

# HINDU CODE BILL

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## SECTION I

### HINDU CODE BILL REFERRED TO SELECT COMMITTEE

17th NOVEMBER 1947

TO

9th APRIL 1948

\* [f1] HINDU CODE

**The Honourable Dr. B. R. Ambedkar** (Minister for Law): Sir, I move:

" That the Bill to amend and codify certain branches of the Hindu Law be continued. " Mr. Speaker : Motion moved :

" That the Bill to amend and codify certain branches of the Hindu Law be continued. "

**Mr. Naziruddin Ahmad** (West Bengal : Muslim): May I know the present stage of this very important Bill ? I understand there has been a considerable amount of agitation among our Hindu friends over it and it is better we have a picture of the stage at which the Bill is at present.

**The Honourable Dr. B. R. Ambedkar**: It was only introduced. No further stage was taken.

**Shri R. V. Dhulekar (U. P. : General)** : In the new set up we should have no Hindu Law and Muslim Law. We should have a general Law and therefore....

**Mr. Speaker** : Honourable Member is speaking on the merits. He will have an opportunity of saying it when the Bill comes before the House. At present the only question is whether the Bill should be continued or not continued.

**Shri R. V. Dhulekar** : So, Sir, I oppose, it should not be continued.

**Mr. Speaker** : The question is :

" That the Bill to amend and codify certain branches of the Hindu Law be continued. "

The motion was adopted.

[f2] HINDU INTERCASTE MARRIAGE REGULATING AND  
VALIDATING BILL

**Shri Mohan Lal Saksena** : (U. P. : General) : Sir, since the Law Minister has informed me that he proposes to make a motion for reference of the Hindu Code to a Select Committee during the present session, I do not want to move this motion.

**Mr. Speaker** : Do I understand that the Honourable Member does not want to make a motion now, but he wishes to keep it alive?

**Shri Mohan Lal Saksena**: Yes, Sir, In case the Law Minister does not bring in his motion, I may have to move mine.

[f3] HINDU MARRIAGES VALIDITY BILL

**Pandit Thakur Das Bhargava (East Punjab : General)** : Sir, I beg to move for leave to introduce a Bill to provide that marriages between Hindus, Sikhs, Jains and their different castes and sub-castes are valid.

**Mr. Speaker** : The question is : " That leave be granted to introduce a Bill to provide that marriages between Hindus, Sikhs, Jains and their different castes and sub-castes are valid."The motion was adopted.

**Pandit Thakur Das Bhargava**: Sir, I introduce the Bill.

[f4] HINDU CODE

**The Honourable Dr. B. R. Ambedkar (Minister for Law)**: I beg to move:

" That the Bill to amend and codify certain branches of the Hindu Law, be referred to a Select Committee consisting of Shri Alladi Krishnaswami Ayyar, Dr. Bakshi Tek Chand, Shri M. Anantthasayanam Ayyangar, Shrimati G. Durgabai, Shri L. Krishnaswami Bharathi, Shri U. Srinivasa Mallayya, Shri Mihir Lal Chattopadhyay, Dr. P. S. Deshmukh, Shrimati Renuka Ray, Dr. P. K. Sen, Babu Ramnarayan Singh, Shri Kishorimohan Tripathi, Shrimati Ammu Swaminadhan, Pandit Balkrishna Sharma, Shri Khursheed Lal, Shri Brajeshwar Prasad, Shri B. Shiva Rao, Shri Baldeo Swarup, Shri V. C. Kesava Rao and the Mover, with instructions to report not later than the last day of the First week of the next session of the Assembly and that the number of members whose presence shall be necessary to constitute a meeting of the Committee shall be five."

Sir, it is a matter of great pity and also of great regret both for myself and I believe also for the members of the House that so important a measure as the codification of Hindu Law should have come for discussion before the House almost at the fag end of the session. We have, according to the arrangement announced by the Honourable speaker this morning, to conclude the debate on this motion by 7 O'clock from now, with an interval of half an hour. I think it my duty that within the limitations in which we are placed I should give more time

to Members of the Legislature to express their views on the various points raised by this Bill and I should like to contribute my own mite to the fulfilment of this wish which I have expressed. The only way by which I could do it is to set an example by myself to make my opening speech as brief as I can possibly make. I regret it very much to have been required to come to that decision because this Bill is of such a vast character that if one were to expound it fully and thoroughly, and to explain its provisions as against the background of the existing Hindu Law, I have not the slightest doubt that such an effort would take not less than four or five hours. But that is impossible, and the House therefore, will forgive me if I confine myself to placing before it the most salient points which mark a departure from the existing law as we know it today.

