refer to the various amendments under each clause. They have got a serial list of amendments.

श्री शिवमूर्ति स्वामी : अध्यक्ष महोदय, मैं इस बिल के जो उसूल हैं, उनका स्वागत करता हूं और इस बिल को यहां लाने के लिये माननीय मंत्री जी को धन्यवाद देता हूं । तमाम हिन्दू समाज पर जो इसे एप्लाई (लागू) किया जा रहा है, इसका भी मैं स्वागत करता हूं ।

लेकिन मेरी जो एमेंडमेंटस (संशोधन) नं० १४१ और १४३ हैं उनको मूव (प्रस्तुत) करने का मेरा मंशा यह है कि यहां पर आपने जो हिन्दू का लफ्ज लिया है उसके बारे में आपने कहा है कि हिन्दू कोई वैदिक शब्द नहीं है । मैं समझता हूं कि कदीम जमाने (प्राचीन काल) से हमारी जो संस्कृति है यह फूली फली है और तमाम समाज के लिये यह शब्द लागू होता है । लिहाजा यह जो हिन्दू शब्द है इसी में से वीराशैव और लिंगायत निकलते हैं । वीराशैव भी समाज के अंग हैं और कर्नाटक इत्यादि इलाकों में रहते हैं । इन सब पर आपने इसे लागू किया है । मैं आपको बतलाना चाहता हूं कि मुगलों के जमाने में, जब हिन्दुस्तान में उनकी हकूमत थी, लोग लिंग भी साथ रखते थे, और तब से यह जो लिंगायत शब्द है यह एक कामन वर्ड (साधारण शब्द) बन गया है । इस वास्ते में चाहता हूं कि अगर आपको लिंगायत शब्द रखना ही है तो इसको आप ब्रेकिट (कोष्टक) में रख दीजिये जिस तरह से कि मैंने अपनी एमेंडमेंट नं० १४३ में दिया हुआ है । अगर इस शब्द को निकाल भी दिया जाये तो भी कोई परवा नहीं है ।

श्री शेषगिरी राव ने जो अपनी एमेंडमेंट नं० १४२ दी है, उसकी भी मैं ताईद करता हूं क्योंकि वीरशैव में लिंगायत आ सकते हैं । इसी तरह से दूसरी जगहों पर भी बताया गया है । यह तमाम हिन्दू समाज की एक डिवेलेपमेंट है । इसी तरह से श्री वी० जी० देशपांडे ने जो अपनी एमेंडमेंट दी है जो कि इस तरह से है ।

"to any person other than a Muslim, Christian, Parsi or Jew"

अगर उसको ही रख दिया जाये तो भी कोई क नहीं पड़ता है ।
फ

लिहाजा में उन तमाम लोगों से जो यह कहते हैं कि यह बिल जरूरी है सहमत हूं और विडो रिमैरेज (विधवा पुनर्विवाह) तथा सकसेशन (उत्तराधिकार) का जो हक बहनों और बीवियों को दिया जा रहा है या दिया गया है उसका मैं स्वागत करता हूं और समझता हूं कि यह बहुत जरूरी है । आज तक कोपार्सनरी (समांशी) और मिताक्षरा के जो लाज (विधियां) हैं उनमें जो रेस्ट्रिकशंस (प्रतिबन्ध) औरतों के हक्क पर लगाई गई हैं उनको मैं ठीक नहीं मानता लेकिन मैं यह चाहता हूं कि वीरशैव में से लिंगायत शब्द को निकाल दिया जाये और इन सब को मैनशन (उल्लेख) करने के बजाय में चाहता हूं कि लफ्ज हिन्दू ही रख दिया जाये । अगर ऐसा नहीं हो सकता तो वीरशैव लफ्ज ही काफी है और दूसरे लफ्ज की कोई जरूरत नहीं है ।

Shri Seshagiri Rao (Nandyal): My amendment is No. 142, which I wish to move now.

Mr. Speaker: The hon. Member did not rise in his seat when I called for the amendments to be moved.

Shri Kasliwal (Kotah-Jhalawar): I wish to move my amendment No. 144, to clause 2.

Mr. Speaker: What was he doing when I called for the amendments?

Shri Kasliwal: I was looking through the other amendments.

Mr. Speaker: For how long? Hereafter, when I call a particular clause and request hon. Members to get up and indicate their amendments, they should do so. They should not take up the time of the House later on. Let amendments Nos. 142 and 144 be also moved.

Shri Seshagiri Rao: I beg to move:

Page 1, line 10—

omit "lingayat".

Shri Kasliwal: I beg to move:

Page 1, lines 25 and 26—

for "as a member of the tribe, community, group or family to which such parent belongs or belonged" *substitute* "as such".

Mr. Speaker: Amendments moved:

(i) Page 1, line 10 —

omit "lingayat".

(ii) page 1, lines 25 and 26—

for "as member of the tribe, community, group or family to which such parent belongs or belonged" *substitute* "as such".

Shri Seshagiri Rao: My amendment is very simple, Clause 2 reads like this :

> "to any person, who is a Hindu by religion in any of its forms or developments, including a Virashaiva, a Lingayat or a follower of the Bromo, Prarthana or Arya Samaj;"

Virashaivas are admittedly part and parcel of the Hindu society. There is no need to mention Virashaivas and Lingayats. By including this word "Lingayat" it seems to imply that Lingayats are not Virashaivas and Virashaivas are not Lingayats. Virashaivas, as you, Sir, know, fall into three groups— Lingadharis, Aradhyas and Lingayats. Therefore, Lingayats are included in Virashaivas, and it is unnecessary to have the word "Lingayat" in clause 2.

I would even urge that the word Virashaiva" should be taken away from clause 2 because we are not including Viravaishnavas and Virasakhyas. All of them are admittedly Hindus. Why should we have this word "Lingayat" at all here? The Madras High Court has decided that Virashaivas are Hindus and they are guided by the Hindu law.

My amendment, therefore, is a very simple and obvious amendment, and I hope the hon. Minister will accept it.

Shri V. G. Deshpande: Let me move my amendment No. 140, which reads..

Mr. Speaker: He ought to have moved it previously.

Shri V. G. Deshpande: I was the first to stand up when you called for the amendments.

Mr. Speaker: The hon. Member is suggesting that I have missed him. How can I miss Shri V. G. Deshpande? I called for the Members who wanted to move their amendments to stand up, and on this side I only saw Shri Sivamurti Swami.

If hon. Members come late and want me to add, I have no objection to give them an opportunity.

Shri V. G. Deshpande : I stood first, I did not come late.

Mr. Speaker : It is a surprise to me.

Shri V. G. Deshpande : Those who were sitting by my side know that I rose when you asked the Members to rise. I want to move my amendment No. 140.

I beg to move:

Pages 1 and 2—

for lines 9 to 26 and 1 to 7 respectively, substitute : "to any person other than a Muslim, Christian, Parsi or Jew".

As has just now been joined out by my friend, Shri Sivamurti Swami, we find there has been a lot of confusion. We have been seeing again and again this definition of persons to whom Hindu law applies because many kinds of definitions are being given. We have got here all kinds of involved wordings. We find that Arya Samajists are included. They themselves say they are Vedic. Our Minister of Legal Affairs waxed eloquent when he said that Hinduism is not a religion. Then, he says in clause 2, 'who is a Hindu by religion'. We find that the Lingayats and Virashaivas who are one and who claim to be Hindus are shown as something different. The Buddhists, Jains and the Sikhs are also shown as different. All these definitions are thrown to the winds when they say, 'any other person who is not a Muslim, Christian, Parsi or Jew by religion'. Again, in the *Explanation*, we find many confusing things.

> "Any child, legitimate, or illegitimate, both of whose parents are Hindus, Buddhists, Jainas or Sikhs by religion."

I do not know why it is insisted that both of the parents should be Hindus etc. By the new law of marriage, which we have passed recently, it is not necessary that both the husband and wife should be Hindus. A Hindu can marry a Christian, Parsi and even a Muslim woman or *vice versa*. In such a case, our saying that both the parents must be Hindus is also understandable. As far as I am concerned, I am not very happy in excluding the name Hindu from all statutes. But, I find that there is a tendency nowadays to call us non-Muslims, non-Pakistanis etc. There are

all kinds of words which are used and if it had been left to them, this country also could have been called non-Pakistan. One country is Pakistan and the other country is non-Pakistan. There is nothing positive. But, so far as precise wording is concerned, I feel that instead of having all this confusion, it would be much better if we say that this Act will apply to any person other than a Muslim, Christian or Parsi or Jew, and afterwards other words are used. Then, I think, the purpose would be served and many confusions and inconsistencies would be avoided. That is why I have sought to define as 'any person other than a Muslim, Chritistian, Parsi or Jew'.

Mr. Speaker: Hinduism is a religion, other religions do not require a definition; only this requires a definition.

Shri V. G. Deshpande: The other religions have got definitions in their own Acts.

So far as this Act is concerned, they have not sought to definite a Hindu. In one of such laws, I sought to provide a definition for 'Hindu'. The Buddists, Jains, Sikhs, Lingayats, Virashaivas, Arya Samajists, Prarthana Samajists the Brahmo Samajists, all these are part and parcel of the great Hindu community. But, here an attempt is made to show them as separate because some people insist that Hindus are separate, Buddhists are separate etc. Either define clearly who is a Hindu or include all of them and say that Hindu Law will apply to them. You do not want to say that they are included in the big conception of Hindus. This creates many difficulties.

For example, you say the Sikhs are separate. Then, we have very serious objection to Buddhists, Jains and Sikhs being treated as separate. Master Tara Singh himself has said that they are part of the Hindu *rashtra*, though this has not been alluded to by many people. He has been insisting on saying that Sikhs are Hindus. We are making attempts to separate them from Hindus. My objection is that there is no precise definition. Instead of allowing the involved clauses 2(1)(a) and (b), it would be much better to have only (c)—the first two lines of it—that is, any person who is not a Muslim, Christian, Parsi or Jew by religion. I think, our purpose would be served.

Shri Sadhan Gupta (Calcutta South-East): What about the Chinese settlers who are Buddhists?

Mr. Speaker: Amendment moved:

Pages 1 and 2—

for lines 9 to 26 and 1 to 7 respectively, *substitute* :

> "to any person other than a Muslim, Christian, Parsi or Jew".

Shri Kasliwal: My amendment is that words, 'as such' be substituted for 'as a member of the tribe, community, group or family to which such parent belongs or belonged'.

The provision reads :

> "any child, legitimate or illegitimate, one of whose parents is a Hindu, Buddhist, Jaina or Sikh by religion and who is brought up as a member of the tribe, community, group or family to which such parent belongs or belonged;"

One of the parents may belong to one group and the other parent to another group. We never know which parent is going to rear up that child. That is why I say, 'who is brought up as such'. If a child is brought up as a Hindu, Buddhist, Jain or Sikh etc. then he should be governed by this law.

That is my amendment.

Shri Tek Chand (Ambala-Simla): Mr. Speaker, Sir, I regretfully find that the clause is deficient in cogency or clarity. If you scrutinise it closely, you will be pleased to notice that it contains a large number of defects. If you concentrate upon 2(1)(a) and (b), you will find that it is regrettable that the word 'Hindu' should be jumbled up with Brahmo Samajists, Prarthana Samajists, Arya Samajists, Buddhists, Jains etc. I thought more so from the speech of the hon. Minister this morning that Hinduism is a genus and in this genus of Hindus there are a large number of species. The Arya Samajists, the Parathana Samajists, the Brahmo Samajists, the Buddhists, Jains and Sikhs happen to differ in the nature of species, branches of the same stock, Hinduism. That being the position, I consider the definition is unscientific.

Apart from that when I come to the *Explanation*, I find it a little confusing. It is admitted that the Hindus, Buddists, Jains and Sikhs are really branches of Hindus and they do not belong to different religions. The hon. Speaker a

[Shri Tek Chand]

minute ago was pleased to draw the attention of my hon. friend who sat down just now that Hinduism is a religion. If that is so, why are you saying in the same breath Hindu religion, Sikh religion, Buddhist religion etc.? I find myself a little bewildered at this conglomeration.

For instance, Sikhs have no separate religion. We all know that so far as the Sikhs are concerned, there is a sharp division in nomenclature, the *shisdharis* and *keshdharis*. The *shishdharis* are those who have not got long hair and the *keshdharis* are the others. There are also a very large number of Hindus who worship along with the Sikhs at the same Gurdwaras. How can you drive a wedge between these two types? When you talk of Christians, you never talk of the Protestants and the Catholics. When you talk of Muslims, you do not talk of the Sunnis and the Shias. When it comes to talking about Hindus, you talk as if the other branches of Hindus are totally separate. This sort of a tendency has been noticed lately in some of the statutes. It is time that on some occasion this matter is gone into. They should not be compartmentalised into so many watertight compartments.

If the amendment of Shri Kasliwal is not accepted, then there will be confusion. You say in sub-clause (b): "any child, legitimate or illegitimate, one of whose parents is a Hindu....and who is brought up as a member of the tribe ...." What tribe? Hindus as such cannot be classified into the nomenclature of a family. That being so, it should be sufficient to say: "....who has been brought up as Hindu or Buddist, Jaina or Sikh." They are the qualifying words meant by the expression, "as such".

Therefore, I sumbit that amendment No. 140 appears to be the nearest approach because the distinction is drawn by Shri Deshpande from the point of view of cuitures, between people who inherently belong to our culture and the people whose cultures might have developed in this country but which have been brought into this country. That is why he says that those who are not Muslims, Christians, Parsis or Jews should be governed by one law. It would be inconsonance with the observations of the Minister who says that Hindu culture is one. If it is one, people who are adherents of that common culture should have a common law and further divisions, distinctions and sub-divisions in the same culture should be eschewed. At any rate this distinction among Hindus as such is very improper because you cannot mix up genus with species. Talk of genus, alone. So far as species are concerned, leave them alone. That would be inconsonance with logic.

Shri C. C. Shah: I support the amendment of Shri Kasliwal, No. 144 and oppose No. 140 of Shri Deshpande. Subclauses (a) to (c) of sub-section (1) of clause 2 are intended to make it clear that this law will apply to all persons who, at one stage or another, though they do not regard themselves as Hindus, are governed by the Hindu law of succession. Take, for instance, the Buddhists or Jainas or Sikhs. There is a controversy—we need not go into that aspect—that they are not Hindus by religion but so far as the application of the law is concerned, it is accepted that the Jainas, Sikhs, etc. are governed by Hindu Law. Therefore, leaving aside that controversy, it is intended to make it clear that they will be governed by this law. Similarly, there is a controversy whether Virashaivas, Lingayats, etc. are Hindus or not.

An. Hon. Member: No controversy.

Shri C. C. Shah: So far as sub-caluse (c) is concerned, it is much wider and it includes everybody who is not one or the other of the religions mentioned there. I submit, therefore, that this is drafted properly.

As regards amendment No. 144, let us see the relevant clause. It reads: "any child, legitimate or illegitimate, one of whose parents is a Hindu..". That is, born of a parent of a particular religious denomination. Then the words are: "who is brought up as a member of the tribe ....". In the second part, the reference is to tribe, community, group or family. The first part refers to the religion.

The amendment is intended to make it clear that the child is brought up as such, namely, as a member of that religion and not as a member of any particular tribe or family. I think that amendment is consistent with the words

of sub-clause (b) and I would, therefore, suggest that amendment No. 144 be accepted and that No. 140 be rejected.

Shri T. S. A. Chettiar (Tiruppur): The scope of the Bill is very important. There are certain people who are governed by Hindu law but who may be other than Hindus. We do not refer to them in this Bill. They may be governed by other enactments by choice. This applies only to Hindus of various categories and those who have adopted the Hindu Law in the past. The Bill, as it is, is all right.

Clause 2(1) (c) refers to persons who are not Muslims, Christians, Parsis, or Jews and who might have adopted the Hindu way of life and who were governed by Hindu law. I do not think there is any need for an amendment like the one of Shri Deshpande.

Shri Seshagiri Rao referred to one point. It is well understood that Lingayats are Hindus. There is no doubt about it at all. If we omit it now, somebody may come and argue that the word "Lingayat" was there in the Bill.

An Hon. Member: 'Virashaiva' includes Lingayats.

Shri T. S. A. Chettiar: I do not know if it is so, so far as the legal parlance goes. It has been negatively argued in certain cases that certain words were omitted and that meant that the legislature did not intend them to be included. Unless the legal department issues a clarification that 'Virashaiva' includes 'Lingayat', there is no harm in keeping it to avoid any such doubts.

I think the phraseology in sub-clause (b) is rather clumsy and the amendment suggested by Shri Kasliwal makes it better. As it is, it is somewhat confusing. As amended, it will mean "any child, legitimate....who is brought up as such...." I think this makes the position clear and so I suggest that this amendment may be accepted.

Shri Sadhan Gupta: Regarding clause 2, I want to draw the attention of the Minister to two possible dangers in the definition. Before I do that, I do not want to enter into controversies about the definition of Hindus. I agree that the word 'Hindu' should be defined with some amount of exactness because there is considerable difference as to who are Hindus and who are not. Shri Deshpande may feel one way regarding certain communities. Some members of these very communities may feel another way. For instance, there may be a difference between the Sikhs themselves or between Buddhists themselves as to whether they are Hindus or not. Therefore, bringing those people who do not agree with the definition of the word 'Hindu' will not serve any useful purpose.

Apart from that, I shall speak of two lacunae in the Bill which I want to point out to the Minister. The first lacuna or danger is that the Bill has been made applicable, among others, to Buddhists. Now we know that Buddhists are not only Indians; there are many Buddhists from outside. For example, there are many Chinese who are settled here. I think some of them have become Indian citizens also, but they are, as far as I know Buddhists. Under these circumstances we will have to know whether they would like to be governed by this law of succession. I want to know whether that aspect of the matter has been taken into consideration.

1 P.M.

Now, the second part of it seems to be a little perplexing—the Explanation. It is said in the Explanation that the law would apply to a legitimate or illegitimate child both of whose parents are Hindus, Buddhists, Jain, etc. Now, suppose one parent is a Hindu and the other a Buddhist. Would it apply to the case of children of that union?

An Hon. Member: Why not?

Shri Sadhan Gupta: Under the Explanation as it stands the interpretation seems to be that both the parents must be of the same religion. This Act would apply to Hindus as well as Buddhists. So, there is no sense in providing that if one parent was a Hindu and the other parent was a Buddhist, the Act would not apply automatically to the children of that union. Therefore, I want that this particular aspect should be corrected.

If this had come to my notice earlier, I would have moved an amendment. But I was rather busy with other matters and could not devote my attention to this Bill. Nevertheless I would draw the hon. Minister's attention to it.

Mr. Speaker: The hon. Minister.

Several Hon. Members *rose*—

Mr. Speaker: I would appeal to hon. Members who want to take part in the clause by clause discussion to rise in their seats as soon as a particular clause is taken up. Not that I am trying to make any discrimination, but there are some hon. Members whom the House may like to hear. As I call upon the hon. Minister to reply I find several hon. Members rising in their seats. We set apart a particular time for a particular clause and this situation embarrasses me and also takes away the time of the House. Therefore, hon. Members who wish to contribute to the debate will all get up in the first instance, so that I may bear them in mind and according to the time available give chances in a particular order.

Shri Venkataraman: May I make a submission?

The difficulty in regard to this matter in the clause by clause consideration of the Bill is obvious. It is not possible to make up ones mind in advance. Frankly, I did not want to speak on this clause. But when I found Shri Kasliwal's amendment being supported by talented legal brains, I wanted to raise my feeble vocie in protest. I could not have made up my mind earlier. Every rule has an exception and I am sure I will have your indulgence.

Sir, I oppose amendment Nos. 140 and 144. The reason is this. Clause 2 of this Bill is in exact and identical terms with section 2 of the Hindu Marriage Act and for the sake of consistency in legislation I would say that it is necessary we should adopt the same language as we have adopted. That is number one. Number two: the object of sub-clause (b) is to make Hindu law applicable to the children, legitimate or illegitimate, of persons one of whose parents is a Hindu, Buddhist, Jain, etc. It is not necessary that that child, legitimate or illegitimate, should be brought up as such. Mr. Kasliwal's amendment would require that not only should one of the parents be a Hindu, Jain, Sikh, etc., but the child also should be brought up under one of these religions. It is not necessary. The object of this clause is to see that the child is goverened by Hindu law. Therefore, there is a fundamental point in the amendment suggested by Shri Kasliwal and I would therefore oppose it.

I think the amendment would restrict the scope of the definition of "Hindu" and therefore, I think the hon. Minister will give his serious consideration to this and at least for the sake of consistency that I have mentioned in the first place he would oppose this.

Shri B. K. Ray (Cuttack): I oppose both the amendments, 140 and 144, and on these grounds.

First of all, so far as amendment No. 140 is concerned, it is said Brahmos, Prarthanas, etc. are all Hindus. Therefore, the word "Hindu" alone would be sufficient to include them. Why should you have them specifically mentioned; therefore it is urged it would be sufficient to say "any person other than a Muslim, Christian, Parsi or Jew". Now, there is a misconception behind this argument, because looking to the stream of litigations with regard to who is a Hindu and what are the characteristics of proving that a man is a Hindu, it is necessary that we should be a little more explicit, and to say that by saying this we are excluding them from the category of Hindus is also completely wrong. I take it, the clause want to make out 'Hindu' means any person who is a Hindu by religion *in any of its forms or developments*. Then follows the inclusion of those classes. The inclusion should mean the illustration of the various forms and developments of Hinduism. Therefore, by the section it is not implied that they are excluded from the category of Hindus, strictly speaking. On the contrary they are included notwithstanding the forms and developments being different. Therefore, for charity and for avoidance of litigation, it is necessary that the clause should continue as it is.

Amendment No. 144 suggests, the substitution of the words "as such" for the words "as a member of the tribe, community, group or family to which such parent belongs or belonged". Now "as such" as the previous speaker said would mean "as a Hindu, as a Buddhist as a Jaina or as a Sikh by religion".

We know under our Constitution there is absolutely no sanction, on the contrary there is a ban, on education in religion in our primary and secondary schools. It would be very difficult to prove that some boy or some man has

been brought up in a particular religion. It cannot be said that I have been brought up in Hindu religion. I have never been brought up in that way. If you call me a Hindu it is because I have been brought up in the manners and customs of the Hindus. That is all. Therefore, if you leave it at that, that is "as such" there will be intricacy in the definition, it will leave vagueness and it will lead to litigation. It may be that Hindus may not be tribes, but they are groups, they are communities and they are Hindu families in that way. Of course, the words tribe, community, group or family have been stated for the sake of wideness and imparting comprehensive character. Therefore, I oppose both these amendments.

Shri Patasknr: Mr. Speaker, I need hardly add much to the arguments which have been already advanced by some hon. Members on this side of the House. One thing which I would like to bring to the notice of the House, and which I would like to stress, is that we have already passed the Hindu Marriage Act and there the matter was considered almost from the same points of view which have been urged here. Therefore, for the sake of consistency, if nothing else, I would like that for the present we should keep the definition as it is. Of course, I admit the force in the arguments, but if there was something very wrong or something which needed amendment that was a different matter. So far as I can see there is no such thing.