Sir, this Bill, the aim of which is to codify the rules of Hindu Law which are scattered in innumerable decisions of the High Courts and of the Privy Council, which form a bewildering motley to the common man and give rise to constant litigation, seeks to codify the law relating to seven different matters. Firstly, it seeks to codify the law relating to the rights of property of a deceased Hindu who has died intestate without making a will, both female and male. Secondly, it prescribes a somewhat altered form of the order of succession among the different heirs to the property of a deceased dying intestate. The next topic it deals with is the law of maintenance, marriage, divorce, adoption, minority and guardianship. The House will see what is the ambit and the periphery of this Bill. To begin with the question of inheritance. Under this head the Bill enacts a new principle, at least for certain parts of British India. As many members who are lawyers in this House will know, so far as inheritance is concerned, the Hindus are governed by two different systems of law. One system is known as *Mitakshara* and the other is known as *Dayabhag*. The two systems have a fundamental difference. According to *Mitakshara*, the property of a Hindu is not his individual property. It is property which belongs to what is called a coparcenary, which consists of father, son, grandson and great grandson. All these people have a birth-right in that property and the property on the death of anyone member of this coparcenary passes by what is called survivorship to the members who remain behind, and does not pass to the heirs of the deceased. The Hindu Code contained in this Bill adopts the *Dayabhag* rule, under which the property is held by the heir as his personal property with an absolute right to dispose it of either by gift or by will or any other manner that he chooses.

That is one fundamental change which this Bill seeks to make. In other words, it universalises the law of inheritance by extending the *Dayabhag* rule to the territory in which the rule of the *Mitakshara* now operates.

Coming to the question of the order of succession among the heirs, there is also a fundamental difference of a general character between the rule of the *Mitakshara* and the rule of the *Dayabhag*. Under the *Mitakshara* rule the

agnates of a deceased are preferred to his cognates; under the *Dayabhag* rule the basis of heirship is blood relationship to the deceased and not the relationship based on cognatic or agnatic relationship. That is one change that the Bill makes; in other words, here also it adopts the rule of the *Dayabhag* in preference to the rule of the *Mitakshara*.

In addition to this general change in the order of succession to a deceased Hindu, the Bill also seeks to make four changes. One change is that the widow, the daughter, the widow of a pre-deceased son, all are given the same rank as the son in the matter of inheritance. In addition to that, the daughter also is given a share in her father's property; her share is prescribed as half of that of the son. Here again, I should like to point out that the only new change which this Bill seeks to make, so far as the female heirs are concerned is confined to daughter; the other female heirs have already been recognised by the Hindu Women's Right to Property Act of 1937. Therefore, so far as that part of the Bill is concerned, there is really no change in the Bill at all; the Bill merely carries the provisions contained in the Act to which I have made reference.

The second change which the Bill makes so far as the female heirs are concerned is that the number of female heirs recognised now is much larger than under either the *Mitakshara* or the *Dayabhag*.

The third change made by the (Bill is this that under the old law, whether the *Mitakshara* or the *Dayabhag*, a discrimination was made among female heirs, as to whether a particular female was rich or poor in circumstances at the death of the testator, whether she was married or unmarried, or whether she was with issue or without issue. All these considerations which led to discrimination in the female heirs are now abolished by this Bill. A woman who has a right to inherit gets it by reason of the fact that she is declared to be an heir irrespective of any other considerations.

The last change that is made relates to the rule of inheritance in the *Dayabhag*. Under the *Dayabhag* the father succeeds before in preference to the mother; under the present Bill the position is altered so that the mother comes before the father.

So much for the order of succession of heirs to a deceased male Hindu. I now come to the provisions in the Bill which relates to intestate succession to females. As Members of the House who are familiar with Hindu Law will know, under the existing law the property held by a Hindu female falls into two categories; one is called her *stridhan*, and the other is called "woman's property". Taking first the question of *stridhan*, under the existing law *stridhan* falls into several categories; it is not one single category, and the order of succession to the *stridhan* of a female under the existing law varies according to the category of the *stridhan*; one category of *stridhan* has a different law of succession than another category and these rules are alike both as to *Mitakshara* as they are to the *Dayabhag*. So far as *stridhan* is concerned the

present Bill makes two changes. The one change it makes is that it consolidates the different categories of *stridhan* into one single category of property and lays down a uniform rule of succession; there is no variety of heirs to the *stridhan* in accordance with the different categories of the *stridhan*—all *stridhan* is one and there is one rule of succession.

The second change which the Bill seeks to make with regard to the heirs is that the son also is now given a right to inherit the *stridhan* and he is given half the share which the daughter takes. Members will realise that in formulating this Bill and making changes in rules of succession, it is provided that while the daughter is getting half the share in the father's property, the son is also getting half the share in the mother's property so that in a certain sense the Bill seeks to maintain an equality of position between the son and the daughter. Coming to the question of the " woman's estate ", as members of the House will know under the Hindu Law where a woman inherits property she gets only what is called a ' life estate '. She can enjoy the income of the property, but she cannot deal with the corpus of . the property except for legal necessity; the property must pass after the death of the woman to the reversioners of her husband. The Bill, here again, introduces two changes. It converts this limited estate into an absolute estate just as the male when he inherits gets an absolute estate in the property that he inherits and secondly, it abolishes the right of the reversioners to claim the property after the widow.

An important provision which is ancillary to the rights of women to inherit property contained in this Bill is a provision which relates to *Dowry*. All members of the House know what a scandalous affair this *dowry* is; how, for instance, girls who bring enormous lot of property from their parents either by way of *dowry or stridhan* or gift are treated, nonetheless, with utter contempt, tyranny and oppression. The Bill provides in my judgment one of the most salutary provisions, namely, that this property which is given as *dowry* to a girl on the occasion of her marriage shall be treated as a trust property, the use of which will inure to the woman and she is entitled to claim that property when she comes to the age of 18, so that neither her husband nor the relations of her husband will have any interest in that property; nor will they have any opportunity to waste that property and make her helpless for the rest of her life.

Coming to the provisions relating to maintenance, there is mostly nothing new in this part of the Bill. The Bill prescribes that the dependents of a deceased shall be entitled to claim maintenance from those who inherit his property either under the rules of intestate succession or who inherit the property under his will. There are 11 different kinds of dependants enumerated in this Bill. I believe, at least speaking for myself, it is an unfortunate thing that even a concubine is included in the category of dependants, but there it is; it is a matter for consideration. The liability to maintenance is cast upon those who take the estate of the deceased. As I said, there is nothing very new in this part of the

Bill.

There is another part of the Bill which is important and it relates to the rights of a wife to claim separate maintenance when she lives separate from her husband. Generally, under the provisions of the Hindu law, a wife is not entitled to claim maintenance from her husband if she does not live with him in his house. The Bill, however, recognises that there are undoubtedly circumstances where if the wife has lived away from the husband, it must be for causes beyond her control and it would be wrong not to recognise the causes and not to give her separate maintenance. Consequently the Bill provides that a wife shall be entitled to claim separate maintenance from her husband if he is (1) suffering from a loathsome disease, (2) if he keeps a concubine, (3) if he is guilty of cruelty, (4) if he has abandoned her for two years, (5) if he has converted to another religion and (6) any other cause justifying her living separately.