For instance, take the first amendment, number 140. It says :

> "to any person other than a Muslim, Christian, Parsi or Jew"

We have considered this aspect from various points of view and we have decided to follow a particular way in which the word 'Hindu' is going to be defined, or, rather, to define as to whom this Act will apply. From that point of view I do not think that we can accept this amendement No. 140.

Similarly, with respect to amendment No. 121, which says: "after" a 'Virashaiva' insert "or" I am unable to follow the need for it. As it is, the wording is: "including a Virashaiva, a Lingayat or a follower of the Brahmo etc." Because, some other things are to follow, the word "or" comes in after "Lingayat" I think it is better to leave it like that.

Shri S. S. More (Sholapur): May I know whether Virashaiva and Lingayat are identical groups, two different groups or whether Virashaiva is a larger group of which Lingayat forms a part?

Shri Seshagiri Rao: Virashaiva is a larger group of which.....

Shri Pataskar: I am not well-versed in all this theocracy, but I belive there may be some differences among those people. Whatever it is, I think it is better to leave the wording as it stands. Nothing would be lost by it. I think we want to name the people to whom the Act would apply. Why should we enter into any controversy as to whether these two groups are the same or different groups?

Then I come to amendment No. 142 which seeks to omit the word 'Lingayat'. The same reasons which I advanced for the previous amendment apply in this case also. This amendment also cannot, therefore be accepted.

Shri Seshagiri Rao: The hon. Minister thinks that the Lingayats are different from the people belonging to Virashaiva group.

Shri Pataskar: I do not think anything. Why is it necessary to enter into any controversy?

Shri Seshagiri Rao: Then why this repetition is necessary?

Shri Pataskar: I do not want to commit the Government or anybody else to a controversy as to what is Virashaiva and what is a Lingayat; whether they are the same or whether they are different. Why is it necessary? For the purpose of this Act, we say it applies to both. I think it is better to leave the provision as it is. It is not good, in a measure like this, to bring in all such controversies.

Then I come to amendment No. 144. It was quite rightly answered by Shri Ray. The provision reads like this:

> "any child, legitimate or illegitimate, one of whose parents is a Hindu, Buddhist. Jaina or Sikh by religion and who is brought up as a member of the tribe, community, group or family to which such parent belongs or belonged";

[Shri Pataskar]

The whole idea is that it should be made applicable to persons who belong to that tribe, community, group or family to which one of the parents who is a Hindu, Buddhist, Jaina or Sikhs belonged. So far as the definition is concerned; I do not think there should be any difficulty. Of course, any amount of criticism can be made on anything. So far as the purpose of this Act is concerned, it is to include all these people and to that extent the definition is all right. I would, therefore, say that the hon. Members, if for nothing else, at least from the point of view that we have already exhaustively considered this matter of definition and have passed a Bill which is now the law of the land, will agree with me that it is not desirable that there should be two different definitions in two different Acts. There may be other parts of the legislation to come up. We may have to enact the Hindu Code. Probably that will be a better occasion and time to consider whether there should be at all any change.

Therefore, I would appeal to all those hon. Members who have moved amendments to this clause, that after all that I have said if they find the provision as it is desirable and to their advantage, they should withdraw their amendments.

Shri Mulchand Dube (Farrukhabad Distt.-North): Sir, I want to put one question to the hon. Minister. My submission is that the list given in clause 2 of the Bill is not exhaustive. Only a few sub-sections or off-shoots of Hinduism have been included. There are many others which have not been included. Therefore, what I say is, either the list should be full or there should be no list at all. For instance, in U. P.

Mr. Speaker: If the hon. Member wanted to speak again, he ought to have risen in his seat at the proper time.

Shri Mulchand Dube: I have not spoken at all. There is no question of my speaking again. I only wanted to draw the attention of the hon. Minister to this fact.

Mr. Speaker: Order, order. I am asking the hon. Members to advise me on this point. After all opportunities have been given to all hon. Members and ultimately, after the hon. Minister has been called upon to reply, still an hon. Member gets up and says that he wants to put a question. When am I to conclude this? I won't allow this sort of thing. I am very sorry. There must be some rule observed. Shri Venkataraman and some other hon. Member got up and I never prevented them from speaking, keeping in view certain things that have been said. I did not want a wrong impression to be created and so I said I am prepared to allow them. Now, at this fag end, it is rather inconvenient to allow any more discussion.

Now I will put the amendments to the vote of the House. In view of what the hon. Minister stated and in view of the fact that this is the definition which we have adopted in the Hindu Marriage Bill—what the hon. Minister says is that there ought not be a difference created; naturally it is one of the points of interpretation—do the hon. Members want me to put the amendments to the vote of the House? If they still require, I shall do so.

Shri V. G. Deshpande: Amendmnet No. 140 may be put to the vote of the House.

Mr. Speaker: The question is:

Pages 1 and 2—

for lines 9 to 26 and 1 to 7 respectively, *substitute* "to any person other than a Muslim, Christian, Parsi or Jew".

The motion was negatived.

Shri Sivamurthi Swami: I suggest that amendment No. 143 may also be put to the vote of the House.

Mr. Speaker: The question is:

Page 1, line 10—

for a "a Lingayat" *substitute* "(a Lingayat)".

The motion was negatived.

Mr. Speaker: I take it that the other hon. Members are not pressing their amendments and they have the leave of the House to withdraw them.

The amendments were, by leave, withdrawn.

Mr. Speaker: The question is:

"That clause 2 stands part of the Bill."

The motion was negatived.

Clause 2 was added to the Bill.

Clause 3—(*Definitions and interpretations*)

Mr. Speaker: The selected amendments are : 24, 57, 93, 94, 25, 59, 95, 96, 97, 98, 145, 146, 99, 100, 147, 26, 101, 148 and 149.

Shri Seshagiri Rao: I want to move my amendment No. 150 also, Sir,

Mr. Speaker: All right, that is also included.

Shri C. R. Chowdary (Narasaraopet): I beg to move:

Page 2—

omit lines 13 to 15.

Shri K. P. Gounder (Erode): I beg to move:

Page 2, line 13—

omit "(*gotraja*)".

Shri V. G. Deshpande: My amendment No. 93 is the same as amendment No. 57 moved by Shri K. P. Gounder just now.

I beg to move :

Page 2—

omit lines 16 to 20.

Shri C. R. Chowdary: I beg to move:

Page 2—

omit lines 21 to 23

Shri K. P. Gounder : I beg to move:

Page 2, line 21—

omit "(bandhu)".

Shri V. G. Deshpande: My amendment No. 95 is the same as amendment No. 59 moved by Shri K. P. Gounder just now.

I beg to move :

(i) Page 2, line 32—

omit 'and "uterine blood'."

(ii) Page 2—

omit lines 37 to 39.

(iii) Page 3—

omit lines 6 to 20.

Shri K. P. Gounder: I beg to move:

(i) Page 3, line 14—

after "Cochin Nanyar Act" *insert*:

"with respect to the matters for which provision is made in this Act".

(ii) Page 3, line 18—

after "governed" insert :

"with respect to the matters for which provision is made in this Act."

Shri V. G. Deshpande: I beg to move:

(i) Page 3—

omit lines 21 to 24.

(ii) Page 3—

omit lines 26 to 30.

Shri H. G. Vaishnav (Ambad): My amendment No. 147 is the same as amendment No. 100 moved by Shri V. G. Deshpande just now.

Shri C. R. Chowdary: I beg to move:

Page 3—

for lines 26 to 30, *substitute*:

"Provided that illegitimate children shall be deemed to be related to their mother and to one another and also to their putative father; and legitimate children of such children shall be deemed to be related to them and to one another, and any word expressing relationship or denoting a relative shall be construed accordingly."

Shrimati Renu Chakravartty (Basirhat): I beg to move:

Page 3, line 27—

after "one another" *insert* :

"and to their putative father".

Shri Barman (North Bengal-Reserve-Sch. Castes): I beg to move:

Page 3, lines 27 and 28—

(i) *for* "and their legitimate descendants" *substitute* "and also to their father if known and the legitimate descendants of such children"; and

[Shri Barman]

(ii) *after* line 30 *insert*:

"Provided further that nothing contained in the preceding proviso shall be construed as conferring upon any such illegitimate children any rights in or to the property of any person other than any of the persons referred to therein in any case where, but for the provisions thereof, such children would have been incapable of acquiring any such rights by reason of their being illegitimate children."

Shri K. P. Gounder: I beg to move:

Page 3—

omit lines 31 and 32.

Shri Seshagiri Rao: I beg to move:

Page 3—

for lines 31 and 32 *substitute*:

"(K) "Son" includes adopted son and "father" includes adoptive father".

Mr. Speaker: All these amendments are now before the House.

Shri H. G. Vaishnav: Mr. Speaker, my amendment is No. 147 which seeks the deletion of lines 26 to 30 on page 3. As the Bill stands in sub-clause (j) of clause 3, the definition of the word 'related' is given. It says:

"(j) 'related' means related by legitimate kinship."

After this a further proviso has been inserted which says:

"Provided that illegitimate children shall be deemed to be related to their mother and to one another, and their legitimate descendants shall be deemed to be related to them and to one another; and any word expressing relationship or denoting a relative shall be construed accordingly;"

The object of this proviso seems to be to include illegitimate children among the class of heirs.

Mr. Speaker: And to the mother also.

Shri H. G. Vaishnav: Yes, Sir. They are entitled, by this provision, to have a share in the property. I want this proviso to be omitted by my amendment. Why so? I need not explain the reasons in great detail. If the illegitimate children are included in the definition of "related", it may create not only complications but it may affect the morality of society. There is the opinion that illegitimate children exist not because it is their fault, but that it is the fault of someone else—their parents—and that these illegitimate children are to suffer for the fault committed by their parents. No doubt this is true, but how many such instances are there in society? There might be only a few. When we make a law, the law should not be made keeping in view of the case of very few person. Our Law should be general and it should tend to improve the morality of society. If this proviso is maintained, my submission is that there will be really a defect in the morals of society. If the illegitimate children are given a share in the property, I need not mention the difficulties that might ensue. A thing which is considered in the eye of the law and by society as a moral crime will be considered later on in a manner which may be very easy for anyone to interpret in his own way. Therefore, this undesirable trend in society should not be allowed to grow. When we have to raise the morals of society, they should be raised from the very bottom. That would be my reply to those advocates who take the side of the illegitimate children and who say that those children suffer and will suffer because of no fault of their own and due to the fault of someone else. But if we have to stop this at the root, what I think is, there should not be any such proviso in this Bill permitting a share to the illegitimate children.

Already there is a provision in our ordinary law that illegitimate children have the right of maintenance or enjoyment of the property with the rest of the family, and I think that is enough for them. If they are given an equal share with those of the other sons, I think it will not be good and it may create ill-effects and the trend may be towards immorality. Morals should be encouraged from the very roots. So, if the immoral actions of parents are not encouraged by giving a share to the illegitimate children, I think it will be a great check. Therefore, it is in the interests of the society as a whole that this provision is omitted from the Bill. "Related" as it has been defined in sub-clause (j) means related by legitimate kinship. That is enough. This provision

which includes even illegitimate children should be withdrawn. That is why I have moved my amendment No. 147. I submit that it should be accepted.

Shri K. P. Gounder: My amendment No. 57 is to omit the word *gotraja*. Under the old Hindu law, *gotraja* is confined merely to male heirs. In the definition in this Bill, we say 'agnate'. That would include both males and females. But then we have added the word *gotraja* which will lead to confusion. In the old Hindu law, as it stands today, only male *gotraja* heirs are allowed to succeed. If one is to radically change this, it is better, in order to avoid confusion, that the word *gotraja* is omitted. By omitting it, we do not lose anything, because it is only by way of explanation that it is put in there.

Shri V. G. Deshpande: The Minister is absent when the clauses are being discussed.

The Minister of Defence Organisation (Shri Tyagi): I am the legitimate Minister.

Shri Tek Chand: Not a legitimate Minister of Legal Affairs!

Shri V. G. Deshpande: If the Minister is absent, how can our suggestions be considered by him?

Mr. Speaker: This is an important Bill. Both the hon. Ministers concerned with the Bill are not in the House. Let some hon. Member take notes on behalf of the Minister.

Shri K. P. Gounder: The same argument applies to *bandhu*. The definition of *bandhu* under the old Hindu law meant that only males were allowed to succeed except in some States like Madras and Bombay where certain females were not excluded. In the definition of 'cognate', it would include both male and female, that is, male *bandhu* and female *bandhu*, and they are now allowed to succeed to property, in the Bill. If we are going to allow this, then it is better to avoid the old technical expressions such as *gotraja* and *bandhu*. My amendment to omit *bandhu* is No. 59.

My amendment Nos. 145 and 146 are merely consequential amendments. I have said that the words "with respect to the matters for which provision is made in this Act" be inserted, because we have omitted these words when we defined *Marumakkattayam* law. It is merely a formal thing and there need not be anything more said above this amendment No. 145 and also amendment No. 146.

In my amendment No. 149, I have sought to omit lines 31 and 32 at page 3. In the definition, son includes a son adopted in accordance with the law. In that case, we must say that father includes adoptive father and mother includes adoptive mother. If we have recourse to the old Hindu law, while son includes an adopted son, father also will include an adoptive father and mother will include an adoptive mother. So, this will lead to defects and difficulties. Therefore, the best course is to avoid this thing and to omit such a definition.

Shri Barman: I should like to speak on my amendment No. 148. It is practically the opposite of what Shri H. G. Vaishnav was speaking upon. In fact, I want to amend his amendment No. 147 by this amendment of mine. The first part of my amendment reads thus :

> "*for* "and their legitimate descendants" *substitute* "and also to their father if known, and the legitimate descendants of such children"; and"

I have then given the proviso in the second part of the amendment.

The main point is, so far as the illegitimate children are concerned, they shall be entitled to inherit the property of the mother, and not only that; they shall be entitled to inherit the property of the father if that father be known. My friend Shri H. G. Vaishnav argued that in order to check immorality in society, such things should be discouraged and that no illegitimate children should be given any share either in the property of the mother or in the property of the father. I would like to argue in the reverse way. In order to discourage this sort of immorality, it would be rather penalising not only the mother but also the father, so that they might think of their future consequences and the result of their actions.

I submit that the Joint Committee consisting of Members of this House as well as the other House have in their wisdom inserted this.

Mr. Speaker: Is it not difficult to establish the identity of the father of an illegitimate child?

Shri Barman: There is difficulty in proving facts in all cases. Here the words used are, "if the father be known"; "be known" means, "if it is proved before a law court that that man is the father of that child". In such cases, the consequences will follow. But if the identity of the father cannot be proved, in such cases, the consequences will not follow.

Mr. Speaker: Is it not an encouragement for misbehaviour?

Shri Barman: There may be encouragement, but such things do happen in the world. After all, the law courts will establish the facts. In my district there are several tea gardens and we have some experience of this. Sometimes the European managers had illicit intercourse with the workers and when the issue was born, they denied any responsibility for that. The matter was taken to the law court; the identity of the father was established from the resemblance of the child to the man and he was forced to pay for maintenance.

Mr. Speaker: We are dealing with people who have got the same colour!

Shri Barman: So, my submission is that if the identity of the father is legally established, only in such cases the consequences will follow; not otherwise.

Illegitimacy follows not only when there is some illicit intercourse; sometimes the law of the land makes a certain child illegal, even though its father and mother are definitely known to society.

Mr. Speaker: Hindu law has been so modified that irrespective of any caste or sub-caste, any man can marry any woman. Only when the women is already married, the offspring is declared to be illegal. If she is not already married nothing prevents them from marrying. Now that marriage has become so free, why should a premium be put on any man and woman living together? If a man and a woman are living together continuously for a number of years there is presumption of marriage. Now, this applies only to cases where marriage is tabooed under the law. If a child is born of a certain man's wife to some other man, would you like to give that share to that child born of illicit intercourse also?

Shri Barman: If that argument is put forward, then why do you say that an illegitimate child can inherit the property of the mother? That also should not be there. If mother's property can be inherited, there is no reason why father's property cannot be inherited, provided the father be known. Of course, I realise that any man can marry any woman under the present law. I will refer to one instance. There was a very rich man who was not living in a happy way with his married wife. Subsequently he took another girl, a tribal girl, and children were born to them. Because he could not marry that girl according to Hindu rites, the girl was not married to him. Therefore, the children born to them were *prima facie* taken to be illegal. The case is still going on and therefore, I shall not refer to particulars. What I mean is, in such cases no one denies that he is the father. Everyone knows it; even in the law courts it has been admitted that those children were the children of that man. In many cases, the children are declared to be illegal because there is some difficulty under the law.

For the reasons I have mentioned, I submit that in all cases where the child is allowed to inherit the property of the mother, it should also be allowed to inherit the property of the father. It is only because of certain legal difficulties that certain things happened in the past. In future such things may or may not happen; but, I submit that when we are giving the right to an illegitimate child to inherit the property of the mother, there is no reason why the child should not inherit the property of the father also.

Shri C. R. Chowdary: I have moved three amendments to clause 3, namely, amendments Nos. 24, 25 and 26. I will first deal with amendment No. 26.

You know very well that under an established and recognised rule of law, an illegitimate child, under the existing Hindu law, is conferred a partial right, if not an equal right as is conferred on a legitimate child, in the property of the putative father. Under the existing law, the share of an illegitimate child is half of what he would have got had he been legitimate. Under the proviso, you are now completely depriving an illegitimate child from inheriting the property of the father. Originally, a provision was made conferring rights on an illegitimate child to inherit the property of the putative

father, with the qualification "if known". That provision has been deleted now. The cumulative effect of the clause as it stands is that an illegitimate child is deprived of or denied the right to inherit the property of his putative father. It is most unjust and unfair to deny this right to the illegitimate child, for no fault of his. Arguments have been advanced by some hon. Members that if such a right is conferred, it would imply the encouragement of the misbehaviour, the result of which phenomenon is the illegitimate child in the family. I say that would not act as a check but it would encourage indulgence in misbehaviour the other way. If we want to keep the sword of Damocles hanging over the heads of people that they shall not indulge in such a misbehaviour without being in wedlock, it is better for us to provide by way of check for the conferring of right on illegitimate children. That would surely be a check. You know well the mentality of human beings and their behaviour at praticular points when they indulge in such things. Probably it would not be taken into consideration by the parties to such misbehaviour that their children will be debarred from inheriting the property of the father. In the heat of the itch and so many other factors, they first indulge and then feel sorry. Children who are the by-products of such a phenomenon, for no sin of theirs, are sought to be penalised. You want to deny the status of legitimacy and you want to deny them the right to inherit the property of the putative father. Is it right to do so? That is the point that has to be considered when we consider the proviso that is added to sub-caluse (j) of clause 3. I hope the hon. Minister piloting the Bill will take into consideration this aspect of the matter and do the needful in the matter.

The other two amendments numbers 24 and 25 which are to the same effect, could be conveniently dealt with as one. The effect of these amendments is the deletion of certain lines. These lines deal with the definition of cognates and agnates. As I understand, the underlying principle of this Bill in the arrangement of succession to properties and conferring of rights is not religion or propinquity or blood relationship. The principle that has been accepted as the guiding star is love and affection. On the basis of the love and affection rule, you have given a list of heirs to the property of a deceased. That list is sufficiently exhaustive. When the list is sufficiently exhaustive, as based upon the rule of love and affection, where is the need further to extend the field to cognates and agnates, bandhus, gotrajas, samanodakas and the rest of it? These people, generally, will not be known to the deceased nor would the deceased have any affection for these people. The whole basis is love. When these people were not near and dear nor affectionate to the deceased, why should these people be allowed to take the place of heirs and inherit property if he dies without any one of the people enumerated in the Schedule as coming in Class I or Class II? Why should these people be flooded into the arena of inheritance and allowed to inherit the property—people who would not have entered the house of the deceased while he was alive, not known to him when he was alive, nor concerned with the good or bad of that gentleman?

Mr. Speaker: How does the father's father's younger brother come in? Is he not an agnate?

Shri C. R. Chowdary: He is an agnate.

Mr. Speaker: The hon. Member knows in many families, when the elder brother leaves a boy, the younger brother brings him up. He would not come in either in class I or class II. He comes in only as an agnate. What the hon. Member says is, deny it to him and allow escheat. To whom should it go? In the absence of agnates and cognates, it goes to the State.

Shri C. R. Chowdary: Yes.

Mr. Speaker: Consequently, you would rather give it to the State than to the father's father's younger brother who brought up the farther and on account of whom this man enjoys some property. Let the hon. Member apply his mind more closely.

Shri C. R. Chowdary: I have thought over this matter sufficiently and I have come to the definite conclusion that the father's father's brother and all these people are not near and dear to the deceased. The simple reason is, we know, bandhus and others will always think ill of the nearest and dearest. We see in the practical field. They are always looking at how best they could snatch away his property, not by persuasion and love and affection, but otherwise. They always think ill of that gentleman. That being the case, the nearest and dearest who, in our opinion, would be entitled to get the property have been already brought in the list. As a matter of fact, may I draw

[Shri C. R. Chowdary]

your attention to the fact that many of the people that were previously in the list of *bandhus, gotrajas,* cognates or agnates are now being classified and upgraded in class I? If that were not the case, if cognates and agnates who are near and dear to the deceased had not been brought in, I would have understood the principle that the hon. Speaker attempted to enunciate. In this Bill really, all those who, in the opinion of the Joint Committee and the drafters of this Bill, were near and dear, who were affectionate to the deceased have been brought under classes I and II. Had they thought that the father's father's younger brother was one of those for whom the love and affection of the deceased would have been there, they would have certainly brought him in classes I or II. The Joint Committee and the authors of this Code in their wisdom have omitted that particular heir as near and dear. Therefore, I appeal to the hon. Minister to consider this aspect and see that the list of heirs is confined to the classes given in the Schedule and not extended to all those people whom the deceased might not have known or to whom he had no love and affection. Let that property not fall into the hands of these people. Let it go in preference to the State. The State has got so many public undertakings, utility services for which this money can be usefully spent.

Shri Seshagiri Rao: My amendment No. 150 is very simple. The clause says:

> " 'son' includes a son adopted in accordance with the law for the time being in force relating to adoption among Hindus."

A point was raised that when you are defining certain terms in the Code, they should be exhaustive and complete; otherwise it will lead to trouble later on. When the son includes adopted son, the father also must include the adoptive father. So, I say that the clause should be:

> " 'son' includes adopted son and "father" includes adoptive father".

That is the amendment. It is quite simple and I hope the hon. Minister will accept it. It will save trouble.

Only one point I would like to say. My hon. friend was saying that illegitimate children should have some right in the property of the putative father. I cannot understand that. After all, the putative father is not expected to give his property to the by-product of a momentary pleasure.

Shri V. G. Deshpande: I have seven amendments to this clause 3. Of course, most of them deal with some technical terms which I think the hon. Minister of Legal Affairs need not have used. My friend who spoke just now said that the law is based upon love and affection, but we have a different conception. We thought it was based upon duty and responsibility and look at it from that point of view.

All these Sanskrit words are not properly used and do not convey the meaning which they should. Here, the definition of agnate has been given and the word used is *gotraja.* The Sanskrit word *gotraja* means those related to each other as *sagotra spindas* including *satulyas* or *samanodakas.* In a similar manner, *bandhu is also defined* as those related to each other as *bhinna gotra sapindas.* While here, the definition is given:

> "one person is said to be an 'agnate' (*gotraja*) of another if the two are related by blood or adoption wholly through males".

I do not mind that, nor do I want to go into the controversy whether my meaning is correct or the meaning which is given here is correct, but it would be better if these words *gotraja* and *bandhu* are omitted and only the words "agnate" and "cognate" are kept. Then, all the confusion on account of the different technical meanings attached to these words in the Hindu Dharma Shastras will be avoided. This is only a suggestion.

Then, my third suggestion is, of course, even more fundamental. It is about these different laws which are being included here, and we may discuss it at another place.

Then, I want that from this law, this word "uterine blood" should go. "Full blood" we understand, "half blood" is also understood to some extent by us, but it is stated in this definition:

> "two persons are said to be related to each other by uterine blood when they are descended from a common ancestress but by different husbands"

So far as inheritance is concerned, to our mind this is a very revolting term—it may be reactionary, not very progressive—and therefore I would request the Minister of Legal Affairs to omit this.

Mr. Speaker: What happens if a widow re-marries? A widow who has a child by one husband, re-marries and begets children by another husband. What is to happen? The hon. Member allows widow re-marriage, but does not allow property. The question is: one boy by one father dies leaving his property, is another boy by another father entitled to succeed to him or not? How is he to be described? He is not half blood or full blood.

Shri V. G. Deshpande: They are born of the same mother.

Mr. Speaker: Uterine brother. That is the definition.

Shri V. G. Deshpande: What I was driving at was this conception is revolting to us that this branch should also inherit from each other. That was the view I was expressing.

About this legitimacy, I am more worried about (j). The definition should be: "related" means related by legitimate kinship, without the proviso. I think we should stop here. Some of the Members have proposed, as the Members of the Joint Committee had proposed, that the relationship with the father should also be established if the father is known, and that in the legitimacy clause father should also be included. Now, they have retained only mother. My objection is even to this clause, because I will explain it is not a question of not being sympathetic towards those fruits of the sins of their parents. I have got all my sympathy for them, and in this socialist pattern whose dreams our hon. friends are seeing I feel that it is the responsibility of the State to see that these illegitimate children are properly looked after. I do not want that they should be looked after at the cost of somebody else's property. It is for the Government and the Welfare State to look after these sins of their citizens and particularly when progress is going in the direction where illegitimate children are being encouraged. Under such circumstances, it is the responsibility of the State to look after them. If you read this clause, you will see what would be the evil consequences of it.

> "Provided that illegitimate children shall be deemed to be related to their mother and to one another, and their legitimate descendants shall be deemed to be related to them and to one another."

Suppose there is a man who dies and his property goes to the widow. If he has a son, the widow gets half. And in our zeal for progressiveness we have given her absolute property right. After the husband dies, this woman gets an illegitimate son, and on account of our sympathy, the property of the man who has died should be given to the sin of that woman, the property of that man against whom she has committed a crime. She is to be given a reward, that her illegitimate son, will get the property of another man. I suggest that this kind of sympathy for illegitimate children should be shown at the cost of the State Exchequer, and not at the cost of men who have believed in certain things, certain laws. They have earned property and they carry on certain family responsibilities, certain traditions. They may be good, bad or indifferent. But our conception of property is that property is earned by a person so that the tradition of his family may be continued. It may be expressed in a crude form that *pindas* may be given, that *shraddas* may be performed. That itself is a sacred obligation. But even if you do not believe in that, at least family traditions have to be carried on. Even if you say that he will be regarded only as related to his mother, your law is so exhaustive that anybody's property can go to anybody, and with this absolute right conferred upon the widow I think that this legitimacy question should be made more strict.

My friend has not studied the correct position of the Hindu law. He says that even now illegitimate children inherit. He is true only partially. Among the *sudras* illegitimate children do inherit when the woman is in his keeping and the relationship is known. There are certain well-defined conditions. Among the *sudras*, the *dasi putra* gets half a share. That is the present position.

Shri N. Rachiah (Mysore—Reserved—Sch. Castes): Where is the question of *sudras ?*

Shri V. G. Deshpande: It is there, in the present Hindu law.

Shri C. R. Chowdary: In a secular State there is no distinction of Brahmin and non-Brahmin.

Shri V. G. Deshpande: I am not saying *sudras* should be kept separate. Shri Pataskar has still kept them separate.

Shri Pataskar: Do not mind me, mind yourself.

Shri V. G. Deshpande: The present Hindu law does make a distinction of *Trivarnas* and *sudras*. The *Trivarnas* are small in number, and therefore I say he is correct to some extent. The *sudras* form the major portion of the country, and among the *sudras* some kind of inheritance is given to the *dasi putras* or illegitimate children, not of adulterous connection or interposed, but when they are in keeping and their relations are well-defined and publicly known. Only under such conditions they inherit. But that is not a very controversial issue. What I was going to state was that even according to the present Hindu law, the mother's property is not inherited by the children if it is *stridan* property, and there are certain properties which are not inherited by illegitimate children. Now, if you make this provision, if after the husband's death children are born to a woman through illegitimate or adulterous intercourse, then the husband's property can go to these children. This is highly objectionable not only to our ideas and sentiments, but even according to common justice.

My last appeal is that Government should not shirk its responsibility of maintaining these children. The House should pass a resolution that all illegitimate children should be looked after by the State, should be given the best of education. That resolution may be passed and we can show our sympathy by that method, but not by giving somebody's property to the children of some others.

2 P.M.

Mr. Speaker: Now, Pandit Thakur Das Bhargava.

Pandit Thakur Das Bhargava (Gurgaon) I want to understand....

Mr. Speaker: There are many other clauses of a more contentious nature. So, let us speed up with these clauses. I am not saying this against Pandit Thakur Das Bhargava. I have made this suggestion incidentally, only after he got up. In fact, I should have done so even earlier.

Pandit Thakur Das Bhargava: I do not understand the meaning of the words 'sons and daughters' in clause 17, when they are considered in the light of the definition given in clause 3 (1) (j). Clause 17 (1) reads:

> "The property of a female Hindu dying intestate shall devolve according to the rules set out in section 18.—
>
> (a) firstly, upon the sons and daughters (including the children of any pre-deceased son or daughter) and the husband....".

Here, the words are 'sons and daughters', whereas in clause 3 (1) (j) we find this proviso, namely:

> "Provided that illegitimate children shall be deemed to be related to their mother and to one another, and their legitimate descendants shall be deemed to be related to them and to one another....."

Now, the question arises whether the words 'son' and 'daughter' used in clause 16 or clause 8 include illegitimate sons or illegitimate daughters or not. So far as the Schedules referred to in clause 8 is concerned, I understand that 'son' means a legitimate son. But when we come to clause 3 (1) (j), we find that the illegitimate children, so far as the mother is concerned, have a relationship between them. I am rather doubtful as to whether the meaning in clause 17 is the same as in the Schedules.

It may so happen, as in the example given by Shri V. G. Deshpande, that a woman might inherit property from her husband, and she might also have a child by that husband. The child may succeed, and the mother also may succeed. Suppose, after the death of the husband, there is an illegitimate issue. How would that legitimate issue, and the illegitimate issue succeed, so far as this woman is concerned? So far as the woman is concerned, they are both related to her. They are both sons, so far as that woman is concerned. Therefore, it may be that the illegitimate son may claim under this definition, saying that he is also related to the mother. And both the sons, the legitimate son from

the previous husband, and also the illegitimate son, may indulge in a sort of competition between themselves.

I want to know from the Minister whether both will succeed equally, or only one will succeed and the other will not succeed, or else, what would happen, and what would be the inter-relationship between these two. I fail to understand what the position is. If the definition were not there, I could have understood the word 'son' or 'daughter' in clause 17 also to mean only ligitimate son or legitimate daughter. But when this definition is there a doubt arises in my mind, which I would humbly request the Minister to kindly solve.

Shri N. Rachiah: I support clause 3 as recommended by the Joint Committee, because I find that many amendments have been tabled to this clause.

As you are aware, in our Hindu society, for thousands of years, after the Manu-dharma-shastra which came to give us justice, there has never been a single code under which all the Hindus have been brought. We have been having different codes in different parts of the country. This is the first time in the history of our country and of our Hinduism that we are trying to codify the Hindu law, and this august House is engaged in the task of enacting one single code under which all the Hindus will be governed.

At present, we have got different systems of law in different parts of the country. In one State, a particular system is followed, while in a second State, some other system is followed, and in a third State, a third system is followed. Sometimes, the systems differ from locality to locality and from section to section. One section of society is governed by one custom, while the other is governed by some other custom. The result is that there is division, disparity, hatred, class barriers, caste distinctions and what not. I am one of those who believe that it is because of this diversity of customary laws, that there have been class distinctions. My. hon. friends may disagree with me, but I would like to point out that our Prime Minister and our other leaders have been condemning class distinctions and communal outbursts. Unless we have a common code, and unless there is social justice, we shall not be able to root out these things. As many hon. Members have pointed out, we are now a secular State, and as such we must see that there is one common civil code for the whole of the country. We should try and codify the different systems of law, which govern different parts of the country, and have one common code for the whole of the country.

At the same time, I find that we have not been able to bring all the Hindus together. Only a little while ago, I found that there was a lot of controversy over the inclusion of Virashaivas and Lingayats. Some people have said that only Lingayats should be here, while some others have said that only Virashaivas should be there. So, it is clear that even within one community there are so many differences. When that is the case, it is but proper that there should be a uniform code for all of them. The future generation will certainly be grateful to the Congress Government and also the present generation, and particularly, the Members of this House, for their farsightedness in having been able to codify the different systems and have one common code in the best interests of the country.

[MR. DEPUTY-SPEAKER *in the Chair*]

The majority of the people in our country are Hindus, while the rest are Christians, Muslims or persons belonging to the other religions. So far as the minorities are concerned, they have got a single code which is applicable to them all over the country. So far as the Muslims are concerned, they have got one code, namely the Quran, and in the case of the Christians, they have the Bible as their common code. It is only the Hindu population in this vast country of ours, that does not have a uniform code. Unless we pass this second instalment of our Hindu code, I am afraid all our talk of socialistic pattern and welfare State and democracy and so on will merely be on paper, or in the air.

I am sorry to find that many of the Congress Members are opposing the Bill, as they had done previously also, while the Opposition Members, or at least, most of them, are supporting this Bill. I am very sorry that our Panditji....

Mr. Deputy-Speaker: I would request the hon. Member to be more specific on the clause that is before us now. I find that the hon. Member is going into a general discussion.

Shri N. Rachiah: I was saying that by way of general remarks. Now, I come to the clause that is under discussion.

[Shri N. Rachiah]

I would submit that of the entire code, this Bill is the most important one. The other chapters of the Hindu code merely deal with definitions and interpretations, but the central chapter of the Hindu code is the one relating to succession. What is the use of having a Hindu code without making provision for succession? Marriage can go on even without this Bill, and it has been going on. But with regard to the right of succession, we find that there are different customs in different parts of the country. In Travancore-Cochin, they follow one particular custom; in Bengal, they follow the Dayabhaga system. In Mysore and other parts of India, and particularly in those parts from which I come, we are governed by the Mitakshara system of law. Apart from these three or four major schools of thought among Hindus, there are so many other customs. Just now, Shri V. G. Deshpande mentioned about Scheduled Castes as *sudras*. I am very very sorry that even after nine years of independence, a responsible Member of this House can refer to some section of society as *sudras* (*Interruptions*). The Scheduled Castes are a community who are economically backward. That does not mean that they can be called *sudras*.

Shri V. G. Deshpande: I did not say that.

Shri N. Rachiah: I challenge him. Because a man is a Scheduled Caste, it does not mean that he is a *sudra*. Scheduled Castes are a class who are economically, socially, educationally and politically backward. There are in the society, three classes, the advanced class, the backward class and the Scheduled Castes. The Scheduled Castes are the most backward. Simply because one class is backward and another class is advanced, can an hon. Member say that the backward class people are *sudras*?

Shri V. G. Deshpande: Scheduled Castes are not *sudras*.

Shri N. Rachiah: I do not accept that constitutionally any Member is entitled to say the Scheduled Castes are *sudras*. Clause 3(d) says:

> "the expressions 'custom' and 'usage' signify any rule which having been continuously and uniformly observed for a long time, has obtained the force of law among Hindus in any local area, tribe, community, group or family".

Our country is a very poor country, an illiterate country. The people are very ignorant. Our Government have thought it fit to effect some improvements by means of the law. I am one of those who do not want to have any regard for any custom or usage, because if you want to consolidate our country, if you want to consolidate Hindus, if you want to promote goodwill, love, affection and brotherhood among all Hindus, that can be done only by law. Government have found out that our society is so backward, our people are so ignorant, our people are so poor that they cannot go to a court of law. So from all points of view, they have thought it fit to allow some relaxation with regard to the law.

Taking advantage of that, some people say that some people are *sudras* and some non-*sudras*. We do not tolerate such kind of talk, because in a democracy, in a socialist pattern of society, anything could be done only through law, as we have variety of communities and schools of thought under Hindu law. Somebody expands his own school of thought to cover the whole country. That is not the way of proceeding in this matter. This is the representative, august House of our great country and everything should be done through legislation; otherwise, we cannot achieve anything in the form of unity and consolidation. In the interests of the solidarity of Hinduism, that is the only course.

Mr. Deputy-Speaker: I would request the hon. Member to confine his remarks to the subject under discussion. We are now only discussing clause 3 and he should confine himself to what is contained in clause 3.

Shri N. Rachiah: What I have been explaining is that some Members have moved amendments and spoken on them. Just now Shri V. G. Deshpande attacked the Government by saying that what they did in regard to this Bill was revolting and Government had no sense whatsoever. He spoke in that spirit.

Mr. Deputy-Speaker: There will be other clauses in this Bill where the hon. Member can answer that charge and say that Government have got very great sense. But here the only point is about custom, usage etc.

Shri N. Rachiah: I submit to you that you came to the Chair just now only. Just before that, Shri V. G. Deshpande attacked the Government by saying that

the word incorporated in this Bill was revolting. I want to know in what way it is revolting to Shri V. G. Deshpande or his followers a section of the society to which he belongs. I say this because Government have, after 15 years have elapsed since this charter and other charters of the Hindu Code have been before the public, before this country, before this House and before the society, particularly Hindu society, come to the conclusion that unless we pass this Bill, there will be no salvation for Hinduism. I am afraid that if we allow the lapse to continue, in course of time most of the Hindus may get out of Hinduism, and as a result, Hinduism may be wiped off. That is the fear of our leaders. As such, I refute the charge which he has levelled against the Government. I refute the charge that what they have done is revolting. What they have done is quite justified. I support this instalment of the Hindu Code which has come in the form of this Bill, as recommended by the Joint Committee. I support all the sub-clauses to clause 3 regarding definitions and interpretation.

Pandit C. N. Malviya (Raisen): I support the definition in sub-clause (j). It says:

> " 'related' means related by legitimate kinship provided that illegitimate children shall be deemed to be related to their mother and to one another".

I oppose all the amendments to sub-clause (j) and support the amendment regarding sub-clauses (a) and (c), that is, relating to agnates and cognates. Why should we care so much for property and not for human beings for no fault of their? Pandit Thakur Das Bhargava has posed the question: supposing a mother who inherits a property, has a son, and another son who is an illegitimate son, what will happen to them? Let them have the share of the mother equally. What is the harm in that, because, it is no fault of the illegitimate son that he was born illegitimate. After all, what is legitimacy and illegitimacy?

It is a conception created by ourselves, the society.

Shri V. G. Deshpande: Somebody else.

Pandit C. N. Malviya: Today we call certain things illegitimate which may become legitimate and certain things legitimate which may become illegitimate. Can you imagine in the Hindu society of hundred years ago, descriptions like the uterine brother and half-brother?

Therefore, I support this definition and I want that the legitimate son or daughter should not be penalised for the crimes or sins of their parents. This will not be an encouragement but discouragement because one will have to share property; he will have to share something which is very much beloved.

In view of the changing conditions of society, when we are moving towards a particular goal and when we have passed the Estates Duty Act and the amendments to the Income-tax Act in order to reduce inequalities and when we want to bring about a social change by putting ceilings on lands etc. where is the place for all these agnates and cognates? You have effected some changes in the joint family system. According to ancient Hindu law, a daughter has only a right to maintenance. She does not have right to a share of the property. But, here we are giving a share to the dauther in the coparcenary property. Then, why not change the law now and omit all these agnates and cognates, so that the property may be divided among the nearest and dearest? If they get substantial property they will be able to invest in development programmes of our country and also add something more to the Exchequer. Otherwise, it would bring about a host of other people to look to the property of that man. We should wipe out all these things at once. I do not think there is any justification for the agnates and cognates to have any share in the coparcenary property or the joint family property. This is my submission and I hope the House will agree with me.

Shri Tek Chand: Mr. Deputy-Speaker, I wish hon. Members who have spoken had cared to analyse with greater precision the proviso under 3(j). What it says is that with regard to illegitimate children they shall be deemed to be related to their mother and to one another etc. I quote an illustration. A husband and wife, married, give birth to a son. The husband dies and the wife, as his widow, becomes the absolute owner of the property left by him, sharing it, of course, along with the son. Then, the widow leads an unchaste life, whereby she may have a plurality of illegitimate children, 3, 4 or 5. What happens? The property of her deceased husband is to be shared, if she has got 5 illegitimate children, to the extent of 1/6 by the legitimate son and to the extent of 5/6 by the illegitimate children. It seems to be wrong as my friend, Shri Kasliwal, says, (*Interruption*). My submission is that it is all very

[Shri Tek Chand]

very well to shed tears for children who carry the brand of illegitimacy for no fault of their own. But, I ask: while we are showing some sympathy or pity towards them, is it the correct way of showing that sympathy or pity by completely obliterating the distinction between legitimate and illegitimate? In other words, it is an impetus, it is an encouragement to widows to become unchaste. The law does not consider their conduct askance. If the widow has got any number of illegitimate children, they are going to share the property of her late husband equally along with the legitimate son. Just see the impact on the heart strings of the son. The mother carries the stigma; the honour of the family of the husband has been defiled and for having defiled that honour, you are going to present her children with equal rights. Is that charity? Is that just? Is that morality?

I can understand if you had made some sort of distinction, if you had made some rule of priority. If you were to say that if a woman has legitimate sons from her late husband they are to be preferred, that is understandable. One might even stretch logic, strech sympathy and say that even in the presence of the legitimate children the illegitimate children may be given something; that, at least, is understandable. It is difficult for me to swallow. But to say that she may go on producing this type of children will that not be a stigma on the society? Will that not be a stigma on the law which permits her to do what she likes and which allows the property of her late husband to be shared by those who do not share the particles of his body and by those who share the particles of his body? That is the moral aspect of it. It is fashionable to spurn morals these days. By all means, reject them. But, if you reject them, you are rejecting sound commonsense, sound decency. Reject it by all means, but reject it with open eyes.

My attack on the proviso is also on the score that it is innocent of logic. I wish to speak as a lawyer. In one class you are giving preference to illegitimate children. You say that illegitimate children shall be deemed to be related to their mother and to one another and then you say that their legitimate descendants shall be deemed to be related to them and to one another. That is to say, the illegitimate child of an illegitimate child is not related. I find the hon. Minister is engaged otherwise. I wish to pinpoint his attention on this. The principle of law is clear. In the matter of relationship, you recognise the relationship of an illegitimate person *vis-a-vis* the legitimate descendants. Nobody knows better than my hon. friend, the hon. Minister that *inclusio unius est exclusio alterius*, including one thing is tantamount to excluding all the others. When you are going to state the relationship here, you say the illegitimate person's relations are, of course, their mother, they themselves *inter se*, but not their illegitimate descendants. They must be legitimate descendants and then alone can they be deemed to be related. I think you have given logic a long holiday, a furlough when you are drafting the proviso in the manner in which you have drafted it.

Mr. Deputy-Speaker: It is much better for the hon. Member to refer to the clause or sub-clause instead of directly addressing the Minister, as, 'you say' etc.

Shri Pataskar: It is for the purpose of impressing.

Mr. Deputy-Speaker: He might impress me; I will bear that.

Shri B. D. Pande: He is the legitimate father of the Bill.

Shri Tek Chand: I must admit, by ignorance or otherwise, I am not foisting parentage, legitimate or putative, upon the hon. Minister.

Now, Sir, you ask me to specify the particular clause. I was dealing with 3 (j), proviso.

Mr. Deputy-Speaker: I was not doubtful of the clause that was being discussed. I only requested the hon. Member that instead of pointing to the hon. Minister and saying, 'you say this, you say that', he may say that the clause says or the proviso says.

Shri Tek Chand: This word, the second pronoun, may be put in converted commas. I am really addressing you. Coming to (k), it says:—

> "'son' includes a son adopted in accordance with the law for the time being in force relating to adoption among Hindus".

Here, I notice a lacuna because, when they are treating an adopted son as a son, they by mischance it appears, seem to have forgotten another case of adoption with which you must be more

familiar than the rest. That is what is known as the appointment of an heir under well-established customary law in Punjab. The distinction between adoption according to the Hindu law and customary adoption is this. Under the Hindu law adoption, you transplant a son from one family into another whereby he bears relationship in the transplanted family. In the case of customary law adoptions, well known in Punjab, not necessarily confined to Hindus only but accepted even by the Muhammadans, the distinction is that the appointed heir bears relationship with the appointor to the exclusion of his other relations. The result therefore is this. Here is your law of succession, which is going to apply to the sons, which is going to apply to adopted sons, whether according to *dattaka* form or *kritrima* form, but it is going to exclude a large number of sons other than those that come under the institution known as "appointment of heir". To this extent, (k) bears certain imperfections, because a very large number of people happen to be excluded from that definition. I want, through you, Sir, to focus the attention of the hon. Minister to this.

Shri Pataskar: But I could not follow his reference to putative and all that.

Shri Tek Chand: I am glad he has, by his interjection, really assisted me to point out another negation of logic regarding the provisions for illegitimate children. It is stated that an illegitimate child is related to his mother, and being related to his mother, he is her heir. What about the putative father? The putative father is responsible for fathering an illegitimate child on a woman. But so far as his property is concerned, that is not available to his illegitimate son. The answer may very well be that it will be exceedingly difficult to discover or find out the putative father. There may be a plurality of them, whereby it is difficult to fasten paternity on A, B or C in the case of two, three or four of them having had access at the same time to the same woman. That may be difficult under such circumstances; but what about the case of a man who is keeping a concubine who is not married to him and who is having children from his concubine? The result will be that so far as the children of the concubine are concerned, they are entitled to inherit the property of their mother—under (j) the relationship between the mother and themselves is there —but they cannot take the property of their putative father. So far as illegitimate children are concerned, you are showing all sorts of sympathy, but do not take leave of logic surely. If illegitimate children are entitled to the benefits of property, they are entitled to the benefits of property not only of their mother but also of their putative father. That is the point that I was endeavouring to lay with regard to putative fathers.

A closer analysis of these provisions leads me to come to the conclusion that in certain cases they lead to absurdities, and in most cases they may lead to gross injustice, and in some cases they are prone to pervert the morals of society.

Shri Pataskar: Clause 3 relates to the definition of certain phrases which have been used in the Act.

The first is the definition of the word "agnate". An agnate is defined like this: one person is said to be an agnate (*gotaraja*) of another if the two are related by blood or adoption wholly through males. There is an amendment that the word "gotraja" should be omitted. The amendment is No. 57. When the whole thing is so clear, I also think that from the point of view of drafting, this word 'gotraja' may be deleted.