The next topic to which I wish to make a reference concerns the question of marriage. The Code recognises two forms of marriages. One is called " sacramental " marriage and the other is called " civil " marriage. As members will know, this is a departure from the existing law. The existing Hindu law recognises only what is called " sacramental " marriage, but it does not recognise what we call a " civil " marriage. When one considers the conditions for a valid sacramental marriage and a valid registered marriage, under the Code there is really very little difference between the two. There are five conditions for a sacramental marriage. Firstly, the bridegroom must be 18 years old, and the bride must be 14 years old. Secondly, neither party must have a spouse living at the time of marriage. Thirdly, parties must not be within prohibited degree of relationship. Fourthly, parties must not be *sapindas* of each other. Fifthly, neither must be an idiot or a lunatic. Except for the fact that similarity of *sapindaship* is not a bar to a registered marriage. so far as other conditions are concerned, there is no difference between the sacramental marriage and the civil marriage. The only other difference is that the registered marriage must be registered in accordance with the provisions in the Bill while a sacramental marriage may be registered if parties desire to do so. Comparing the rules of marriage contained in the Bill and the existing law, it may be noticed that there are three differences which the Bill makes. One is this, that while the existing law requires identity of caste and sub-caste for a valid sacramental marriage, the Bill dispenses with this condition. Marriage under the Bill will be valid irrespective of the caste or sub-caste of the parties entering into the marriage.

**Pandit Thakur Das Bhargava** (East Punjab: General): If the marriage is between persons belonging to different castes, will it be valid?

**The Honourable Dr. B. R. Ambedkar** : Let me proceed with my speech. If the Honourable Member puts the question while making his speech, I shall

reply to it.

The second provision in this Bill is that identity of *gotrapravara* is not a bar to a marriage while it is under the existing law. The third distinctive feature is this, that under the old law, polygamy was permissible. Under the new law it is monogamy which is prescribed. The sacramental marriage was a marriage which was indissoluble. There could be no divorce. The present Bill makes a new departure by introducing into the law provisions for the dissolution of marriage. Any party which marries under the new code has three remedies to get out of the contract of marriage. One is to have the marriage declared null and void; secondly, to have the marriage declared invalid; and thirdly, to have it dissolved. Now, the grounds for invalidation of marriage are two: One, if one party to the marriage had a spouse living at the time of marriage, then such a marriage will be null and void. Secondly, if the relationship of the parties fell within what is called the ambit of prohibited-degrees, the marriage could be declared null and void. The grounds for invalidation of the marriage are four. First, impotency. Second, parties being *sapinda*. Third, parties being either idiotic or lunatic. Fourth, guardian's consent obtained by force or fraud. In order not to keep the sword of dissolution hanging on the head, the Bill, in my judgement very wisely, has provided a limit to an action for invalidation. It provides that a suit for the invalidation of marriage must be filed within three years from the date of the marriage; otherwise the suit will be barred and the marriage will continue as though there was no ground for invalidity. The Bill also provides that even though the marriage may be invalidated and may be declared invalid by a court of Law, the invalidation of marriage will not affect the legitimacy of the children born and they would continue to be legitimate just the same.

Then coming to the question of divorce, there are seven grounds on which divorce could be obtained. (1) desertion, (2) conversion to another religion, (3) keeping a concubine or becoming a concubine, (4) incurably unsound mind, (5) virulent and incurable form of leprosy, (6) venereal diseases in communicable form and (7) cruelty.

Coming to the question of adoption, there again, most of the rules embodied in the Bill are in no way different from the rules obtaining under the present law. There are two new provisions in this part dealing with adoption. Firstly, under the Code, it will be necessary for the husband if he wants to make an adoption to obtain the consent of his wife and if there are more than one, at least the consent of one of them. Secondly, it also lays down that if the widow wants to adopt, she can only adopt if there are positive instructions left by the husband authorising her to adopt and in order to prevent litigation as to whether the husband has, as a matter of fact, left instructions to his wife, the code provides that the evidence of such instructions shall be either by registered deed or by a provision in the will. No oral evidence would be admissible, so that chances of

litigation are considerably mitigated. The Code also provides that the adoption may also be evidenced by registration. One of the most fruitful sources of litigation in this country is the question of adoption. All sorts of oral evidence is manufactured, concocted; witnesses are suborned; widows are fooled; they one day declare that they have made one adoption and subsequently they make an avowal that they have not adopted and in order that all this litigation may be put a stop to, the Code makes a salutary provision that there may be registration of adoption by a Hindu.

Then there is the question of minority and guardianship, the last subject which the Bill seeks to codify. There is nothing new in this part of the Code and, therefore, I do not propose to say anything so far as that part in the Bill is concerned.