For the same reason for which I conceded the deletion of word 'gotraja' I should agree to the adoption of the word 'bandhu' in the definition of the word "cognate". I do not want anybody afterwards to come and argue about the meaning of the word 'bandhu' and the purpose for which it is introduced here. Therefore, I agree to the deletion of the word "bandhu" as suggested in amendment No. 59.

I will first of all refer to those things with which I agree.

Shri Nand Lal Sharma (Sikar): All the technical words of the Hindu law are to be omitted.

Mr. Deputy-Speaker: The hon. Member has come too late.

Shri Pataskar: I anticipated all these things. Then, amendment No. 145 is another thing with which I agree. It says that in page 3, line 14, *after* "Cochin Nayar Act" *insert* "with respect to the matters for which provision is made in this Act". Naturally, I find on an examination of that Act that it

[Shri Pataskar]

also refers to certain other matters. Therefore, this amendment has been rightly suggested and I am prepared to accept amendment No. 145. The same thing more or less occurs in line 18, that is, amendment No. 146.

Shri Bansal: Which are the amendments that the hon. Minister is accepting?

Shri Pataskar: Nos. 145 and 146, because they are more or less verbal things.

Shri Bansal: Whatever they may be, we only want to know the numbers of the amendments that are being accepted by the hon. Minister.

Shri Pataskar: I am accepting Nos. 57 and 59.

Shri Bansal: We do not follow.

Mr. Deputy-Speaker: Nos. 57, 59, 145 and 146. Are all these amendments accepted?

Shri Pataskar: No. 146 is not yet acceptable, because I shall have to examine it further. I will let you know about it later. If it is only a verbal thing, if it is on the same basis as amendment No. 145, then it should be acceptable. However, I will examine it further.

With regard to amendment No. 149, suggesting the omission of the definition of "son", I would say this. The definition as given here is that "son" includes a son adopted in accordance with the law for the time being in force relating to adoption among Hindus. There is some force in the argument of my hon. learned friend, though it was more vehement than I could grasp. Still, I feel there was some force in it. I would rather like that the word "son" may not be defined. We all know what "son" means. I am prepared to accept amendment No. 149 which says that this definition is unnecessary, and it should be deleted.

Much attention was focussed and a considerable feeling created with regard to the definition of the word "related" in clause (j).

The word 'related' means 'related by legitimate kinship'.

Pandit Thakur Das Bhargava: May I know where this word is used? I do not find the word used anywhere.

Shri Pataskar: We shall see now. We only recognise legitimate things. Much of the trouble is not about the definition of the first part. There has been a good deal of criticism with respect to the proviso. What does it indicate? It says: "Provided that illegitimate children shall be deemed to be related to their mother and to one another....." At one stage, the Select Committee recommended: "Illegitimate children shall be deemed to be related to their mother and to their father, if known". When the matter was discussed in the other House, it was thought that this might lead to the evasion of the Marriage Act. Let us suppose that there was a person who had a married wife. He also has another woman. We know that in many parts of our country, if he has no son, the tendency is to have some other woman and have a child. There will be another woman and he can keep her. Then, that child will be there. So, that would lead to the breaking of the very solemn provisions of the law by which we have provided for monogamy. Though it was suggested by the Select Committee, I thought that it would be inconsistent with the trend of our society, the society which we are trying to evolve by the other law. But, I am surprised that even, after that, there should be objection to the present proviso which only means that if there are illegitimate children, they shall be related to their mother. I do not know what objection could be there if they are related to their mother and to one another. To whom could they be related? This is a very simple proposition. But the ingenuity of some of the hon. Members finds out something. Supposing there is a woman, they say. Supposition can be made so long as our imagination continues to play its role and is allowed to go to any length. What was the idea? There is a widow who has got a son. She has inherited the property from her husband. Supposing she subsequently leads an immoral life and children are born, what is going to happen? Should the son born out of wedlock inherit her property? (*Interruptions*).

Shri Tek Chand: Her husband's property.

Shri Patasker: He will allow me to finish. I was patiently hearing his speech.

Mr. Deputy-Speaker: He should point it out to me.

Shri Tek Chand: I am sorry I had to interrupt.

Shri Patasker: The example given is of a legitimate son. He gets a share in the father's property. Even under the present law, the widow has got a right to inherit; she does get a share in the property. There may be rare cases of such a nature. It is wrong to suppose that we shall make some exception in a law like this where we say that normally, illegitimate children are related to their mother and to one another. Supposing in certain exceptional cases, things are not what they should normally be, what can be done? Should we make exceptions which are going to conflict with our ideas? We do not want that the children in such cases should inherit the mother. It is not prudent to stick to things which are unreal. . (*Interruptions*). There are some people who are born with certain ideas of which unfortunately, they could not get out. That is the trouble. I will not quarrel with them. I will say to them that the meaning is clear. Whenever a woman succeeds, naturally, she gets the property. We all want that there should not be such a society in which women can go on having illegitimate children. If that happens, then what? I would make it clear to my hon. friends who have put me the question that the woman having inherited some property absolutely her children shall get it. It will go to her children no doubt. I will not mince matters. For the sake of some imaginary, hypothetical question, do we want to say that we should have an exception to the normal rule? Should we say that so far as illegitimate children are concerned, they should not be related even to their mothers or to each other? That is going too far. I would say to the hon. Members that such cases are likely to be very few and far between and for that we should not agitate so much and allow this feeling to grow. I am prepared to make any change so far as the definition of sub-clause (j) is concerned. (*Interruptions*).

Shri C. R. Chowdary: By allowings this proviso to go untouched, are we not allowing a chance to bring into existence a community which is not there now—a new community?

Mr. Deputy-Speaker: Has the hon. Minister finished?

Shri Patasker: Yes, Sir. I would also accept amendment No. 146 which is on the same basis as No. 145.

Mr. Deputy-Speaker: Now, I will put the amendments to the vote of the House. Do the hon. Members desire that they should be put separately.

Shri Bansal: That will be better.

Mr. Deputy-Speaker: That is all right. I will put them separately. Amendments Nos. 57, 59, 145, 146 and 149 are acceptable to the Minister and I shall put them first to the vote of the House.

Mr. Deputy-Speaker: The question is:

Page 2, line 13—

omit "(gotraja)".

The motion was adopted.

Mr. Deputy-Speaker: The question is:

Page 2 line 21—

omit ("bandhu)".

The motion was adopted.

Mr. Deputy-Speaker: The question is:

Page 3, line 14—

after "Cochin Nayar Act" *insert*:

"with respect to the matters for which provision is made in this Act".

The motion was adopted.

Mr. Deputy-Speaker: The question is:

Page 3, line 18—

after "governed" *insert*:

"with respect to the matters for which provision is made in this Act".

The motion was adopted.

Mr. Deputy-Speaker: The question is:

Page 3—

omit lines 31 and 32.

The motion was adopted.

Mr. Deputy-Speaker : The question is :

Page 2—

omit lines 13 to 15.

The motion was negatived.

Mr. Deputy-Speaker : The question is :

Page 2—

omit lines 16 to 20.

The motion was negatived.

Mr. Deputy-Speaker : The question is :

Page 2—

omit lines 21 to 23.

The motion was negatived.

Mr. Deputy-Speaker : The question is :

Page 2 line 32—

omit 'and "uterine blood"'

The motion was negatived.

Mr. Deputy-Speaker : The question is :

Page 2—

omit lines 37 to 39.

The motion was negatived.

Mr. Deputy-Speaker : The question is :

Page 3—

omit lines 6 to 20.

The motion was negatived.

Mr. Deputy-Speaker : The question is :

Page 3—

omit lines 21 to 24.

The motion was negatived.

Mr. Deputy-Speaker : The question is :

Page 3—

omit lines 26 to 30.

The motion was negatived.

Mr. Deputy-Speaker : The question is :

Page 3—

for lines 26 to 30, *substitute*:

"Provided that illegitimate children shall be deemed to be related to their mother and to one another and also to their putative father; and legitimate children of such children shall be deemed to be related to them and to one another; and any word expressing relationship or denoting a relative shall be construed accordingly."

The motion was negatived.

Mr. Deputy-Speaker : The question is :

Page 3, line 27—

after "one another" *insert*:

"and to their putative father".

The motion was negatived.

Mr. Deputy-Speaker : The question is :

Page 3, lines 27 and 28—

(i) *for* "and their legitimate descendants" *substitute* "and also to their father if known; and the legitimate descendants of such children"; and

(ii) *after* line 30 *insert*:

"Provided further that nothing contained in the preceding proviso shall be construed as conferring upon any such illegitimate children any rights in or to the property of any person other than any of the persons referred to therein in any case where, but for the provisions thereof, such children would have been incapable of acquiring any such rights by reason of their being illegitimate children."

The motion was negatived.

Mr. Deputy-Speaker : The question is :

Page 3—

for lines 31 and 32 *substitute* :

"(K) 'son' includes adopted son and 'father' includes adoptive father".

The motion was negatived.

Mr. Deputy-Speaker : The question is :

"That clause 3, as amended, stand part of the Bill."

The motion was adopted.

Clause 3, *as amended, was added to the Bill.*

Clause 4—*(Over-riding effect of Act)*

Mr. Deputy-Speaker: The following are the selected amendments to clause 4 of the Hindu Succession Bill which have been indicated by the Members to be moved subject to their being otherwise admissible: Amendments Nos. 151, 152, 153, 193 (similar as 153), 154, 155, 156 and 195.

I have got one request to make to the hon. Members. Of course, interpretation of clauses is very important, but we have more important clauses still to be taken up. Therefore, in amendments, if the hon. Members agree to take less time and put forward only the points, that will be better because in that case for other controversial points we will have more time and, perhaps, we will have to spend a much longer time.

Shri Nand Lal Sharma: I submit that this is a controversial clause and. . .

Mr. Deputy-Speaker: I have not said that time should not be spent on this clause. I only made a request to hon. Members in general terms.

Pandit Thakur Das Bhargava: I beg to move:

(i) Page 3, lines 36 and 37—

omit "any custom or usage as"

(ii) Page 4—

omit lines 1 to 3.

Shri Radha Raman (Delhi city) I beg to move:

Page 4—

after line 3 *add*:

"(c) any law, and custom or usage in force immediately before the commencement of this Act, barring the right to partition of the Mitakshara coparcenary property by any member of the coparcenary owing the property, shall cease to have effect."

Shri Tek Chand: I beg to move:

Page 4—

after line 3, *add*:

"(c) any law, custom or usage barring the right of any male member of a joint Hindu family governed by Mitakshara Hindu law to claim partition of the coparcenary property, in force immediately, before the commencement of this Act, shall cease to have effect."

Pandit Thakur Das Bhargava: I beg to move:

Page 4—

omit lines 4 to 8.

Shri V. G. Deshpande: I beg to move:

Page 4, line 5—

after "affect" *insert*:

"the right to succeed to immovable property as has been in force hitherto amongst Hindus, Jains, Sikhs and Buddhists and persons other than Muslims, Christians, Parsis and Jews and"

Shri Hem Raj (Kangra): I beg to move:

Page 4, line 6—

after "being in force" *insert*:

"or to be enacted hereafter.".

Pandit Thakur Das Bhargava: I beg to move:

Page 3—

after line 39 *add*:

"(aa) in the case of every Hindu undivided family governed by the Mitakshara Law I son or a grand son shall be deemed to be entitled to claim partition of the coparcenary property against his father or grand father notwithstanding any custom to the contrary".

Mr. Deputy-Speaker: All these amendments are before the House.

Shri Radha Raman (Delhi City): Mr. Deputy-Speaker, my amendment is No. 153. I just want that in clause 4 after sections (a) and (b), a section (c) should be added. It only seeks to provide that in Punjab, where in the lifetime of a father a son cannot claim partition, he should have the same right as the sons in other parts of the country will have, because the object of this Bill is to have a uniform law. If this uniformity is not maintained, then there will be a certain amount of suffering on the part of those who reside in that part.

[Shri Radha Raman]

Clause 6 of the Hindu Succession Bill has been drafted on the assumption that every male member of a Mitakshara coparcenary has the right to claim partition of the coparcenary property at any time and that the interest of male members who do not wish to continue as such are therefore absolutely safeguarded. This is not so in all parts of the country. This aspect of the matter appears not to have come to the notice of the Joint Committee. It has been held by the Punjab Chief Court vide *All India Reporter* 1918 *Lahore* 291 *Full Bench*) that in the Punjab the son cannot demand a partition of the coparcenary property during the life-time of his father against the latter's wishes. The Bill does not seek to remove this grave injustice which is clearly an extremely restrictive provision going against not only the modern trends of thought, but even the fundamental principles of the Mitakshara system of Hindu law. The necessity for a change in this respect has become all the more essential in view of explanation to section 6 which gives the daughter an equal share in her brother's interest also in the coparcenary property. Coparcenary properties and businesses as they stand today are not merely of an ancestral nature, but are comprised of very material contributions by adult sons. In fact, in very many cases of urban coparcenaries the coparcenary property owes its origin solely to the endeavour of sons who either never got any nucleus from their father or were able to convert an insignificant nucleus into huge properties.

Sir, as I have just now mentioned, it is necessary that this law is of a uniform nature and be maintained with uniformity all over the country. Therefore, if in one particular area the son was not allowed to seek partition during the life-time of the father and he had to build up properties, which will ultimately be shared by those who did not contribute anything to that building up, it will be rather no incentive to that son and, probably, many persons in that area will not like to put in their best efforts to carry on their business with the same zeal and enthusiasm as they would have otherwise done. I, therefore, say, that there should be this provision which should make it possible that during the life-time of the father, the son can have partition, as it is possible in all other areas. That will only bring the entire country on a par and there will be the same flow of provisions throughout the country. There will be no difference or discrimination in one part as compared to another part of the country. This is a simple amendment which I want to place before the House. Since it only brings the clause in uniformity with the rest of the provisions, I hope it will be accepted by the hon. Minister for Legal Affairs.

Shri Bansal: Sir, I rise to support the amendment of my friend Shri Radha Raman. But I have only one point to make. There are amendments to clause 6 of the Bill seeking the deletion of the explanation. If any one of those amendments is accepted by the hon. Minister, I think, perhaps,—I am not sure—there may not be any need for the amendment Shri Radha Raman. I leave it to the hon. Minister to let us know if in his opinion the substance of what Shri Radha Raman has said will be covered if the explanation to clause 6 will be deleted. If it is not so, then I would suggest that Shri Radha Raman's amendment may be accepted.

After looking into the wording of this amendment rather carefully, I am not very sure if the amendment of Shri Radha Raman does not go much beyond than what he has actually in view. Our intention is very limited and that is, in the case of those States where the son does not have a right to claim partition during the life-time of his father, he should be given that right.

श्रीमती सुभद्रा जोशी (करनाल): जिसमें बहनोंको न मिले ।

Shri Bansal: Not at all. The point is this. In joint families what happens is that the coparcenary property is the sum total of the property that accumulates on account of the combined labour of the father and sons. It is to safeguard those cases that this amendment has been moved by my friend Shri Radha Raman. I suggest, if that small limited purpose is met by the deletion of explanation to clause 6, then perhaps there is no need of this amendment. If it does not, then the wording of this amendment may be carefully looked into and the amendment accepted.

श्री नन्द लाल शर्मा :

नमोऽस्तु रामाय सलक्ष्मणाय देव्यै च तस्यै
जनकात्मजायै ।

[श्री नन्द लाल शर्मा]

नमोऽस्तु रुद्रेन्द्र यमानिलेभ्यो नमोऽस्तु
चन्द्रार्क मरुद्गणेभ्यः ।।

माननीय उपाध्यक्ष महोदय, मेरा निवेदन है कि यह क्लास ४ वस्तुतः हिन्दू ला के मूल पर कुठाराघात करने वाली है । इसका कारण यह है कि भारतवर्ष में चाहे अंग्रेज रहा हो, चाहे मुसलमान रहा हो चाहे किसी और ने यहां पर राज्य किया हो, और उन्होंने चाहे अपनी ओर से कोई और दीवानी चलाई हो, कोई और कानून चलाये हों लेकिन किसी ने भी हिन्दू धर्म का शास्त्र से कोई सम्बन्ध नहीं है यह कहने की चेष्टा नहीं की । प्रिवी काउंसिल में जितनी भी जजमेंटस् दी गई हैं और उन जजमेंटस् को देते वक्त जजिस का कैसा भी इंटरप्रेटेशन ला का क्यों न रहा हो किन्तु उन सब जजमेंटस् मुख्य आधार मनु, याज्ञवल्क्य,दाय भाग, मिताक्षरा आदि ही रहा है । आज तक किसी भी लैजिस्लेटर ने यह कहने की चेष्टा नहीं की कि हिन्दुओं का परसनल ला उनसे बिल्कुल अलग कर दिया जायगा । क्लाज ४ में जो यह कहा गया है कि any text, rule or interpretation of Hindu law. इसका अर्थ है कि जहां मुसलमानके लिए उनके हदीस के अनुसार उसका परसनल ला उसके ऊपर लागू होगा, ईसाई के लिए बाइबिल के अनुसार लागू होगा तथा दूसरों के लिए उनका परसनल ला होगा, वहां हिन्दू ही ऐसा अभागा रह जायगा जो मिस्टर पाटसकर के रूल में आकर अपने हिन्दू धर्म शास्त्र से सम्बन्ध तोड़ लेगा । मैंने पहले भी पाटसकर साहब से प्रार्थना की थी और आज भी करता हूं कि वह चाहे जितना गंदे से गन्दा कानून हिन्दू जाति के लिए बना लें और जितना उनकी इच्छा है, उतना ही खराब कानून हिन्दू जाति के लिए बना लें किन्तु हिन्दू जाति का हिन्दू धर्म शास्त्र से और हिन्दू रिवाज परम्परा से सम्बन्ध न तोड़ें । इतना और कहना चाहता हूं कि कानूनी इंटरप्रेटेशन तो उनकी सबसे उत्तम है और इस प्रकार की इंटरप्रेटेशन शायद सर सुल्तान अहमद या डा० अम्बेडकर भी नहीं कर सके हैं । आज यद्यपि हिन्दू जाति या हिन्दू शास्त्र ....

3 P.M.

Mr. Deputy-Speaker : There is nothing personal for Shri Pataskar. That should not be impressed very much. The Government are bringing in this Bill. It may be said once or twice, but to repeat it after every sentence does not look nice.

श्री नन्द लाल शर्मा : उपाध्यक्ष महोदय, मेरी प्रार्थना यह है कि लोगों का तो जो कोई भी इसका वर्तमान पिता है उसी से सम्बन्ध है । हमारी किसी से व्यक्तिगत शत्रुता नहीं है । न हमारी व्यक्तिगत शत्रुता सर सुल्तान अहमद और न डा० अम्बेडकर से थी और न ही पाटसकर साहब से है । इस समय यह बिल श्री पाटसकर साहब के नाम से उपस्थित है, इसलिए इसके जो भी गुणदोष हैं, वे सब पाटसकर साहब के सिर पर हैं ।

उपाध्यक्ष महोदय : वह भी तो गवर्नमेंट को रिप्रिजेंट (प्रतिनिधित्व) कर रहे हैं और आप गवर्नमेंट से जो कुछ कहना चाहते ह, वह कह सकते हैं ।

श्री नन्दलाल शर्मा : बहुत अच्छा गवर्नमेंट से ही कहता हूं परन्तु गवर्नमेंट के मुख्य दशा इस प्रसंग में केवल पाटसकर साहब ही हैं—

उपाध्यक्ष महोदय : बहुत अच्छा, आगे चलिये ।

श्री नन्द लाल शर्मा : मेरा निवेदन केवल इतना है कि अब भी वह हिन्दू जाति का हिन्द धर्म शास्त्र से तथा उसकी प्राचीन परम्पराओं से सम्बन्ध न तोडे और इस भाग को हटा दे । इसके बाद चाहे वह इस ला को कितना ही खराब कर ले, मुझे कोई एतराज नहीं है । मैं समझता कि एक न एक दिन ऐसा आवेगा जब हिन्दु जाति इसको पनः ठीक कर सकेगी अब इसके बाद यदि हिन्दू जाति के हिन्दू ला के सम्बन्ध में कोई भी प्रश्न कोर्टस के सामने उपस्थित होगा तो कोई भी हिन्द धर्म शास्त्र को, मनु स्मृति को, याज्ञवल्क्य इत्यादि को उठाकर देखने वाला नहीं रह जायेगा । जो व्यवस्था लाखों वर्षोंसे चली आई है उसका सम्बन्ध हिंदू जाति से आज भारत के स्वतंत्र हो जाने के बाद टूट जायेगा । इस लिये मैं इस क्लास (खण्ड) का सोलह आने विरोध करता हूं और मैं निवेदन करता हूं कि पाटसकर साहब इसमें स्वयं ही समुचित परिवर्तन करें जिससे हिन्दू धर्म शास्त्र का और हिन्दू परम्परा का सम्बन्ध हिन्दू जाति से न टुटने पावे ।

Shri Tek Chand: The amendment standing in the name of my hon. friend Shri Radha Raman is the same and is similarly worded as my amendment No. 193 and I rise to support what he has said. In this connection I wish to bring to the notice of the hon. Minister certain inconsistencies. When the hon. Minister spoke on the 10th October, 1955, he said that the rights of the sons are absolutely safeguarded because they can claim partition from the coparcenary property, when they wish, from their father. I believe that he was, at that time, not conversant or not fully posted with that aspect of the law where the interpretation in different high courts relating to different territories happens to be different. No doubt, we have in the great bulk of our country, Mitakshara as the standardised law but there are notable inroads by way of exceptions and by way of slight variations.

So far as Punjab is concerned, the position of a son who happens to be a member of the coparcenary is not the same as it is in other parts of India where Mitakshara prevails. So far as Punjab is concerned, the son carries on under a disability. That disability is this. If there is a father and several sons who form a coparcenary, it is not open to the son to dictate to his father and enforce partition if he so desires; whereas the son who happens to be a member of the coparcenary in other parts has that right, has that privilege. So, in Punjab, the son suffers from a distinct disability.

The question, therefore, is that the son in a Hindu coparcenary in Punjab should be brought at par so that his rights and disabilities may be exactly the same as those of similarly situated persons governed by the same law elsewhere in this land. It is from this point of view that it has been considered by my learned colleagues who made it clear that we should have a law at par so far as the same law and the same principles are applicable.

In this connection, I have noticed that so far as the applicability of laws is concerned, sometimes abstract propositions are apt to confuse whereas the same matter can be clarified by an easy illustration. I wish, through you, to invite the attention of the hon. Minister to an illustration which I give as follows. There is in existence a Hindu coparcenary consisting of father, two sons and two daughters. If the law as it is in other parts of the country is applied. It is open to any one, of the two sons to claim disruption of the coparcenary and thereby the coparcenary stands partitioned. But in Punjab, the father enjoys a preferential position. If the father consents, then alone there can be disruption and not otherwise. That is to say, at the instance of the son, the disruption is not possible. Supposing, in the illustration that I have given, the father agrees to separate one son. May be that he is not a good boy or has gone in bad ways. Supposing, therefore, the father says, "All right. Here is your slice that falls to your share. You take it and get it as you wish". So far as the other son is concerned, he carries on in business contributing his mite, his talents, labours and whatever little money he has, to the family coffers. If ten years hence when he has contributed substantially, the son says that he would also like to partition the coparcenary, the father says "no" and the father's "no" is the last word on the subject. Then the father dies. What happens? According to the Bill that is going to become law, that surviving son who has not yet partitioned and who is still a member of the coparcenary, and the two daughters get equal shares. The result, therefore, is that the son who left the family is in a better position and he would have had the share three or four times over. But, the son who was sweating and labouring and contributing his efforts and his funds to enrich the coparcenary but who could not get out of the coparcenary, gets a pittance, when it comes to his lot.

Shri C. C. Shah: May I submit that this is related to the explanation of clause 6 and arises directly out of it? There are certain amendments suggested to clause 6, particularly to the explanation. There are some amendments which seek to amend that explanation and there are other amendments which redraft the proviso. If the explanation to clause 6 remains as it is, then this amendment, as moved by Mr. Radha Raman may be necessary. If the explanation to clause 6 is omitted, this amendment may not be necessary. May I, therefore, submit that this amendment may stand over to be considered along with the explanation to clause 6, because it is directly correlated to it?

Shri Pataskar: I entirely agree with the remarks made by the hon. Member. It is certainly not my intention to treat the followers of Mitakshara in Punjab differently from the followers of Mitakshara in other parts of India. I find that clause 6 as it stands now probably requires some amendment. Of course, it is too early to say what form clause 6 will take, because there will be so many views on both sides. I am convinced of this point, namely, that whether they come from Punjab or other parts of India, followers of Mitakshara should be treated alike. I will see if some suitable provision can be made in clause 6.

Mr. Deputy-Speaker: What is the proposal of the hon. Minister? Does he agree to clauses 4 and 6 being taken together?

Shri Bansal: We will come back to clause 4, or at least to the amendment of Shri Radha Raman, after disposing of clause 6.

Mr. Deputy-Speaker: That would mean that clause 4 should stand over. Perhaps it may be discussed separately.....

Shri C. C. Shah: There are some other amendments to clause 4 moved by my friend, Pandit Bhargava. What I wish to submit is that only this amendment to clause 4, namely, the amendment of Shri Radha Raman, may be allowed to stand over. The rest of the amendments to clause 4 may be disposed of.

Pandit Thakur Das Bhargava: On the subject-matter of this amendment of Shri Radha Raman, I have tabled 4 or 5 amendments. In regard to clause 4, I have given amendment No. 195. I have also tabled another amendment to clause 32. After I get an opportunity to speak on clause 4, then I would seek the advice of the hon. Minister. Whether the explanation to clause 6 is accepted or not, this will stand on an independent footing. Therefore, my humble submission is that you may be pleased to hear us all and then decide this question.

Mr. Deputy-Speaker: My proposal is this. We may discuss all the amendments to this clause, but I will not put them to the vote of the House now. I will put them to vote after we have discussed clause 6.

Shri Tek Chand: I was alive to the situation pointed out by my friend, Shri Bansal. I intended to reply to it. I have devoted some thought and time to the question as to whether this amendment moved by me will find an appropriate place under clause 4 or clause 6. I contend that whatever the fate of clause 6 ultimately may be, the amendment which stands in my name and in the name of my hon. friend, Shri Radha Raman, on its own independent strength deserves to be allowed for the simple reason that it is intended to obliterate the anomaly that exists in the case of a son who is a member of the coparcenary governed by Mitakshara law in Punjab and elsewhere. I was giving an illustration; that illustration, perhaps, has been lost sight of to a certain extent. The position is that in the case of a son who is tied down to the coparcenary and who has no chance of getting out of this coparcenary, his labour and contributions must continue, but when it comes to getting his share, he gets a lot less than his legitimate share, because of the peculiar circumstances and peculiar notions of this law in one great State, namely, Punjab.

One way out of the above situation is this, that you bring into harmony the Mitakshara law regarding the rights of sons to claim partition all over the country. You can do so by accepting this amendment. Whatever the fate of clause 6 may be, if you accept this amendment, the result will be that it will be open to a son to claim partition of the coparcenary property, regardless of what may or may not be left of clause 6. Therefore, I submit that if this matter is examined now and disposed of now, even if it is correlated to clause 6, the effect of it will be that this particular anomaly, which has no reason behind it, will be removed. I submit that it will be extremely desirable to insert this as sub-clause (c) in clause 4, rather than tag it on to clause 6. If clause 6 goes, naturally its efficacy will be restricted and limited. Nonetheless, it is not altogether without efficacy, because it is going to make a uniform law for the same class of people all over the country.

May I say one or two words on the remarks of my hon. friend on my right, Shri Sharma? He said that clause 4 was laying down an axe at the root of the

Hindu Law and therefore he was opposed to that clause. Where as I happen to be in substantial agreement with his sentiments, I do not see any logic in his contention for the simple reason that if the Succession Act is going to be the law of the land, all other existing laws must go by the board willy-nilly.

Shri Nand Lal Sharma: It is "Hindu Succession Act".

Shri Tek Chand: I meant "Hindu Succession Act". If the Hindu Succession Act is going to be the law of the land, from tomorrow, from that day, all other rules, usages, customs and laws of Hindu succession cannot co-exist, because we cannot have two colliding sets of law. Therefore, on the sentimental ground there may be some reason for attachment and affection to our old traditions, and on this matter, I am in agreement with him. But, if an Act has to come, then these provisions are imperative.

Shri C. R. Chowdary: May I ask one question? My hon. friend who spoke just now is contradicting himself. Earlier. . . .

Mr. Deputy-Speaker: The hon. Member may not take another opportunity for speaking himself.

Pandit Thakur Das Bhargava: In regard to the first question whether a Hindu son has by custom got the right to enforce partition—we know that the hon. Minister is also satisfied—I may just inform the House that this matter also came up before this House on another occasion. In the Finance Act, this question came up. At that time, I moved an amendment and it was accepted by the House. An Explanation was added to the Finance Act. The Explanation reads as follows:

> "In the case of every Hindu undivided family governed by the Mitakshara law a son shall be deemed to be entitled to claim partition of the coparcenary property against his father notwithstanding any custom to the contrary."

This is an accepted law of the land. This appears in the Finance Act. On the basis of this very wording, I have put in my amendment which is No. 195.

On the same basis, I have also proposed another amendment No. 196 to clause 6 and another amendment also on the same lines, No. 197 in relation to clause 32. My difficulty was this. Clause 4 reads as follows:

> "any text, rule or interpretation of Hindu Law or any custom or usage as part of that law in force immediately before the commencement of this Act shall cease to have effect with respect to any matter for which provision is made in this Act;"

In this Act, there is no provision by virtue of which the right of a son has been recognised or not recognised. Therefore, it would not fit in here if these words remain as they are. But, there is one aspect which has to be considered. In dealing with the question of succession, you are dealing all along with the question of partition. According to Mitakshara Law, there is no succession law. It is all a partition law. Joint family continues in spite of births and deaths. Partition and inheritance are so inextricably involved together that you cannot separate the one from the other. So far as this Bill is concerned, I should think that even if you put it here, nothing will be lost. On the contrary, as my hon. friend Shri Tek Chand has remarked, supposing in clause 6 you delete the Explanation, even then a Hindu son in Punjab does not get the right which sons in other parts of India get. The position will not be covered even if you omit clause 6. This is an independent thing. It has practically no relation to clause 6. I can understand it has got a relevancy there. It can be put in there also. Suppose you do not accept the Explanation to clause 6, what happens? We are helpless. When we are abrogating all the customs here, we want that the custom which discriminates between a Punjab son and a son in other parts of the country should be done away with. There will be nothing lost if you put it here because it is an independent matter. I have given the idea. My hon. friend may accept that phraseology or have his own. This phraseology has been in existence for the last 6 or 7 years. He has agreed in substance!

Shri Pataskar: Which is the amendment?

Pandit Thakur Das Bhargava: Amendment No. 195. The very words of the Finance Act, I have taken, I shall read it.

Some Hon. Members: The amendment has not been circulated.

Mr. Deputy-Speaker: Therefore, the hon. Member is reading it.

Pandit Thakur Das Bhargava: These are the words in the Finance Act with which Members are familiar.

> "In the case of every Hindu undivided family governed by the Mitakshara law, a son or a grandson shall be deemed to be entitled to claim partition of the coparcenary property against his father or grandfather notwithstanding any custom to the contrary."

The words 'or grandson' I have added.

Shri Tek Chand: Why against a grandfather or father; why not against the uncle?

Pandit Thakur Das Bhargava: As against the grandfather, this bar exists. Otherwise the son even today has got the right of partition against the uncle or any other person.

My hon. friend Shri Tek Chand has elaborated upon this point and pointed out the absurdity of a custom like this. I will not give any other illustration and waste the time of the House. I may explain here that if the hon. Minister is not inclined to accept it here, I have got it in clause 6 also as well as in clause 32, because the point is one of substance. I do not want that a son in Punjab who has got as much vested interest as any other son in any other part of the country should be deprived of that by making it disposable by the father. Even now, we are thinking in terms of the interests of the father and son. When you make it that the entire thing can be willed away, you are going against the accepted principles of Hindu Law which says that no coparcener can part with his rights in this way except for legal necessity or for proved necessity. Now, we are departing from that. I will not now enter into this question. We will consider it at the proper time. A Hindu coparcener's interest is limited. The father's interest is also limited. He cannot sell or will away his interest in the joint family property. There are certain restrictions. They are making the limited estate of the daughter absolute which means that we are giving more powers to the daughter than the sons in the Punjab. I will not presently expatiate on this question. You may put this in clause 6 or clause 32. In clause 32, I want it to be made clear that fathers cannot be allowed to will away the vested property of the son. You may put it anywhere. But I want that so far as the Punjab son is concerned, he should be brought on the same line as the sons in other parts.

Then, I come to amendments 151, 152 and 154. Let me first take up amendment No. 154. When the Bill was being considered, I pointed out that this para. was absolutely redundant. In so far as devolution of tenancy rights in respect of such holdings is concerned, I do not see of what possible use it can be. I gave the example of the Punjab. Devolution of tenancy rights can only relate to occupancy holdings. In regard to tenancy at will, there is no question of devolution at all. So far as occupancy tenancy is concerned, the House knows that all these tenancies have now ripened into proprietary rights. The question does not arise. It is quite right that the daughter was not a heir under section 59 of the Punjab Tenancy Act. The widow was a heir, the daughter was not. I am very glad that so far as occupancy tenancy is concerned, you do not think that the daughters should be allowed to poke in their noses because the holdings are very small. But, this is of no use. It is not necessary. There is no occupancy holding now.

As regards fragmentation of holdings, so far as I know, except in Bombay, perhaps, there is no law preventing the fragmentation of holdings. I do not know how the question of succession will react on the question of fragmentation of holdings. Is it meant that by virtue of succession the holding will not be fragmented? Then, will you stay the hand of succession so far as the daughters etc., are concerned? Is that the meaning of this clause? I do not think the hon. Minister means it, nor is it possible.

So far as ceilings are concerned, I do not know how they will be affected. Suppose 30 acres is the ceiling and

[Pandit Thakur Das Bhargava]

there are two sons and a daughter. Each will be entitled to 10 acres. Where is the doubt? How does the ceiling come in? This, too, is unnecessary. It is apt to lead some people to think that this law is innocuous as it excludes fragmentation, ceiling and all that. As a matter of fact, it does nothing of the kind. Let us not delude ourselves by enacting this.

As regards my other amendments, Nos. 151 and 152, I must submit that if there are certain provisions in this law which are contemporaneous with some other law, then we should choose either that law or this law, because there cannot be two laws on the same subject. It is apt to create confusion. Therefore, it is better we say that so far as the existing laws in this country are concerned, whether made by the Central Government or the local Government, this law shall have preference. I can understand that. But so far as the question of custom and usage is concerned, this was debated for four days on the Hindu Code Bill. I do not remember if any ultimate decision was taken. Anyhow, it is a matter of very great moment. Apart from certain reasons about which Shri Tek Chand has spoken in relation to matters which fell from the mouth of my friend Shri Nand Lal Sharma, I must submit that so far as custom and usage are concerned, in every country they have been regarded as transcendental law. As regards the Hindu law also, custom is transcendental law.

This is how a custom grows. Suppose there is a bad law. How do we change it? The custom grows day by day. People have certain practices. Ultimately the custom ripens into a good custom. In this case, custom has also been defined:

> "the expressions 'custom' and 'usage' signify any rule which having been continuously and uniformly observed for a long time, has obtained the force of law among Hindus in any local area, tribe, community, group or family:
>
> Provided that the rule is certain and not unreasonable or opposed to public policy: and
>
> Provided further that in the case of a rule applicable only to a family it has not been discontinued by the family;"

There are customs and customs, but a custom should be of the nature as defined under clause 3. So far as this custom is concerned, it is hallowed by continuity, by the fact that it is not unreasonable and by the fact that it is ancient. It is quite right to say there should be one rule and custom should not be allowed to have its way. I can understand that. I can understand the mentality of my friend Shri Tek Chand, the legalistic mentality that as a matter of fact the law must be certain, we must know what it is; if custom is allowed to prevail, there will be nothing but confusion. It is quite right so far as other interpretations or texts and other customs are concerned. But so far as customs about succession are concerned, we know that custom and usage grow and the law is changed as a result of the growth of custom and usage.

We have not tabooed every custom. When the question of marriage came in this House, we all opposed and opined that there should be no custom in the matter of marriage; the law should be there, there should be no discrimination between the South and the North and there should be one law. But my friend stood up and said: "No, we must have custom", and they had custom so far as marriage, divorce etc., were concerned. I can understand him. He wanted not to disturb the practice of the masses. He knew that the laws that we pass would jar against the inmate and cherished ideas of the masses. It is in this view that I have given an amendment to clause 6 that this law should not apply to the Punjab. When I come to that clause, I will give my full reasons, but here I only want what the hon. Minister may agree that the words "custom or usage as" may be taken away from this clause.

I know what I am saying. According to law, it is not a right thing for me to urge that, but taking the view that as a matter of fact law grows, customs also grow and customs have been regarded as good law in all systems of jurisprudence, I think that if you take away custom, then the growth of law will be checked. Just now we have discussed about illegitimate children. It may be that the decision which my friend has given to us is perfectly right from his point of view, but we see how it jars against the mentality of many persons in this House. Let it grow. If there is a custom in which illegitimate children

can get their rights, let the custom grow and afterwards we will adopt it. But today if you are going to ride rough shod over the feelings of people, over the customs of people, the dissatisfaction will be very great. I know as a lawyer I should not make this amendment, but as a person who is interested in the growth of custom, in society in general, as a person who does not want that dissatisfaction may grow in this country as a result of this Bill being passed by this House, I am anxious that these words "custom or usage as" may be taken away.

चौ० रणबीर सिंह (रोहतक) : उपाध्यक्ष महोदय, मैं श्री राधा रमण और पंडित ठाकुर दास भार्गव के १५३ और १५४ नम्बर के संशोधनों का विरोध करने के लिए खड़ा हुआ हूं।

मंत्री महोदय की तरफ से यह ख्याल जाहिर किया गया है कि वह अगले क्लाज के अन्दर शायद इस बात को ठीक कर सकें और मालूम ऐसा पड़ता है कि पंडित ठाकुर दास भार्गव ने क्लाज चार के पार्ट २ को हटा देने के लिए जो कारण (आर्गुमेंट्स) दिये हैं उनकी वजह से शायद मंत्री महोदय का दिल पिघल गया है। पंडित ठाकुर दास भार्गव ने बतलाया कि तमाम देश के कानून में कहीं भी सिवाय बम्बई के फ़ैगमेंटेशन आफ होल्डिंग पर पाबन्दी लगाने का कोई कानून नहीं है सिवाय इसके कि पंजाब का जो उत्तराधिकार कानून है जिसके मातहत कोपार्सनरी प्रापरटी (संमांशी सम्पत्ति) में बाप की इच्छा के बगर उसका लड़का पार्टीशन नहीं कर सकता है। फ़ैगमेंटेशन आफ होल्डिंग को बचाता है। इसी तरह बम्बई का कानून है। उस सम्बन्ध में मेरा कहना यह है कि या तो वह इस बात को कहें कि वह फ़ैगमेंटेशन आफ होल्डिंग्स करना चाहते हैं और अगर वह इसको करना चाहते हैं तो इस क्लाज में से २ नम्बर की उपधारा को निकाल दें लेकिन अगर फ़ैगमेंटेशन आफ होल्डिंग को नहीं चाहते हैं तो मैं समझता हूं कि वह जो सारे देश के लिए एक यकसां कानून बनाने की खातिर हर एक चीज को बदल देना चाहते हैं, वह ठीक नहीं होगा। मैं तो समझता हूं कि यह चीज फ़ैगमेंटेशन आफ होल्डिंग्स पर एक प्रकार का चैक है।

पंडित ठाकुर दास भार्गव : अर्बन प्रापरटी मवेबिल और इम्मूवेबिल प्रापरटी (शहरी सम्पत्ति, चल सम्पत्ति तथा अचल सम्पत्ति) भी हो सकती है।

चौ० रणबीर सिंह : मुझे इसमें आपत्ति नहीं कि किसी मकान को तक्सीम कर दें या न कर दें लेकिन जहां तक जमीन का सम्बन्ध है मैं समझता हूं कि पंडित ठाकुर दास भार्गव भी इस बात को जानते हैं कि करीब ८० फीसदी से ज्यादा जायदाद जमीन की है, बाकी २० फीसदी के लिए अगर कोई अलाहदा कायदा या कानून बनाना चाहे तो मुझे कोई ऐतराज नहीं है लेकिन २० फीसदी के वास्ते यह जो आप ८० फीसदी जमीन की जायदाद को नुकसान पहुंचाना चाहते हैं तो वह कानून मेरी समझ में नहीं आता है।

उपाध्यक्ष महोदय, फ़ैगमेंटेशन आफ होल्डिंग्स के बारे में मुझे यह कहना है कि अगर वह एक गांव के अन्दर हो तो इतनी ज्यादा खराबी नहीं ह जितनी कि खराबी तब होगी जब एक गांव में ही नहीं बल्कि एक कुटुम्ब की जमीन, कई गांवों में ३, ४ या ५ गांवों में छोटे-छोटे टुकड़े हो जायं तो जाहिर है कि उनके ऊपर काम करना किसी के लिए भी नामुमकिन है और इसलिए यह जरूरी है कि उनका जो एमेंडमेंट है उसको न माना जाय और फ़ैगमेंटेशन आफ होल्डिंग्स से बचाया जाय। पंजाब के अन्दर आप जानते होंगे कि बहुत ही थोड़े ऐसे लोग होंगे और मैं समझता हूं कि उनकी तादाद कोई ३०, हजार से अधिक नहीं होगी जिनके कि पास ४, ५ एकड़ से अधिक भूमि होगी। आमतौर पर पंजाब में काश्तकारों के पास थोड़ी थोड़ी जमीनें हैं और इसलिए मैं यह जरूरी समझता हूं कि इनके जो अमेंडमेंट्स हैं, उनको न माना जाय और इस देश के कानून को हर एक चीज में यकसां करने की जो भावना है, उससे बचा जाय।

अगर रिवाज से हमारे देश की भावना कुछ खराब होती है तो मेरी समझ में आ सकता है कि इस कानून को सब जगहों के लिये एक सा कर देना चाहिये। लेकिन अगर कस्टम (रिवाज) से कोई फायदा है, जिसके लिये उन्होंने लिखा है कि वह अपनी मर्जी के खिलाफ भी रख रहे हैं, तो उसको क्यों न रक्खा जाय। हां, अगर अब उन का विचार बदल गया हो तो बात दूसरी है और वह चीज मेरी समझ में आ सकती है। लेकिन मेरी समझ में यह नहीं आता है कि चूंकि उसका असर दूसरों पर नहीं पड़ता है इस वजह से उसको न रक्खा जाय। मैं मंत्री महोदय से नम्र निवेदन करूंगा कि आज उन के सामने बड़े-बड़े वकीलों ने अपने नुक्ते निगाह से वकालत की है, उस पर वह ध्यान दें, लेकिन साथ ही वह एक काश्तकार की बात का भी

[चौ. रणजीत सिंह]

ध्यान रक्खें और पंजाब के काश्तकारों को बचायें। मुझे इसकी खुशी है कि मेरी इस वकालत से कुछ मेरी बहनों को भी फायदा हो जायेगा। मुझे इसका गिला नहीं। जो कुछ हमारे दोस्तों ने यहां कहा हमें उनकी बोनाफाइडीज (सद्भाव) पर शक नहीं करना चाहिये, लेकिन दूसरे तरीके से उन्होंने जाहिर किया कि उन को जो यह खयाल आया है वह इस डर से आया है कि बहनों को कुछ अधिक हक मिल जायेगा। अगर इस से बहनों को कुछ ज्यादा हक मिल जाता है तो कोई हर्ज नहीं है। जैसा हमारे मंत्री महोदय ने कहा कि यह बिल लाया ही इसलिये गया है कि हमारी बहनों को हक मिले, और हमें इस बात से घबराना नहीं चाहिये।

Shri Hem Raj: I want to make a few observations on amendment No. 156. As the Bill was originally introduced in the Rajya Sabha, sub-clause (2) of clause 4 had not found a place there. It was in deference to the wishes of several Members of this House as well as of the other House that this sub-clause has found a place in the Bill as it has emerged from the Rajya Sabha.

During these days, we are making efforts to remove disparities in many spheres. The Minister of Legal Affairs had pointed out that there are certain States which are framing laws for the purpose of consolidation of holdings and also for the prevention of fragmentation of holdings. In the same way, in order to have greater produce, they are also putting a ceiling on holdings, thereby removing the disparity which exists at present between different sections of the population.

The provision as it stands will cover only those laws which are in force at the present moment. It will not cover those laws which may be enacted hereafter. That is why I have sought by my amendment to add the words 'or to be enacted hereafter' after the words 'being in force'. If that is done, then this clause will also cover the cases of those laws which may be framed hereafter by the different States. As it is, all the States have not enacted legislation to secure consolidation of holdings, to prevent fragmentation of holdings, to give fixity of tenure, or to fix ceilings.

I do not think the argument that has been advanced by my hon. friend Pandit Thakur Das Bhargava that this sub-clause will not be of any use is of much avail, for only if this sub-clause remains there, will the State be in a position to enact laws whereby partition of the family estate may be prevented. For example, we are now giving a right to the daughter in agricultural land. Formerly, that is, under the Hindu Code as recommended by the Hindu Law Committee, agricultural land was excepted. Similarly, in the Hindu Code Bill of 1948 also, agricultural land was excepted. But now under this Bill, we are bringing agricultural land also within the purview of this Bill. Suppose a daughter gets a share in the agricultural land, and she gets married at a different place. Whenever she finds that this land is not yielding good produce, she will try to dispose of it. Suppose she disposes it of to some person who has got no good relations with her family, then what will happen? She will claim partition, and there is bound to be bad blood created between the two families on that account. If in such cases the State Government could step in and enact laws for the purpose of checking partition, then it will be for the betterment of the agriculturist community.

I therefore feel that this sub-clause is very essential for preventing fragmentation. Hence, I oppose the amendment of Pandit Thakur Das Bhargava.