As members will realise, the points which arise out of this Bill for consideration and which are new are these: First, the abolition of birth-right and to take property by survivorship. The second point that arises for consideration is the giving of half-share to the daughter. Thirdly, the conversion of the women's limited estate into an absolute estate. Fourthly, the abolition of caste in the matter of marriage and adoption. Fifthly, the principle of monogamy and sixthly the principle of divorce. I have sought to enumerate these points separately and categorically because I felt that in view of the limited time we have at our disposal, it would be of help to the Members of this House if I could point out what are the points of debate on which attention may be concentrated. These departures which are made in this Bill undoubtedly requires justification, but I think it would be a waste of time if I at this stage undertook any defence of the departures enacted by this Bill. I propose to hear Honourable Members as to what they have to say on the points which I have enumerated and if I find that it is necessary for me to enter upon a justification, I propose to do so in the course of my reply. Sir, I move. Mr. Chairman : Motion moved:

" That the Bill to amend and codify certain branches of the Hindu Law, be referred to a Select Committee consisting of Shri Alladi Krishnaswami Ayyar, Dr. Bakshi Tek Chand, Shri M. Anantihayananam Ayyangar, Shrimati G. Durgabai, Shri L. Krishnaswami Bharathi, Shri U. Srinivasa Mallayya, Shri Mihir Lal Chattopadhyay, Dr. P. S. Deshmukh, Shrimati Renuka Ray, Dr. P. K. Sen, Babu Ramnarayan Singh, Shri Kishorimohan Tripathi, Shrimati Ammu Swaminadhan, Pandit Balkrishna Sharma, Shri Khurshed Lal, Shri Brajeshwar Prasad, Shri B. Shiva Rao, Shri Baldeo Swarup, Shri V. C. Kesava Rao and the Mover, with instructions to report not later than the last day of the first week of the next session of the Assembly and that the number of members whose presence shall be necessary to constitute a meeting of the Committee shall be five."

[f5] **Dr. B. Pattabhi Sitaramayya (Madras: General)** : Mr. Chairman, Sir, I

rise 'at an early moment in order to catch your eye in the hope that I shall have the ear of the House while having the eye of the Chairman. This is a very interesting piece of legislation which has been presented to this House, a piece of legislation for which the country has been whiting for long. This country having passed under the rule of foreigners for nearly a thousand years has not been able to effect that social progress which is incidental to changes in society in the world and which takes place imperceptibly by force of ever-changing custom. Custom is a force which is generally patronised, appreciated and recognised by the rulers. Unfortunately, this country has had no kings for a long time to whose inspiring example the subjects could look up for any changes in society. In the West, even today, if a social change is required all that is to be done is for the King to initiate that change and all the people will follow as a matter of course. You might have heard the story of Edward the Eighth, who, when he was Prince of Wales, went to a far distant island and having heard from the people that their occupation was gone because of the change of fashions, asked what the fashion was which had mined the occupation. They said formerly they were manufactures of straw hats and now straw hats had given place to felt hats and therefore, they had lost their occupation. The next day he appeared in public on a ceremonial occasion with a straw hat and the straw hat industry was at once revived. That is the power of the king; he is not merely the political head of a State, but head of society, the exemplar, the mentor and the monitor. As such he evaluates the customs age long, traditional and hoary—sanctified by age and it lies in his power to change that custom one way or the other. But what has been our fate since the British rule had come into existence? So long as the Muslims were ruling this country, they copied our customs and we copied their customs; there was an inter-mixture and intercurrency of customs and therefore, some measures of social progress. But after the British came, when they came to be looked upon as untouchables and even unapproachables by the vast majority of the population of this country, the situation was that they were afraid to touch the customs of this country with the longest pole. They were afraid of any interference with the socio-religious structure which was a delicate structure almost like a chemical balance and bore the repercussions of the smallest change coming from abroad and from adventitious sources. They were afraid that such repercussions would be ruinous to the stability of their empire in this country and therefore, they adopted the plausible and seemingly reasonable attitude of not interfering with the religion or the custom of the land. In this manner the Judges of the High Courts always helped to register the custom as it had existed for long centuries behind, and never registered a change in the custom as marking a progress in society. Thus custom became petrified and when custom became petrified, progress became impeded altogether, and for a hundred and fifty years our society has not been able to make any progress. If social evils had been