At the same time, as was stated by the Minister in the course of his reply to the general discussion, in order to make the meaning of this provision clear, it would be better if after the words 'being in force' the words 'or to be enacted hereafter' are also introduced. If that is done, then, the ambiguity, if there is any, would be cleared.

With these words, I would request the Minister to accept my amendment.

Shri N. Rachiah: I support clause 4, and I oppose the amendment moved by Pandit Thakur Das Bhargava. At the same time, I support the amendment moved by my hon. friend Shri Radha Raman.

Many hon. Members have spoken on this clause, and I am sure they are not persons governed by the Mitakshara law. I come from the State of Mysore, where the Mitakshara law is universally followed. The Mitakshara law is not so rigid as the Dayabhaga or any other system of law prevailing in other parts

of the country. The Mitakshara system is helpful to the members of the coparcenary.

But one difficulty with the Mitakshara system is the joint family system which is its central factor. I am very happy to find that under this Bill, the joint family system has been abrogated. It is but proper that when we are progressing towards democracy and individual liberty, the doctrine of joint family system should be abrogated, and I am glad to find that a provision to that effect has found a place in this Bill.

There is also custom in the Mitakshara law. My hon. friend Pandit Thakur Das Bhargava was saying just a little while ago that the words 'custom' and 'usage' should be deleted from clause 4(1). Sub-clause 1(a) of clause 4 reads as follows:

> "any text, rule or interpretation of Hindu law or any custom or usage as part of that law in force immediately before the commencement of this Act shall cease to have effect with respect to any matter for which provision is made in this Act;"

This provision is very simple and very clear. So far, there has been no comprehensive law governing all the Hindus in the entire country. It is for the first time in the history of Hinduism that we are now having a comprehensive Hindu code which will govern all sections of our Hindu society. For nearly thousands of years, we have been governed only by customs. Some customs are now prevalent in Punjab, some customs are prevalent in Mysore and some other customs are prevalent in so many other parts of the country. As such, there is no one universal codified Hindu law. Whether with reference to women or with reference to any particular section of our Hindu society, we have had very very bitter experience of our custom and usage. Our customs and usages have been primarily and mainly responsible for the backwardness of so many Hindus. These have also contributed to inequality in our society.

Pandit Thakur Das Bhargava has said that law creates custom. If he believes that law creates custom, let us make a law which makes a good custom, and let the whole country, the whole society, follow it. I have no objection to that. But if we retain those words in sub-clause (a), the custom and usage will cease to have effect in fact. You know that according to our Hindu custom, ladies should always be dependent on men. But ladies are now demanding equal rights. Daughters are now demanding a share even in properties. They have been given political rights. They must be given all other rights. Otherwise, the political rights should be taken away from them and the Constitution amended. When constitutionally, they have been given all rights, what is the difficulty? After all, they are also human beings and they should also exist. They are also part and parcel of our society. As to whether the daughter and son should get equal share, I will state my view when the relevant clause is actually taken up. But with reference to custom and usage, I am emphatic in my view that these words have been properly and appropriately incorporated by Government and they should be there. I say this because the very moment they are removed from the sub-clause, a fresh lease of life will be given to these customs and usages in fact. Then there will be no point in our codifying the law and telling the world that we have codified the Hindu law after centuries. Under the plea of custom or usage, we can then avoid any law passed by Parliament.

That is why I appeal to the House and also to our veteran lawyer, Pandit Thakur Das Bhargava, not to persist in the removal of these words from the sub-clause which would in effect mean the prepetuation of custom and usage. Government have thought deeply over this matter. Veteran leaders and constitutional lawyers have all given their verdict. The Joint Committee, and the Rajya Sabha, the House of elders, have deeply thought over this matter and incorporated so many things here. I know that the Lok Sabha and Rajya Sabha enjoy equal powers and privileges in many matters. We do not grudge it. Why should we change anything and everything that is passed by the Rajya Sabha?

Mr. Deputy-Speaker: That will not be a valid ground.

Shri N. Rachiah: Sub-clause (2) says:

> "For the removal of doubts, it is hereby declared that nothing contained in this Act shall be deemed to affect the provisions of

[Shri N. Rachiah]

> any law for the time being in force providing for the prevention of fragmentation of agricultural holdings or for the fixation of ceilings or for the devolution of tenancy rights in respect of such holdings."

This is really a very useful provision for the agricultural classes. We can divide other property, but with reference to agricultural property, the position is a little different. While I support the right of a daughter to the immovable property, hon. Members will bear in mind that there is a clause giving the right of pre-emption to the brothers. If the daughter chooses to dispose of her property as she likes, the right of pre-emption is there; the brother or any male relative can have the first preference in taking over that property. So fragmentation will not happen in the case of agricultural property. With regard to agricultural holdings, there must be some safety. As it is, land has been divided and also fragmented on account of our present system. But I am sure that land reforms introduced in the country and ceilings, if they are fixed, would result in larger yields. As such, this provision will certainly be a sort of protection for immovable property. I support the entire clause.

Shri V. G. Deshpande: My amendment is No. 155. I want to bring to the notice of the House that sub-clause (2) of this clause is very important. It is perhaps the most important clause in this whole Bill. The House has given sufficient attention to it. But the Minister of Legal Affairs is not present here. I do not agree with what my hon. friend, Shri N. Rachiah, said. He seems to have infinite admiration for our Government. He has said that it is very carefully drafted and constitutional *pandits* have given their approval to it. My own opinion is the same as that of Shri N. C. Chatterjee's who once called it 'Hari Smriti', meaning Hari Vinayak Pataskar. It has been hurriedly drafted and therefore, it can be called 'Hurry Smriti'. Hurry seems to be the chief consideration. Before supporting this clause, we should clearly understand its implications. The Minister of Legal Affairs has not made it clear; in fact, he has added to the vagueness by once saying that agricultural property is in the State list. Therefore, he seems to be of the opinion that the whole purpose of this law can be defeated by the State legislatures, if they pass legislation for the devolution of landed property in a different manner.

I want a very clear and categorical explanation and declaration from the Minister as to what would happen if State legislatures pass laws regarding inheritance of agricultural property in a different manner? Would that be valid? That point should be made clear. I say this because he has vaguely referred to it saying that agricultural property can be dealt with in that manner. This explanation is necessary because then the House will know whether the devolution of the agricultural property, which is in fact the major portion of the whole property in the country, will be governed by the present law. I am told in U.P. such a law exists. I want to know whether the present law of tenancy rights will apply and whether a daughter will be excluded from sharing property if as State legislature means that the daughter should not get any share in it. After that point has been made clear, we should know what would be the position of the laws which are in force for the time being. Then we should know whether in future also, as my hon. friend suggested, the State Governments should have the power to enact laws whereby a different kind of succession will be operative, because according to me, succession is a Central subject. I want to know whether this succession can be altered by State Governments. From the way the Minister spoke, if it is clear that he wants that agricultural property should not be included in it, we demand that straightway, here and now we make a provision that agricultural property should not come within the purview of this Bill. This point has to be made very clear.

4 P.M.

I think there is great force in the amendment of Shri Radha Raman. It is not as my friend, Shri Rachiah understood it. This is not meant for helping or supporting Shri Pataskar. We should know that in Punjab there is a custom that the son cannot get partition from his father when he is living. Naturally, there is some heart-burning. In order to defeat the provisions of this Bill, the sons could be separated from the father. This benefit should be shared equally by those persons living in Punjab also. The right which the sons in other parts have of having a partition during the lifetime of the father should be available to sons in Punjab also and Shri Radha

Raman's amendment makes provision for that. I support that amendment not on account of the fact that it could be used to defeat the purposes of this Bill but because this invidious distinction must go.

This morning, a gentleman explained to me with concrete instances that a son who gets partition during the lifetime of the father will get more. Then, if he is not allowed to do so in Punjab, he will get less property when the father's property is divided equally between sons and daughters. This discrimination or distinction between a person in U.P. and a person in Punjab is ununderstandable. When we are against all customs and usages, why should this custom come in the way of the normal operation of the Mitakshara school of law?

We are here for the removal of all doubts. It is said :

> "For the removal of doubts it is hereby declared that nothing contained in this Act shall be deemed to affect the provisions of any law for the time being in force providing for the prevention of fragmentation of agricultural holdings or for the fixation of ceilings or for the devolution of tenancy rights in respect of such holdings."

Here I want that after the word 'affect', the words

> "the right to succeed to immovable property as has been in force hitherto amongst Hindus, Jains, Sikhs and Buddhists and persons other than Muslims, Christians, Parsis and Jews and"

shall be inserted.

Of course, some of my hon. friends will think that this is too much of a tall order, because I want that from the operation of this law, the rights to succeed to immovable properties prevalent amongst the Hindus, Jains, Buddhists, Sikhs etc. to be excluded. I do not know whether the House will agree to that. But, for that purpose, I have suggested this amendment. What I really want is that the Minister of Legal Affairs should make it absolutely clear what would be the effect of this law on the succession to agricultural property and what would be the jurisdiction of the State Legislatures for enacting laws of succession to agricultural property.

Shri Venkataraman (Tanjore) : The amendment moved by Pandit Thakur Das Bhargava is one which I have opposed for the last 7 years. The idea of having a new Hindu Code is to make the Code applicable in places where customs contrary to the Code were in existence.

Pandit Thakur Das Bhargava : You accepted that in the marriage law.

Shri Venkataraman : In the marriage law, there were some special privileges to which certain communities were entitled. The analogy does not stand on all fours.

The point is this. When we are enacting a uniform law of succession to property, if we allow the various customs applicable to different communities to prevail, the law will be abrogated; it will be, practically, a negation of the law. It will also lead to any number of disputes and legal questions and litigation will be the only fruitful result of this legislation and nothing else.

My friend was referring to the Punjab custom and he has been referring to it for the last several years. It is true that in Punjab there is a custom by which the son is not entitled to partition of the property during the lifetime of the father, as in Madras or in other parts of India. But, that must be governed by a separate law relating to joint family and partition.

The same is the case with regard to *Marumakkattayam* law. Under the present *Marumakkattayam* law, there is no right to partition. If we extend this Hindu Succession Act to cover cases where there is no right to partition, then, we would be going beyond the very scope of this Bill, whatever the justification may be.

Shri A. M. Thomas (Ernakulam) : My friend is not exactly correct. Even in the *Marumakkattayam* law, the right to partition is there but there is some limitation.

Shri Venkataraman : Take the *Aliyasantana* law: Even there, it is a limited right. The particular branch alone can ask for it and not the individuals.

My submission is this. There are different kinds of laws relating to partition of properties. It has to be dealt with in that particular branch of law relating

[Shri Venkataraman]

to joint family property and partition, and not in the law which relates to Hindu succession. Therefore, whatever may be the justification for the point of view raised, it would be beyond the scope of this particular Bill.

The old argument about succession to agricultural land has been raised. As I said in the course of my observations in the general debate, if you exclude agricultural lands, there is very little left for succession. Actually, you will have to succeed only to free air and water and some of the other natural things.

An Hon. Member: They are already free.

Shri Venkataraman: So far as tenancy laws are concerned, if any State has made a law which regulates tenancy in that particular State, then, this clause will abundantly protect the effect of that special legislation. For instance, if in the State of Madras, they say that on the death of a tenant, his eldest son only will be recognised as the tenant—I am taking an extreme case—then, in that case that law would be saved under clause 4(2). The argument that this law would not protect such cases does not appear to be sound.

So far as the State laws in respect of succession or devolution of tenancy rights are concerned, they will be protected under 4(2). There are various restrictions with regard to devolution of tenancy rights. Fortunately, the Madras Estates Land Act has now ceased to exist with the abolition of the zamindaris. Before that, we had a number of restrictions, particularly under the Estates Land Act, and under those, the persons who could succeed to the tenancy rights were always restricted and subjected to various conditions. Therefore, I do not see how this 4(2) would militate against any State legislation which may be made for the regulation of tenancy rights. It may be that we cannot pass any legislation in respect of succession to agricultural property because succession is a Central subject. My submission is that the States' right to pass laws regulating tenancy as well as relating to fragmentation or consolidation of holdings would not be affected by this.

You know that even under the ordinary partition law, if there is a House it is not divided in specie; it is sold and only the sale proceeds are distributed among the sharers. In the same manner, if the State enacts a law by which it says that an economic holding in the State is not less than 5 acres, then, because of that enactment, that would not be subjected to partition. All the result would be that the holding will have to be sold as one lot and the proceeds distributed among the sharers.

The last point is relating to whether future legislation would be covered. As far as I know about the interpretation of statutes, the expression 'for the time being in force' includes laws existing not only at the commencement of the Act but also laws that may be made thereafter. Otherwise, the expression would be, 'at the time of the commencement of the Act'. We have seen legislation in which they say that certain laws which were in existence at the commencement of the Act were saved and where they also say that the laws for the time being in force are saved. The difference between the two is that in one case the laws which were in existence only at the commencement of the Act are saved, while, in the other case, not only the laws that were in existence at the commencement of the Act are saved but also the laws in that category that may be enacted subsequently by the State Legislature. These would be covered and protected. This is my submission.

Pandit Thakur Das Bhargava: Is there any law in existence by virtue of which the succession law will not be enforced against ceilings, etc.?

Shri Venkataraman: At present I do not know if there is any such law.

Mr. Deputy-Speaker: The hon. Minister will answer this question.

Shri Pataskar: So far as clause 4 is concerned, the first part reads:

> "any text, rule or interpretation of Hindu law or any custom or usage as part of that law in force immediately before the commencement of this Act shall cease to have effect with respect to any matter for which provision is made in this Act;"

I believe it will generally be found reasonable that whenever we are making any provisions in this Act for a certain matter, we should not allow anything to stand in the way and we should not allow them to be opposed on the

ground of any text, rule or interpretation of Hindu law or any custom or usage. Therefore, I think I need not take much time of the House in explaining this.

My hon. friend, Shri Nand Lal Sharma said something, but I do not know the reason behind his point although I tried to follow him as much as I could. Perhaps, the text, rule or interpretation of Hindu law immediately reminded him of certain things in the hoary past and therefore he began to oppose this. Like him I have the highest respect for those ancient people who flourished in ancient times and did very good things. But the question is that their interpretation during the last few years had been made probably by different people in different ways and there is an instance brought out in the discussion of the proposition itself today. In the Punjab, the interpretation of mitakshara law is so modified by custom probably that a son has not got the right to partition. I will not go into detail, but, as you know, I will refer to the interpretation of these laws, not by me, but by the government of the day ever since 1937. When my predecessor, Shri N. N. Sircar, was in charge, Dr. Deshmukh's Bill was brought and the same points were urged, and he very clearly elaborated the point that this law has been subject to such interpretations which have varied from time to time that it has made a mess of the whole thing. We do not know really what the true mitakshara law was. For instance, the reversioners and all that were not probably in existence in the olden days. There are some people who can easily create a prejudice against the Bill by simply taking the names of Manu and Yajnavalkya without even seeing whether they had ever thought of reversioners to limited estates. It is a pity that political considerations swayed in the consideration of these things. So far as we are concerned, I would appeal to my hon. friend, Shri Nand Lal Sharma and others, that as a matter of fact we do not want to allow any text, rule or interpretation to stand in the way or interfere with this.

Then, about sub-clause (b), which says:

> "any other law in force immediately before the commencement of this Act shall cease to apply to Hindus in so far as it is inconsistent with any of the provisions contained in this Act."

there is not much criticism.

Let us take sub-clause (2) and probably there is no objection to this. But my hon. friend, Pandit Bhargava, for whose opinion I always have got great respect, is of opinion that this provision will not be of much use. I beg to differ from him. As I already stated when I was replying today while I made a special reference to this part, I am not aware whether there is in existence a law for the prevention of fragmentation of agricultural holdings or for the fixation of ceilings, throughout all the States. But, as I explained, my whole object is this. At one time at any rate there was in the Punjab an Act which regulated the devolution of tenancy rights so far as that area was concerned. I am told that in U.P. probably there is some legislation which prescribes a different method of devolution in the interest of the agricultural economy of the country in respect of estates. It is very difficult to do anything here for the simple reason that the whole question is before the country, before the Government and before all parties as to what should be the nature of our future land legislation, and naturally the considerations will be entirely different. Whatever be that land legislation—because land is a subject which is in the State List and it is perfectly open to the States to do anything in the matter—I doubt if it will be possible for the country in the immediate future to have one form of land legislation throughout the country because conditions differ. In my part of the country, there was no zamindari but there were certain other forms which were developed during the last hundred years or more. Therefore, it is a problem that had better be solved by the States.

I am clear in my mind that whenever a State passes a legislation—whether it is existing or whether it is going to be passed in the future—naturally that should prevail because it is for a different purpose, for a different object, and from that point of view, an explanation is added in order that no doubt may be raised in the future that probably by this legislation we are taking away the right of a State to legislate over matters which are specifically within their rights. Naturally, it is stipulated here that nothing contained in this Act shall be deemed to affect the provisions of any law for the time being in force providing for the prevention of fragmentation of agricultural holdings or for the fixation of ceilings or for the devolution of tenancy rights in respect of such holdings. I know there may be

[Shri Pataskar]

some States where at present there is no such legislation, but I think in the not distant future all States will have to view this question, which is a question of improving the agricultural economy of the country, consistent with the goal which we want to achieve. It is from that point of view that I have put in sub-clause (2). It may not be of immediate use in some States, but I think this is a very good safeguard. We do not want to have the rights which the State Governments have because the State Governments are responsible so far as agricultural land is concerned.

The last point, which is of some importance, is this. The original mitakshara law is entirely different. Different courts during the last hundred years or so have given different interpretations to the mitakshara law. I was under the impression that this law was the same in all the States and that the son had got the right to claim partition of the joint family property even against the father. But certainly I have come to know that in the Punjab there has been a decision of some Courts which have come to the conclusion that so far as Punjab is concerned, it is an exception to this proposition, and a custom has been upheld by which this right to partition is not with the son.

So far as clause 6 is concerned—when we come to that—I am perfectly clear that I do not want to put any special hardship in respect of the people in Punjab so far as they are governed by the mitakshara law as compared with persons in other States who are governed by that law. The only question is how and in what way it should be done.

There is another point also. So far as clause 6 is concerned, whatever the ultimate form it takes, I think it would be our duty to see that we do not discriminate between mitakshara people in the Punjab and the mitakshara people in the other parts of India. Apart from that, there is a fundamental point also which has come up before the House as a result of discussion of this problem. It is one thing to do something to put the other people also in other parts of the country governed by Mitakshara system on a par for the purpose of this section.

There is another fundamental question. I have all sympathy for that. If it is established that there is one interpretation or modification of the Mitakshara law in Punjab on the ground of custom and there is another interpretation in other places, then it may have to be considered. My difficulty has all along been that this Bill is a Bill brought forward for succession primarily. The question of making provisions with respect to the law relating to Hindu families is another one. It was there in the original Hindu Code. It would have been much better and easier for all concerned if we had passed it at the same time. I agree with Pandit Bhargava that it was possible to discuss the whole thing. Then, probably, things would have been a little more easier than what they are now. Apart from it, it is our duty to see that we do not introduce unnecessary anomalies of any kind. If that is the desire of the Members of this House, I shall not stand in the way if it could be incorporated in the present Bill. It is because that is a larger question. Immediately by this Bill we change the law with respect to Mitakshara family so far as the right of a son to claim partition is concerned. But my difficulty is that I will have to examine if that has to be done. I may frankly say that I can come to the conclusion by merely reading text-books. It is better I go and visit the people and see the conditions. I am myself not so much aware of the matriarchal system of law. I am afraid that there may be some similar difficulty experienced by some people because there also there are so many laws passed by different States. I shall examine this question. It would be better—if at all we come to such a conclusion—to have a section or clause which will give relief to both the cases. This would require some time. So, this clause 4 may be passed except with respect to the amendments relating to this custom, etc. which may be taken up after we finish clause 6. At that stage, we shall see how and in what form we shall put the necessary provision, if it is to be put at all. That is my suggestion.

Mr. Deputy-Speaker: We shall have to defer the voting on this clause. It is not that we can pass it now and the amendments can stand over.

Shri Pataskar: About the other amendments, we can vote. Let only those amendments relating to this particular point remain.

Mr. Deputy-Speaker: The discussion is closed. We have concluded the discussion on these things. The voting on this clause and the amendments can stand over.

MESSAGE FROM RAJYA SABHA

Secretary: Sir, I have to report the following message received from the Secretary of Rajya Sabha:

"I am directed to inform the Lok Sabha that the Rajya Sabha, at its sitting held on Wednesday, the 2nd May, 1956, passed the enclosed motion concurring in the recommendation of the Lok Sabha that the Rajya Sabha do join in the Joint Committee of the Houses on the Bill to provide for the reorganisation of the States of India and for matters connected therewith. The names of the members nominated by the Rajya Sabha to serve on the said Joint Committee are set out in the motion."

MOTION

"That this House concurs in the recommendation of the Lok Sabha that the Rajya Sabha do join in the Joint Committee of the Houses on the Bill to provide for the reorganisation of the States of India and for matters connected therewith, and resolves that the following members of the Rajya Sabha be nominated to serve on the said Joint Committee: Shri Chandulal P. Parikh, Shri Biswanath Das, Shri K. Madhava Menon, Capt. Awadhesh Pratap Singh, Dr. Anup Singh, Shri A. Satyanarayana Raju, Shri M. D. Tumpalliwar, Shri K. S. Hegde, Shri Tarkeshwar Pande, Shri T. R. Deogirikar, Dr. P. Subbarayan, Shri J. V. K. Vallabharao, Shri V. K. Dhage, Shri Kishen Chand, Shri Surendra Mahanty, Shri Kaka Saheb Kalelkar and Shri Govind Ballabh Pant."

HINDU SUCCESSION BILL—*Contd.*

Clause 5—*(Act not to apply to certain properties)*

Mr. Deputy-Speaker: We shall now take up clause 5. The following are the selected amendments to clause 5 of the Hindu Succession Bill which have been indicated by the Members to be moved subject to their being otherwise admissible: Amendments Nos.

158,	6,	27,	28,
29,	30,	31,	32,
33,	34,	61,	62,
102,	159,	160,	182,

Pandit Thakur Das Bhargava: I beg to move:

Page 4—

omit lines 13 to 15.

Shri Rane (Bhusaval): I beg to move:

Page 4—

after line 19, *add*:

"(iii) agricultural lands situated in the Indian Union."

Pandit Thakur Das Bhargava: I beg to move:

(i) Page 4—

after line 19, *add*:

"(iii) any family governed by the Mitakshara system."

(ii) Page 4—

after line 19, *add*:

"(iii) the Punjab State."

(iii) Page 4—

after line 19, *add*:

"(iii) the States of Punjab, Uttar Pradesh and Bihar".

(iv) Page 4—

after line 19, *add*:

"(iii) any State or territories in India, unless the Legislature or Legislatures of the States as the case may be, declare by resolution in this behalf that they agree to be governed by the Act, and unless, in case of territories, the Union Government after ascertaining the wishes of the territories concerned by plebiscite or otherwise, declare by a resolution that the Act shall apply to any such territory".

(v) Page 4—

after line 19, *add*:

"(iii) to any Joint Hindu family concerned".

(vi) Page 4—

after line 19, *add*:

"(iii) lands and rural areas".

[Pandit Thakur Das Bhargava]

(vii) Page 4—

after line 19, *add*:

"(iii) urban properties".