pointed out by missionaries at one stage they were so pointed out in a spirit of carping criticism rather than in a spirit of progressive helpfulness. And as time advanced and English education took root and as democracy spread its tentacles and got firm hold upon the affections of the people another change came into being. The very missionaries and clergymen who were so keen on educated Indians throwing off the trammels of their orthodoxy became suddenly conservative and critical of the drastic changes which the English educated people were taking to with a certain amount of irresponsible case. They began to inquire whether after all these people who were so readily taking to these changes meant to take to these changes or whether they were simply growing away by way of relaxation the rigid customs of age and of society. They did not like it because the spirit of reform is always destructive of their own power. In the encouraging of reform themselves they saw the dangers to their rule and the missionary saw at once that he was encouraging a certain amount of rebellious spirit in the nation. Now *Brahmoism* was looked upon as the saving factor in this country, but *Brahmoism* was thereupon condemned by the missionary because it provided a halting house for the reform spirit of the nation. Thus the missionary himself became conservative. Englishmen became conservative, custom became rigid, society became petrified and congealed and coagulated, as it were, in a chamber which was not wide or expansive, thus, we have suffered, so much so that the issue of a post-puberty marriage in the Punjab was declared illegitimate by the High Court. This was the last straw that broke the back of progressive society. Immediately, there was an attempt to break the bones of custom, by trying to reform the marriage law. Act 3 of 1870, popularly known as the *Brahmo Marriage Act*, required, however, a certain denial statement, " I repudiate that I am a Hindu or a Muslim or a Christian or a Parsee or a Jain or a Jew. " This obnoxious declaration was associated with the provisions of that Act. Therefore, it did not become popular. Later on the *Sarda Act* came into being; fortunately it has set the seal of authority upon that piece of social reform which the heads of orthodoxy were imposing and were impeding. A new era has begun. The Indian National Congress which had started in 1885 had till 1919 associated with it as an ancillary and an auxiliary a social reform organisation which dealt with the social evils of the country and suggested various legislative measures also. But there was a non willingness on the part of the British Government to effect those legislative changes and as time progressed there was also an unwillingness on the part of society to accept the social reform at the hands of foreigners in this country.

Fortunately, Sir, today we have survived those times, I am glad I am alive to see the age when on the initiative of the National Government a progressive measure of reform, comprehensive in outlook, far-reaching in its result, medical in its nature, is being put forward, which embraces the rights of women in

regard to inheritance, in regard to marriage, in regard to property, in regard to divorce, in regard to personal freedom. And I hope, as time advances we shall have more and more of reforms in this direction to which this measure points today.

Let us start with the full rights that have been conferred upon the woman after the death of her husband. In our *Shastras* it has been briefly described that the woman is the bond slave of her father when she is young, to her husband when she is middle aged and to her son when she is a mother. Of course all epigrams, aphorisms, proverbs, platitudes and truisms are half truths. There is a core of truth about them. We sometimes find it useful to quote these things but there is a core of untruth also about them and we should try to understand the full significance of all these.

According to the measures before us, a woman will have property in her own right and be able to dispose of her property. I have been trying to see whether the Law Minister would explain when these rights would come into force. Supposing after the passing of this measure a man dies and his widow inherits his property: what are her rights compared with the rights of a widow whose husband died one year ago? The latter possesses limited estates. What is the change sought to be introduced? Can widows with only limited estates convert those limited estates into full right estates with the right to give away, to mortgage, to sell and so on, irrespective of whether there is legal necessity in the interests of the family or not? That is a point which I have been trying to understand by turning up the pages of the measure before me but I have not been able to understand it. I dare say, in his reply the Mover of the Bill will be so good as to elucidate the point.