(viii) Page 4—

after line 19, *add*:

"(iii) movable properties including money and ornaments".

Shri H. G. Vaishnav: I beg to move:

Page 4—

after line 19, *add*:

"(iii) any joint family property or any interest in Mitakshara coparcenary properties."

Shri Jethalal Joshi (Madhya Saurashtra): I beg to move:

Page 4—

after line 19, *add*:

"(iii) agricultural land."

Shri V. G. Deshpande: I beg to move:

Page 4—

after line 19, *add*:

"(iii) any joint family property or any interest therein which devolves by survivorship on the surviving members of a coparcenary in accordance with the law for the time being in force relating to devolution of property by survivorship among Hindus;

(iv) any property succession to which is regulated by the Madras Marumakkattayam Act, 1932; the Madras Aliyasantana Act, 1949; the Madras Nambudri Act, 1932; the Travancore Nayar Regulation (I of 1088); the Travancore Ezhava Regulation (III of 1100); the Travancore Nanjinad Vellala Regulation (VI of 1101); the Travancore Kshatriya Regulation (VII of 1108); the Travancore Krishnanvaka Marumakkattayam Act (VII of 1115); the Travancore Malayala Brahmin Regulation (III of 1106); the Cochin Marumakkattayam Act (XXXIII of 1113); the Cochin Makkattayam Thiyya Act (XVII of 1115); the Cochin Nayar Act (XXIX of 1113); or the Cochin Nambudri Act (XVII of 1113);"

Shri H. G. Vaishnav: I beg to move:

Page 4—

after line 19, *add*:

"(iii) agricultural holdings less than 100 acres;

(iv) a family dwelling house".

Shri Hem Raj: I beg to move:

Page 4—

after line 19, *add*:

"(iii) agricultural land.

Explanation.—Agricultuarl land means land which is not occupied as the site of any building in a town or village and is occupied or has been let for agricultural purposes or for purposes subservient to agriculture or for pasture and includes the sites of buildings and other structures on such land."

Shri A. M. Thomas: I beg to move:

Page 4—

after line 19, *add*:

"(iii) the Valiamma Thampuran Kovilagam Estate and the Palace Fund administered by the Palace Administration Board by reason of the powers conferred by Proclamation (IX of 1124) dated 29th June, 1949 promulgated by the Maharaja of Cochin."

Mr. Deputy-Speaker: All these amendments are before the House.

Shri A. M. Thomas: By my amendment, I am asking for exemption from the operation of this legislation, the Impartible estate of the Cochin royal family. I do not want exemption of the other properties that may be owned by the members of the royal family, who now number more than 500. By moving this amendment and urging for its acceptance I am only fulfilling a duty to my constituency which is the seat of the Cochin royal family and which, I believe, would ere long be the seat of the Governor of the future Kerala State. The very reasons which have weighed with the Government to have sub-clause (ii) which exempts any estate which descends to a single heir by the terms of any covenant or agreement entered into by the Ruler of any Indian State with the Government of India or by the

terms of any enactment passed before the commencement of this Act, are more or less applicable to this particular case also. If the exemption is granted, Government would only be carrying out an undertaking which it has given at the time of the integration of the States of Travancore and Cochin. This property of the royal family which I plead this House to exempt was an impartible estate for centuries. At the time of the integration, as per the covenant only those members of the royal family, then alive, were entitled to have their allowances continued. The others had to depend upon other sources. The Maharajah of Cochin, therefore, constituted this property by his proclamation which I have referred to in my amendment as not only an impartible estate but also a trust property for the benefit also of the members of the family who were born after the integration. As I have already said, it was with the consent and concurrence of the States Ministry that the Maharaja promulgated that proclamation. According to the Hindu Code Bill that was brought by Dr. Ambedkar, specific exemption was given to this property. Assurances also were given by the States Ministry copies of which I have got now. They are also in the possession of the Government and so I do not want to read them. By these assurances, exemption had been given to the property of the Valiamma Thampuran Kovilagam Estate as well as the Palace Fund. We will be carrying out only social justice if we exempt this estate as there are five hundred and odd members in the royal family and the property also is not considerable. It is their means of livelihood. If it is partitioned, cut into pieces and allowed to be dissipated my submission is that their means of livelihood would be lost.

Another point is that the members of the royal family mostly marry from another community. The male members marry from another caste and the female are married by people of a third caste. They do not marry within the same caste although they are Kshatriyas. That also may be borne in mind, when the House takes into consideration my amendment.

As far as I am concerned, there is another reason why we have to accept this amendment. This estate is now in the hands of so many tenants—a few cents, half an acre, one acre and so on, at very low rates of rent. Thousands of tenants would be benefited if this amendment is accepted. If the estate is to be held partible the sharers get ownership over fragmented holdings under the tenancy law which is on the anvil of that State, for the purpose of self-cultivation, this land can be resumed so that the tenants will all be dispossessed. That is one of the reasons which have weighed with me in bringing forward this amendment.

I understand that in pursuance of the representations made—I have also made a representation concerning this matter —the Government also has gone through the relevant papers. I also understand that the hon. Minister for Legal Affairs also had occasion to have an on-the-spot study of the incidents of this property and I believe he would be persuaded to accept my amendment.

Pandit Thakur Das Bhargava : Sir, my amendments are numbers : 27, 28, 29, 30, 31, 32, 33, 34 and 158.

I shall first deal with my amendment No. 158 which relates to section 21 of the Special Marriage Act, 1954. It will also come up when we take up the repealing section of this Bill. I maintain that so far as clause 5 of this Bill is concerned, we should not uphold section 21 of the Special Marriage Act. I maintain that the time has come when we should repeal section 21 of the Special Marriage Act. At the time when the Special Marriage Bill was before this House, some Members were apprehensive that we could not predict if in the Hindu Marriage Act we will have divorces or not. We did not even know at that time whether we shall have limited estates so far as this is concerned. There were other considerations also which influenced many Members to agree that, so far as marriages solemnized under the Special Marriage Act are concerned, they should be governed by section 21 and that the ordinary Hindu Law of Succession should not apply.

If you kindly see section 21 of the Special Marriage Act, it runs thus :

> "Notwithstanding any restrictions contained in the Indian Succession Act, 1925 (XXXIX of 1925) with respect to its application to members of certain communities, succession to the property of any person whose marriage is solemnized under this Act and to the property of the issue of such marriage shall be regulated by the provisions of the said Act."

[Pandit Thakur Das Bhargava]

Now, a perusal of this Indian Succession Act will show that there are many sections in the Act which enacted that this Succession Act would not apply to Hindus, Muslims, Parsis etc. Really that was an Act which was meant for the Christians. From a perusal of the Act one is apt to come to the conclusion that, really that Act was meant for the Christians only. We wanted that so far as special marriages solemnized under the Special Marriage Act are concerned, those persons got the advantages which were given in that Act. We did not know what will be the advantages which will accrue to those whose marriages were solemnized under the Hindu Marriage and Succession Act. Even at the time when the Act was being enacted I submitted an amendment by virtue of which I wanted that this section 21 should not be enacted. I then contended, and I do contend now, that the Hindu Succession law we are making gives the ladies, if not only equal rights, perhaps more rights than are given by the Indian Succession Act. To the issues of such marriages also more rights are being given. Even if more rights are not given, I would rather like, when we are enacting the Hindu Succession Act, unless as a result of the Special Marriage Act the persons concerned cease to be Hindus, that the Hindu Succession Act should apply to all Hindu. As the clause says, this Act is to provide for all Hindus, and if the persons whose marriages are solemnized under the Special Marriage Act are Hindus, it is but natural that the Hindu Succession Act should apply and not section 21 of the Special Marriage Act.

If you compare the provisions, so far as the succession to property of widows is concerned, the provisions contained in this Bill are more equitable, more just and perhaps more beneficial. So far as the widow is concerned, under the Indian Succession Act, if a widow is there and the descendants of the husband are also there, the widow gets one-third and if there are no descendants and there are distant relations, then the widow gets one-half. As regards heirs also, suppose we succeed in passing this Bill, I do not think that the issues of such marriages will also be more beneficially placed under Section 21 than they will find themselves placed under this Act. If what I am submitting is correct, if the widows and the descendants are better placed under this Bill, there is no reason why we should keep this section 21.

So far as father and mother are concerned, I should think that we are making a much better provision here than there is under the Indian Succession Act. A mother perhaps does not get anything under the Indian Succession Act, if there is the father. Here we are making a provision that both the mother and father shall get the same amount of property. Therefore, my humble submission is, if what we are making is more beneficial or at least equally beneficial to those persons whose rights we are now defining, then there is no reason why we should keep section 21. I beg of this House kindly to consider the proposition from that standpoint.

So far as I have been able to judge, I find that this provision which we are enacting here is more fair and more equitable. It is quite true that the widow will get one-third in the Succession Act but if there are more than two sons or daughters, it is but fair, more equitable that the widow should think that her own descendants should get an equitable share with her. Supposing there are no sons and daughters, under this law she gets the whole property. If this law which we are making is equitable and just for the 35 crores of people, why should we, for the handful of people who may be counted in hundreds, have a separate law. On the contary, on the basis that we are going to have a uniform law for the whole country, those persons should also be included. Therefore, in my humble view, it is not just to keep this section any more and we should see that this Act also applies to all those Hindus who were married under the Speical Marrige Act.

Shri S. V. L. Narasimham (Guntur): Sir, I rise on a point of clarification. Pandit Thakur Das Bhargava was arguing that those persons who are governed by the Indian Succession Act and whose marriages have been solemnized under the Special Marriage Act should also be brought under this Act. But what would be repercussions of such a provision on the offsprings of such marriages if such marriages are declared void?

Pandit Thakur Das Bhargava : In fact, I have not been able to grasp the question properly. If I have understood the hon. Member aright, he wanted to know what will happen if the marriages are declared void.

Mr. Deputy-Speaker : He wanted to know, what would happen to the offsprings of such marriages, if the marriages are declared void.

Shri S. V. L. Narasimham : I shall make myself clear. Under the Special Marriage Act, if the marriage is declared void, so far as the offsprings are concerned, they are entitled to succeed to the property of the father. Now we are recognising that they are illegitimate because the marriages have been declared void.

Now, when we discussed the definitions, "related", "legitimacy", etc. have already been decided. In the event of this particular aspect....

Mr. Deputy-Speaker : Seeking explanation should not grow into a speech.

Shri S. V. L. Narasimham : I want only a clarification on that aspect.

Pandit Thakur Das Bhargava : In fact, my trouble is that I do not remember what we enacted in the Special Marriage Act in respect of such an offspring or in such a contingency when the marriage was declared void. I would not, therefore, attempt a reply when I am not ceratin about the point.

Mr. Deputy Speaker : It should not grow into a detailed discussion. The hon. Member may continue.

Pandit Thakur Das Bhargava : In regard to legitimate children, etc., I am reminded of the fact that we have made ample provision in the Special Marriage Act, and in this Bill also we are making such a provision though it jars against the cherished wishes and sentiments of the people. But, at the same time, they are based on, what I should say, a broader aspect as has been clearly explained to us by Shri S. V. L. Narasimham himself sometime ago.

Now, I am coming to the other amendments, No. 27 onwards. One of the amendments is that this law should not apply to the Punjab State, to Uttar Pradesh and also Bihar. Another amendment goes to show that it should not apply to a joint Hindu family. The third amendment goes to say that it should not apply to lands in rural areas. A fourth one says that this should not apply to urban property and a fifth one says that it should not apply to movable property including money, ornaments, etc. It means practically that I want this Bill not to apply to the three States and to those several aspects which I just now mentioned. I gave my full reasons why I am opposed to this Bill and I want that the oppression caused thereby may be as restricted as possible.

Just now, I heard something from the hon. Minister which gave me heart. When he was saying about the land policies, land, etc., in the States, he was of the view that the States may be in a position to enact certain laws by which perhaps the operation of this Bill also will be restricted to an extent. For instance, if the State says that fragmentation should not go further, then it is possible that even the provisions of this Act will come in and stop fragmentation. I do not know how that will affect the ceiling, because the minimum ceiling is not there. Only the maximum is there. If there is a maximum of 30 acres, in that case, I do not think there will be any law by virtue of which the daughters or sons will be restricted so far inheritance is concerned. They will get their rights, and therefore, I do not know how the ceiling will be affected. So far as the tenancy laws are concerned, in the Punjab it may be so. But from the speech of the hon. Minister it appears that in other States there will be advantages. So far as Punjab is concerned, it is an agricultural State. Only small landowners are there. 75 per cent. of the landowners there own just five to ten acres each. A large number of them have got less than five acres each.

Pandit K. C. Sharma (Meerut Distt.—South) : How?

Pandit Thakur Das Bhargava : Please do not interrupt me.

Pandit K. C. Sharma : I am not interrupting you. I am only talking to another Member.

Mr. Deputy-Speaker : That too is objectionable. The hon. Member says he is talking to another Member.

Pandit K. C. Sharma : That is bad, but I am not disturbing.

Pandit Thakur Das Bhargava : The hon. Minister of Rehabilitation said in this House that out of the large number of refugees, one lakh of the refugees did not go and take the benefit of the land which was given to them, because they were given less than one acre of

[Pandit Thakur Das Bhargava]

land. The position is that, as a matter of fact, the landowners have got very small amount of lands in Punjab. If an average were taken, I do not think there will be an average of more than three to four acres of land per family. That being the condition, in such a contingency when the entire population is taken as a whole, 90 per cent. of the people are such that they are just on the verge of subsistence level when they cannot make both ends meet, what would happen? Now, what would happen to a family, if there are two daughters and one son? The only contingency which I see, in these circumstances, is that the son will have to quit. After all, it is not a question of land alone. I know that the persons do not have houses even. There is just one house with one room generally speaking, and how will they live in that house? It is a practical question. It is not a question of how a daughter can be given a share of the property. I submit that on a practical point of view, if this Bill is enacted, it would mean the total ruination of 90 per cent. of the population in Punjab. Moreover,—I do not know if the hon. Members know it of the hon. Minister knows it—there are hundreds of villages in the different districts of Punjab where all the people are agnates to each other, and they belong to one *gothra*. Even in a set of hundred villages, we find that the people there are of one *gothra*. There are no strangers there. If you see their customs, you will find that they have a very simple marriage custom. Among the Sikhs also, what happens? It is a simple ceremony. Of course, we know that the appointment of an heir has been mentioned. It is a convenient form. But the question is not of sonship or *putra* or according to the Roman law, *heredis nominatio*. All these things are of a secular nature. All the Mussalmans and the Hindus and the Sikhs in Punjab observe all these customs.

When I was speaking of the customs, earlier in the debate, I saw Shri Venkataraman opposing me. I agree with that opposition. I knew his opposition was just. I know how the law as regards custom is going to be enacted so far as succession is concerned and I know what will happen to this law. But I said then and I am submitting now also that Punjab is a land of customs. In every matter, and according to section 5 of the Act of 1872, in regard to all matters including inheritance, succession, appointment of an heir, marriage, etc., this has been the rule of law since 1872 and in fact from time immemorial. They are all based on secularism. They have all become secular and they have become things of convenience. There is no religiosity about them and there is no difference among the people. Now, this state, from your point of view, has progressed to such a great extent that it has become secular in all its outlook. It is a state in which, so far as you are concerned, you could not make any progress. So far as secularism is concerned, there is no religious adoption there. Why are you interfering in this manner? I would respectfully submit that such a poor country as ours should be left all alone. If you want to bring good things, we would all welcome them. We would all welcome your five year plans and all such good things. But if you take this Bill also to Punjab, you will find that as a matter of fact you will not be heard properly. Will the cultivators of the Punjab allow their daughters to have a share in their families and let them live in the houses and then get the property partitioned? There will be nothing but complete dissatisfaction. I am telling you from the bottom of my heart that you are doing a wrong thing. Not that I am opposed to my sisters getting shares. Not at all. I am one with the hon. Minister in this and say that if you want to know my true mind. I am more anxious than my sisters themselves that my sisters should get a right to property just as the brothers have. I am not opposed to it. I am for it. Therefore, I have been suggesting to you very many ways in which you can get your object achieved. You are not listening to me. It is very unfortunate that I have not been able to carry conviction with you.

So far as land and rural areas are concerned, I am telling you that you will be committing a mistake of your lives if you take this Bill to the Punjab and introduce it there. Similar conditions prevail in Uttar Pradesh and Bihar. Very many Members will be able to tell you of those conditions. My sister Shrimati Uma Nehru who goes about the villages was of the same view and the other hon. Members also who go to the villages will confirm me in the view that similar conditions prevail so far as land, etc., are concerned, in Uttar Pradesh and Bihar. In the Punjab, we are not so very poor, and the lands there are fairly fertile. They are irrigated to a much greater

extent than in other places. But, at the same time, so far as house is concerned, there is the same difficulty everywhere. If you want to give rights to ladies, I am not opposed to it. I am very anxious about it; but, you do it like this. As soon as the father-in-law dies, you make the son and his wife equal sharers. Now, what you are giving with one hand, you are taking away with the other. On the one side you are giving rights to married daughters, and on the other side, you are arming the father with the power to see that the married girl is not given any share. It may happen that these powers are utilised. Therefore, sisters may not get anything at all. If you make the son and his wife equal partners for life, then you will be raising the status of every woman in the land and at the same time the son will not raise any objection. The father-in-law will not also raise any objection and the son's wife will become the queen of the family. Nobody can say anything to her. The treatment meted out to her by the husband, father-in-law and all the members of the family will be respectable. She will also understand that she is the owner of the property. Recently we have enacted a law. So far as the divorce provisions of that law are concerned, this will be an antidote to all the activities of all those misguided young men who want to divorce their young wives. If any young man remembers that his wife also has got an equal share in the property, he will think twice before taking recourse to divorce. If you accept my suggestion, you will be killing two birds with one stone. I cannot understand why you cannot agree to my suggestion. You are making the widow of the son, the widow of the predeceased son and the widow of a predeceased son of a predeceased son heirs of the father. What is the difficulty in making the son's wife a heir? There is no difficulty at all. In this way every woman in this land will get property rights.

I have nothing to say to those who are of the view that married daughters are entitled to their shares in the father's property. I am not of this view for the reasons I have stated. But at the same time, I am not so radically opposed even to that. After all, heavens will not fall if married sisters get shares. The Hindu society will not go to dogs. At the same time, I would like to submit that all the ideals of our society are based on the son as the centre; you are disturbing that position. You may not see the consequences of it today. I went to England and there I met a lady. She told me that she was the poorest lady in the land. I asked her "why?". She replied, "I have got a son. The son and his wife are living separately. If I go there, they charge me for my food." That position is coming to India and no son will have the incentive to work with the father and acquire property for the entire family which will be taken away by the sisters. I am not saying that Hindu brothers have got no affection or sympathy for their sisters. But the bare fact remains that the mentality of a person who has to look after a large family, who has to bear the burdens of the family, is different from the mentality of a person who is going to the house of another man, create wealth and live there as a queen. So far as Punjab is concerned, these considerations are present there. I am speaking for most of the Punjabis; though I am not making any tall claim that I am speaking for all of them, I should say I am speaking for most of them. I hope that the other Members representing Punjab must also be feeling in the same way. I most earnestly and humbly ask this House and the Minister to consider the question of Punjab in a sympathetic way. It is quite true that we will follow your lead. Whatever law you pass, your will is supreme. At the same time, I request you kindly to consider the feelings and the interests of those whom we represent. I hope that all the Members from Punjab will agree with me and present a united petition to the hon. Minister to exempt Punjab from the provisions of this Act.

I have submitted my views in regard to rural areas and lands and I shall say nothing more about them. In regard to money and ornaments, I want to say something. I say that if you had made a difference between movable and immovable properties, it would have been understandable. So far as immovable property is concerned, what you have provided is quite feasible. But so far as ornaments and money are concerned, it is most difficult to say how much money or ornaments the sons have got from their father. You have provided that the sister can go to a court of law and make a claim. My humble submission is that there will be nothing but litigation. If you had confined yourself to immovable properties, they can be

[Pandit Thakur Das Bhargava]

divided. But so far as the other properties are concerned, it will be difficult to divide them and there will be litigations. It is not that the daughter will litigate; but, her husband and the other members of the family will force her to bring the case to the courts and the courts will be flooded with litigations. I think that this law of yours will bring litigation into every Hindu and Sikh home.

I have also given an amendment that this law should not apply to joint Hindu families. This appears to be a revolutionary amendment, but this was the view of the hon. Minister when he brought in this Bill. He himself stated that it shall not apply to any joint Hindu family. I am only reiterating his stand when I say that it should not apply to joint Hindu families. I had submitted the same thing when the Bill was referred to a Joint Committee. I say, either take courage in both hands and finish with it for ever or do not disturb it at all. If you finish with it altogether, I can understand it. But the hon. Minister does not take courage, because he does not want to tamper with the entire Hindu family system. I know the difficulties of the hon. Minister. He does not want to disturb the joint Hindu family system; in his own way, he wants to keep it up. I congratulate him for that stand. But at the same time, I am convinced that those who persist and perpetuate this system for all these years, because in their view it is a good and patriotic system and the hon. Minister does not want to disturb a system which is regarded as a very good institution by some people. But, at the same time, if he brings in legislation every time in regard to the joint Hindu family system and also attempts to keep it up, that attempt is not very much appreciated. The stand can be appreciated, but the attempt is bound to fail, because whenever you touch it, you should either remove it by surgical operation or you should leave it intact. But, if you want to treat it as a physician, it is difficult for you to get your points and at the same time keep up the joint Hindu family system. What is your difficulty with regard to clause 6? As long as a son is born with a silver spoon in his mouth, as long as he has got vested interest by birth, I cannot understand how you can have this explanation to clause 6. It is absolutely illogical that you should by law give the vested interest to the son and also then take it away. You are doing an injustice to the minor son who cannot separate, whereas the adult son can separate and take away his share. Therefore, you are on the horns of a dilemma. In trying to do justice to the sister, you are doing injustice to the minor unseparated son and giving some relief to the adult separated sons, or the bad sons, who have left the family. My humble submission is this. I feel nothing but sympathy to the hon. Minister. I appreciate his work, his noble spirit, everything. But, at the same time, he is illogical in the provisions that he is seeking to make.

5 P.M.

I wish to submit one thing with your permission. We had the Estate Duty Bill.

Mr. Deputy-Speaker: If the hon. Member looks at the clock on my behalf, he will know that he has taken a lot of time.

Pandit Thakur Das Bhargava: From 1927 or 1928 I have been trying to see that the Hindu joint family is treated rightly so far as this Income-tax Act is concerned. I have been saying, you regard that in a joint Hindu family, every coparcener is a separate member for the purpose of income-tax. Because every Government wants money, though all the Finance Ministers including Englishmen, Mohammedans, Hindus, etc., said that my case is right and just, they said, no, we will not look into it. When you came to the imposition of estate duty, you, for a long time, did not enact a provision on the basis that it is difficult to put estate duty on a Hindu family. Ultimately, they did the very same thing which my hon. friend is doing here. They said, let the man be treated as divided, as having partitioned on the very day that he dies. Here also, if a person dies, you take that he has partitioned the property. For the purpose of consistency, may I humbly ask the hon. Minister to bring the provision in the Estate Duty Act and this Act into line with the provisions of the Income-tax Act and treat every coparcener as separated?

Taken in any way, it is not justifiable to apply this Act to Hindu joint families. Let him bring in another Act relating to Joint Hindu families. Let him take courage in both his hands and do what is proper

and just in the best interests of the country. Then we shall see how the provisions will react on the joint Hindu families. Before that, he should stay his hands and accept my amendment.

Shri Raghavaiah (Ongole): Mr. Deputy-Speaker, I have tried to go through the amendments notice of which has been given by Pandit Thakur Das Bhargava to this clause 5 which deals with exemptions. First, there are amendments 29 to 34: exempt lands in rural areas, exempt urban properties, exempt movable properties including moneys, ornaments, exempt joint families, exempt the States of Punjab, Uttar Pradesh and Bihar.

Mr. Deputy-Speaker: He has said that he exempts everything.

Shri Raghavaiah: Here is a Member coming from the Government side demanding the exemption of the application of this legislation to all kinds of properties, exemption of 70 per cent. of the ladies who are governed by the Mitakshara system, so many other ladies also, so many States. In the course of his speech, he has also given another argument to strengthen his position of his amendment: his experience regarding the British father and son. My only submission is this.

Mr. Deputy-Speaker: That illustration was of the mother and not the father.

Shri Raghavaiah: If you want all these varieties of properties to be exempted, if you want that 70 per cent. of the ladies governed by the Mitakshara system should be exempted, why don't you vote against this clause and why don't you vote against this Bill.

Mr. Deputy-Speaker: That could be seen afterwards. Why should you anticipate?

Pandit Thakur Das Bhargava: If he puts the question, let me reply.

Mr. Deputy-Speaker: There is no need to reply.

Shri Raghavaiah: I know your reply.

Mr. Deputy-Speaker: The hon. Member should also address me and not try to elicit reply from other Members.

Shri Raghavaiah: The simple point is this. When he has demanded all these exemptions, and when he has put forward his arguments and quoted his experience from the U.K. it would have been better if he had quoted his experience in other countries, they also would have further strengthened his arguments. Instead of all these arguments he could as well have demanded withdrawal of this legislation or vote against it.

Mr. Deputy-Speaker: That also he has been doing at the proper moments. This was for exemptions.

Shri Raghavaiah: He has been doing that very consistently whenever the institution of property has been attacked by any legislation from any angle by any Member of this House. Here we find a staunch advocate of the institution of private property as it stands now. He is also in favour of the joint family system, and such outmoded forms of ownership of property. Having seen all these amendments, having heard his wonderful speech, one need not speak anything against him except to know that here is a staunch advocate of outmoded forms of property, outmoded customs, and worn out social practices. So, I have nothing to say except to advise him as a best friend, not only as a friend in need, but also as a friend in deed, that he should for a moment think that he is living in a dynamic society, in a world that is changing and not in a static world. I may also remind him that he belongs to a party which is wedded to the introduction of a socialist system of society perhaps in the near future if not in the nearest future. Belonging as he does to such a political party in this country, he should at least try to imbibe if not the entire spirit of the socialistic pattern of society that is to come into existence, at least an infinitesimal part of that spirit and try to change with the times. I hope he will think very seriously and try to make amends to his speech and also try to withdraw some of his amendments.

Shri S. S. More: By gifting away his property to the Communist Party.

Shri Raghavaiah: That we will take; he need not give.

Mr. Deputy-Speaker: He has asked him only to make amends to the speech and not the property.

Shri Raghavaiah: And also withdraw some of his amendments.

Then, I come to sub-clause (ii) which deals with :

> "any estate which descends to a single heir by the terms of any covenant or agreement entered into by the Ruler of any Indian State with the Government of India or by the terms of any enactment passed before the commencement of this Act."

I am against this exemption. These people are not to be exempted from the application of this law. My reasons are very simple and they are cogent. Any law of this land has to be applied to all from the President to the common man in the street. No citizen of this land is over and above the law of the land. That is the spirit in which the law is respected in the country from which we borrow so many practices, parliamentary practices, legislative institutions and other things, namely the United Kingdom. The law of the land is supreme and the King also is not over and above the law of the land. So, I do not understand why the properties of certain Rulers should be exempted from the application of this law. This category of people, as the sub-clause says, are governed by certain covenants or agreements entered into by certain parties in power—may be the British, or after the advent of freedom, may be our Government that is now in power. These agreements are the result of the two parties coming to a certain common understanding regarding the safety of their properties and other institutions —movable or immovable. When you exempt this class of people, it is doing injustice to the very law itself.

You want that this law should apply to a very major section of families in this country. You want to tamper with the property of these families of a very large section of the people of this country, but you do not want to touch the properties of these few people, on some pretext or other.

Pandit K. C. Sharma: I do agree with you.

Shri Raghavaiah: These covenants or agreements have come into existence only to safeguard the institution of property of these Rulers by some method or other. There are certain devices by which you have tried to safeguard their properties. Now, if you want that this law should be applied to a major section of the people, but these few people should be exempted from the application of this law, I feel that it is doing the greatest injustice to the law itself.

It is opposed to the spirit of the times. You declare that you are in favour of establishing a socialist form of society, that you are against the institution of property as it is today. You say that you are opposed to so many retrograde methods of Government and so many other things but in each and every law, in the Companies Act, in this Act, in the Estate Duty Act and in so many Acts we find always exemptions being given to vested interests, Rulers, bankers, big industrial magnates etc. You insert some clause somewhere and see that the properties of these people are safeguarded. This is wholly opposed to the spirit of a socialist pattern of society. Do not try to hoodwink the people in this country, do not try to hoodwink the parties in this country and live on very soft and honeyed words like "socialist pattern of society". This is against the times when you find far-reaching and dynamic changes going on. Today there is one Government, tomorrow it is replaced by another Government which is more progressive. Today there is a reactionary Government, a Government of the vested interests, tomorrow it is replaced by another Government. We find today empires falling. Governments go out of existence and new types of Government representing the spirit of times come into existence. Do not forget for a moment that you are living in such a period of far-reaching and dynamic changes and for Heaven's sake, for goodness's sake, please try to see that these exemptions are not made to these handful of people. If necessary, try to amend those covenants, try to amend those agreements. It is not beyond our power.

You are making so many laws to effect far-reaching changes in the socio-economic fabric of our society. When you are making so many laws against which the vested interests sometimes cry hoarse, it is not difficult for you to amend these agreements or covenants and see that they are also not exempted from the application of this law.

I once again appeal to the Government to see that these handful of people are not exempted from the application of this law. Try to see that you live according to the spirit of the words that you use in season and out of season, namely "socialist pattern of society". Please do not use those words. If you want to use them, try to see that they are implemented, try to see that the spirit of those words is somehow brought into this legislation.

श्री वी० जी० देशपांडे : मैं १०२ नम्बर का संशोधन सदन के सम्मुख रखता हूं। उसके द्वारा पेज (पृष्ठ) ४ पर १९वी लाइन के पश्चात् ३ और ४ सबक्लाज (उपखण्ड) डालना चाहता हूं जो कि मेरे उस संशोधन में दिये हुए हैं। ३ नम्बर का जो नया सब क्लाज में ५ नम्बर के क्लाज (खण्ड) में जोड़ना चाहता हूं वह इस प्रकार है :

This Act shall not apply to :

(iii) any joint family property or any interest therein which devolves by survivorship on the surviving members of a coparcenary in accordance with the law for the time being in force relating to devolution of property by survivorship among Hindus ;"

दूसरी ४ नम्बर की जो उपधारा मैं उस क्लाज (खण्ड) में जोड़ना चाहता हूं, उसमें दक्षिण का जो विधान है उसका भी उसमें उल्लेख किया गया है। मेरे इस संशोधन को रखने का उद्देश्य यह है कि प्रारम्भ में जिस विषय पर चर्चा हुई थी वह विषय यह है कि जब सदन के सम्मुख हमारे विधि मंत्री महोदय यह विधेयक लाये थे तब उन्होंने हमको बतलाया था कि मिताक्षर विधान से जो सम्पत्ति नियंत्रित होती है, उस सम्पत्ति का समावेश इस विधेयक में न किया जाय और इस आशय का यहां पर वाद विवाद होकर यह विधेयक हमने संयुक्त प्रवर समिति के पास भेजा था परन्तु जब वह वहां से वापिस आया तो हमें यह देखकर बड़ा आश्चर्य हुआ कि बिल का जो स्कोप (क्षेत्र) था उसको और ज्यादा विस्तृत कर दिया गया और इस तरह का एक दुनिया का नाश करने वाला विधेयक हमारे सामने रक्खा और वैधानिक अड़चनों के कारण हमको यहां यह भी सुविधा नहीं रही कि इस तरह हमारे देश और समाज को नाश करने वाले विधेयक की शब्द योजना को ही हम कुछ ठीक कर पाते और उस पर कम से कम और कुछ नहीं तो अच्छी तरह विचार विनिमय ही कर लेते। उसके लिए हमने सूचना दी थी कि यह फिर से प्रवर समिति के पास वापिस भेजा जाय।

जब इस कुर्सी पर अध्यक्ष महोदय विराजमान थे तब उन्होंने वैधानिक आपत्ति के विषय पर अपना निर्णय देते हुए बड़े स्पष्ट शब्दों में इस बात को स्वीकार किया था कि इस सदन ने जिस स्कोप के अंदर प्रवर समिति को इस बिल पर विचार करने के लिए भेजा था, प्रवर समिति उस स्कोप से कहीं आगे बढ़ गयी और उसने बिल में बड़े बुनियादी और मौलिक परिवर्तन कर डाले हैं परन्तु हमारे जो प्रक्रिया के नियम हैं उन प्रक्रिया के नियमों के अनुसार यह विधिवत् है और सदन को इस पर जिस रूप में प्रवर समिति से लौट कर आया है उस पर विचार करना चाहिए।

मेरी समझ में उपाध्यक्ष महोदय ने भी यह कहा था कि राज्य सभा ने जिस रूप में यह विधेयक पास करके हमारे पास भेजा है, उसकी शब्द योजना कहीं कहीं पर त्रुटिपूर्ण है और मुझे दुःख के साथ इस बात को कहना पड़ता है कि इसकी शब्द योजना ठीक नहीं है और इससे बड़ा गड़बड़ घुटाला होने वाला है और इससे समाज में बड़ा उत्पात मचेगा और यह बड़े खेद का विषय है कि यह स्वीकार करने के पश्चात् भी कुछ नहीं कर सकते। हमारे अध्यक्ष महोदय ने हमको यह मंत्रणा भी दी थी कि अगर आप यह समझते हैं कि राज्य सभा ने संयुक्त समिति को इस बिल के लिए जो सूचना दी थी, संयुक्त प्रवर समिति ने उससे बाहर जाकर इस बिल को तैयार किया है तो आप उसको कह सकते हैं या आप फिर से सूचना लेकर यह कह सकते हैं कि इस विधेयक का प्रभाव मिताक्षरके जो संयुक्त परिवार हैं, उनकी सम्पत्ति पर नहीं पड़ेगा।

इस संशोधन के द्वारा मैं यह सूचित करना चाहता हूं कि जिस प्रकार के विधेयक को हमने सहमति दी थी, जिस प्रकार के विधेयक को हम ने जनता का मत जानने के लिये देश के सामने भेजा था, उसी प्रकार का विधेयक हमारे सामने आना चाहिये था। इसी लिये इस विधेयक में जो अपवाद दिखाये गये हैं कि किस पर इसका प्रभाव न पड़ेगा उस मे मैं मिताक्षर का जो संयुक्त परिवार है उसका समावेश करना चाहता

[श्री बी० जी० देशपांडे]

हूं। यह दलील दी जाती है कि यदि आप मिताक्षर को निकाल देंगे तो रहेगा क्या ? बात ठीक है, म यह मानता हूं, लेकिन आप को इस प्रकार का विधेयक ले आना चाहिये था जिस से हमें सन्तोष होता। लेकिन विधेयक लाने के पश्चात् आप उसको जल्दी जल्दी पास करा लेना चाहते हैं, हमको यह सुविधा भी नहीं देते कि हम उस में उचित संशोधन करा सकें।

मैं समझता हूं कि जनतंत्र की दृष्टि से इस विधेयक द्वारा हम पर आघात किया गया है और जान बूझ कर इस प्रकार के सामाजिक महत्व का विधेयक राज्य सभा में रक्खा गया है, जिनका जनता के साथ सम्पर्क है उन को उस में संशोधन और परिवर्तन करने के लिये भी समय नहीं दिया जाता है। आपने इसके लिये ३५ घंटों की अवधि दी है। मैं देख रहा हूं कि घड़ी का कांटा हमारे लिये रुक नहीं रहा है। पहला वाचन समाप्त हो चुका है, दूसरे को भी घंटे आध घंटे में आप भुगता लेंगे। जो हमारे विधि कार्य मंत्री हैं वह किसी से बात कर रहे होंगे, यहां हमारी बात सुनने वाला कोई भी नहीं है, चाहे हम कोई भी दलील क्यों न दें।

उपाध्यक्ष महोदय : मैं तो सुन रहा हूं और कोई नहीं है तो क्या हुआ ?

श्री बी० जी० देशपांडे : आपके सुनने से क्या फायदा है ? आप सुनते हैं तो क्या हुआ ? मैं आपको धन्यवाद देता हूं। मैं आपका अपमान नहीं करना चाहता हूं, परन्तु आज मंत्री महोदय ने यह स्वीकार किया है कि यदि हम कुछ सूचना देते हैं, कुछ उनको बताते हैं तो वह परिवर्तन करने के लिये तैयार हैं। मैं यह आपको बता नहीं सकता हूं कि संयुक्त प्रवर समिति में क्या हुआ। वैधानिक दृष्टि से वह बताने योग्य भी नहीं है, लेकिन मुझे वहां से वाक आउट (बहिर्गमन) करना पड़ा और स्पीकर साहब (अध्यक्ष महोदय) को बताना पड़ा। निश्चित समय में जो चीज को हो जाना चाहिये और सीधी होनी चाहिये, ठीक होनी चाहिये, पर वहां कभी भी इस प्रकार नहीं हुआ, और आज भी मैं देख रहा हूं कि इसी बात की ओर ज्यादा ध्यान दिया जा रहा है कि इस विधेयक को जल्दी समाप्त होना चाहिये। इसके कारण मैं अनुरोध करूंगा कि आप ऐसा कर दें कि जो क्लाजेज आप ने निकाल डाले थे उन का फिर से इस विधेयक में समावेश कर दिया जाय।

दूसरी बात यह है कि माननीय सदस्य पंडित ठाकुर दास जी भार्गव ने जो संशोधन दिये हैं वह भी बहुत महत्वपूर्ण हैं। उन में से भी मैं किसी किसी संशोधन का समर्थन करना चाहता हूं विशेषत: वह संशोधन जो कृषि विषयक सम्पत्ति, ऐग्रिकल्चरल प्रापर्टी (कृषि सम्पत्ति) देहातों में हैं उस के सम्बन्ध में हैं कि उस को इस विधेयक में से निकाल देना चाहिये। मैं इसका पूर्णतया समर्थन करता हूं। मैंने सदन के सब विभागों के सदस्यों के भाषणों को सुना है और मैं समझता हूं कि यदि कोई दबाव न आये तो इस सदन का बहुमत यह चाहता है कि जो देहातों की खेती सम्बन्धी सम्पत्ति है उसको इसमें से निकाल दिया जाय क्योंकि इस विधेयक के अनुसार उसके टुकड़े टुकड़े हो जायेंगे। चूंकि भार्गव साहब यह चाहते हैं कि ऐसी सम्पत्ति पर इस विधेयक का प्रभाव न पड़े इसलिये मैं भी उनके संशोधन का समर्थन करता हूं। मैं नहीं समझता हूं कि मिताक्षर सम्पत्ति को निकाल देने से सारे देश का प्रश्न उठ खड़ा होगा क्योंकि यहां पर दायभाग की सम्पत्ति भी है।

मुझे पंडित ठाकुर दास भार्गव के साथ एक ही बात में मतभेद है और वह यह है कि केवल पंजाब, उत्तर प्रदेश और बिहार में ही कृषि की भूमि है, बाकी में केवल कारखाने ही कारखाने हैं। यह मुझे स्वीकार नहीं है। मैं समझता हूं कि भारत के सभी भागों में लोग खेती करते हैं। जिन पंजाब के देहातों में खेती होती है अगर वहां की लड़की कोई मद्रास में जायेगी तो मद्रास में खेती बढ़ जायेगी और पंजाब का नुकसान होगा, और जगहों का नुकसान इस प्रकार से नहीं होगा, यह मैं मानने के लिये तैयार नहीं हूं। आज केवल पंजाब में ही खेती की सम्पत्ति नहीं है, सारे देश में कृषि सम्पत्ति है और उसको उस में से निकाल देना चाहिये। केवल बड़ी बड़ी बातें करने से ही आप सोशलिस्ट पैटर्न आफ सोसायटी (समाजवादी ढंग का समाज) लायेंगे यह मैं मानने के लिये तैयार नहीं हूं। आज देश भर में एक विशिष्ट विचारधारा चल रही है। यह बात मनुस्मृति और याज्ञवल्क्य के भीतर की नहीं है। मैं ने प्रारम्भ में बताया था कि यह उनके समझने के योग्य बात नहीं है। इस लिये मैं मनु की बात नहीं बतलाऊंगा। *

मैं वह कहता हूं कि मुख्य दृष्टि से जो समाज का ढांचा बना है वह बदलना नहीं है। हमारे मोरे साहब कहते हैं कि जब नया समय आयेगा तब वह परिवर्तित होगा। मैं समझता हूं कि

*(Expunged as ordered by the Chair.)

यह कभी नहीं हो सकता है । पुरुष और स्त्री नैसर्गिक रूप से अलग अलग किये गये हैं । लेकिन स्त्री पुरुष को देहातों में पूरी तरह से सहयोग करती है । यह कोई नहीं कह सकता है कि देहात में स्त्री पुरुष से सहयोग नहीं करती ।

Mr. Deputy-Speaker: The hon. Member should not raise arguments valid during the general discussion now. He should be more specific.

श्री वी० जी० देशपांडे : मैं यह कहना चाहता हूं कि देश की जितनी कृषि विषयक सम्पत्ति है उस को इसविधेयक में से निकाल दिया जाय ।

दूसरी बात मेरे कम्युनिस्ट (साम्यवादी) मित्रों की है । दुर्दैव से मुझे उनके साथ सहमत होना पड़ता है और वह यह है कि जैसा विधेयक की पांचवीं धारा का सब क्लाज २ है कि :

> "(ii) any estate which descends to a single heir by the terms of any covenant or agreement entered into by the Ruler of any Indian State with the Government of India or by the terms of any enactment passed before the commencement of this Act."

हमारे विधि मंत्री की नजर जो बेचारे खेती करने वालों हैं उनकी तरफ है । ऐसे लोगों की जमीन में भी, जिनके पास कुल चार या पांच एकड़ जमीन है और जो कहते हैं कि हम हल चलायेंगे, मेहनत करेंगे और मेहनत करके अपनी रोटी कमायेंगे, सोशलिस्टिक पैटर्न आफ सोसायटी चला कर और लड़कियों को हिस्सा दे कर, वह उसको तोड़ने और मरोड़ने के पीछे पड़े हुए हैं । लेकिन जो बड़े बड़े राजे महाराजे हैं उन को नहीं छूते हैं । उनके बारे में वह कहव हैं कि हम सामाजिक न्याय करेंगे । संविधान का उदाहरण देकर कहते हैं कि उनको Justice, social, economic और political देनी चाहिये । उनकी जायदाद की लड़की क्या लड़कों को भी देने को तैयार नहीं हैं । भले ही वह भीख मांगते फिरें लेकिन सिवा बड़े लड़के के वह किसी को नहीं मिल सकती है ।

इस दृष्टि से जो क्रान्तिकारी विधेयक यहां पर रक्खा गया है मैं उस का विरोध करता हूं ।

पंडित सी० एन० मालवीय : मैं अपने बुजुर्ग पंडित ठाकुर दास जी भागव के खिलाफ कहने के लिये माफी चाहता हूं । अगर उनके सम्बन्ध में मुझसे कोई गुस्ताखी हो जाय तो वे मुझ को माफ करेंगे ।

उपाध्यक्ष महोदय : आप पहल से ही यह इरादा करके बोल रहे हैं कि गुस्ताखी करेंगे और फिर माफी मांगेंगे ?

पंडित सी० एन० मालवीय : क्योंकि बुजुर्गों के खिलाफ कहते भी कभी कभी गुस्ताखी माना जाता है । आपने जो धारा ५ के बारे में एतराज किया है और जो संशोधन दिये हैं उनके बारे में मैं कहना चाहता हूं कि उन्होंने मिताक्षर कानून पर चलने वाले परिवारों को इस विधेयक से अलग रखने की बात कही है । साथ ही साथ उन्होंने इस बात पर भी जोर दिया है कि वह उत्तर प्रदेश और बिहार राज्यों पर भी लागू न हो । साथ ही वह यह भी कहते हैं कि लड़की को बराबर का हक पिता की जायदाद में न हो, वह ससुर के खान्दान में हिस्सा पाये, क्योंकि उनके अनुसार ससुर के खान्दान में हिस्सा पाने से उसकी इज्जत और स्टेटस (प्रतिष्ठा) दोनों ही बढ़ेंगे । यह सारी दलीलें दी गई हैं । परन्तु मैं उनसे समझना चाहता हूं क्या ससुर की जायदाद मिताक्षर न होगी, पिता की जायदाद मिताक्षर होगी, और अगर लड़की को पति की जायदाद में या ससुर की जायदाद में हक मिलता है और उससे मिताक्षर के कानून का किसी प्रकार से खंडन होता है तो वह उसूल कि मिताक्षर बहुत सैंक्टिटी (पवित्रता) की चीज है, बहुत पवित्र है, जो कि हम रखना भी चाहते हैं, वह कहां रहा ?

पंडित ठाकुर दास भार्गव : सन् १९३७ का ऐक्ट मुलाहजा फरमाइये ।

पंडित सी० एन० मालवीय : वह चाहे कुछ हो, लेकिन आप की बुनियादी दलील तो यही है कि मिताक्षर कानून तो जैसा है वैसा ही रहना चाहिये, उसमें कोई तब्दीली नहीं होनी चाहिये । एक तरफ आप कहते हैं कि या तो आप उसको यक कलम बिल्कुल खत्म कर दीजिये, या तो ऐसा क्रान्तिकारी कदम उठाइये, जैसे कि हम कहते हैं कि पूंजीवाद को एकदम खत्म कर दिया जाय, दूसरी तरफ आप कहते हैं कि हम धीरे धीरे ऐसा करेंगे । शान्तिपूर्वक

[पंडित सी० एन० मालवीय]

करेंगे । इसी प्रकार से मिताक्षर कानून के लिए या तो आप यह दलील देना चाहते हैं कि या तो उसे एक दम खत्म कर दीजिये और इसके वास्ते कोई लेजिस्लेशन ले आइये वरना उसको बिल्कुल टच न कीजिये । लेकिन अगर आप इस दलील को मानते हैं....

उपाध्यक्ष महोदय : अब माननीय सदस्य बाकी गुस्ताखी कल तक ही रखें ।

5-31 P.M.

The Lok Sabha then adjourned till Half Past Ten of the Clock on Thursday, the 3rd May, 1956.