The 'rights' of the daughter is a matter on which I have been feeling very keenly. When speaking to English people or when discussing Indian conditions and society with savants and scholars coming from abroad, I have never been tired of praising my own system. If you wish to understand the basis of a system, or appraise any of its social customs or practices, you must not take it in its present degenerate condition. But you must take it in all its pristine purity and glory. I look upon child marriage as a splendid institution as our ancients conceived it because they conceived it good for the average man and the average woman to be married. And this marriage is a good thing because the child has to be grafted into another family and grafting should take place while the plant is young and not when the plant has become old. But then, the conception itself has changed. Now we live in an age when it is much more happy to be bachelors and criticise others' wives than to marry and beget children. Therefore, our ideals have changed and therefore, the principle of child marriage may not be binding upon us. Each one is at liberty to live his or her own life according to her or his pleasure and there is no obligation imposed by society and social conditions have changed. Under the circumstances we

should not indeed be the victims of past tradition, past customs, past events.

But how shall we deal with the facts which exist at the present day: so many daughters and so many sisters are not merely vegetating but they are rotting in their homes. While we praise our systems to others, we cannot shut from our own eyes the fact that our sisters and daughters and other relations are rotting in their own homes unable to get any relief. Latterly I have suggested a love strike for our women. That is the only remedy which I have thought out and I have been able to think it out as a remedy directed against this custom. I read a book called " The Impregnable Women " while I was in the Ahmednagar Fort. There was a war in England and all the women wanted to resist the war. How could they resist? The men are greedy. The men are pugnacious and blood-thirsty. They want to fight. They want to measure the strength of the tiger and ape it them with the strength of the ape and tiger in others. Therefore, the women said: let us have a love strike. No young maiden would speak to her lover; no wife would speak to her husband; no mother would speak to her son. The men were boycotted. There was no social life between men and women until the war about to be declared was cancelled. They said they would not mix with these people. But, I will not push the matter further. I Suggest that if in a village, or town, or mohalla, there is ill-treatment of a single woman, all our wives had better have a club and go away from our houses and live there for 24 hours and very soon the recalcitrant husband will be brought to his senses. All the men will bring their moral influence to bear upon this man and they will tell him: " What the hell are you doing? All our homes are broken up and they will remain broken unless you take back your wife. "

You may laugh now. But what else are you going to do? Are you going to prosecute the man? He will bring up his charges. Are you going to prosecute the wife? She will bring a number of charges. You should not enter into the quarrels between husband and wife. Once I found a husband beating his wife. I went and interfered. The woman turned round and came down on me like a wolf on the fold. She said: " It is my husband who is beating me. Who the hell are you to interfere?" Therefore, it is not possible for you easily to interfere in domestic affairs. After all the *Kowravas* and *Pandawas* when they fought, they used to say : " we are 1 (X) against 5 but against a third party they said we are 100 *plus* 5 " So in these domestic quarrels both are against us when we meddle in their affairs. So if the daughter is to be happy she must be able to inherit property in her own right I find that the position of a wife is most obsequious. Her sister's son comes. Her brother comes. She wants to give them a good present. But the wife has to wait upon the goodwill of her husband in order to get even Rs. 5: After all this man has his moods. And he may be in a good mood or a bad mood. So she must have some property which she can call her own. Would you wish her to get rid of some of her jewels? The idea is fantastic. No woman will sell away her jewellery even after her husband's death

because after her husband's death that jewellery stands as the symbol of the unity of herself and her deceased spouse. I know it. I have spoken to many women.

**Mr. Chairman :** Does the Honourable Member want to speak for a longer time?

**Dr. B. Pattabhi Sitaramayya:** I am sorry. I was not looking at the time. I would like to continue.

**Mr. Chairman :** The House will now adjourn for half an hour and reassemble at Half Past Five of the Clock.

*The Assembly then adjourned till Half Past Five of the Clock in the afternoon.*

*The Assembly re-assembled at Half Past Five of the Clock, with Mr. Speaker (The Honourable Mr. G. V. Mavalankar) in the Chair.*

**Dr. B. Pattabhi Sitaramayya:** Mr. Speaker, I was dealing with the question of a share for the daughter from the patrimony. I am in the habit of twitting my lady friends by asking them " Why do you want a share ? You are going to become the queens of another home. My wife has become the queen of my home and she is the unquestioned head of the family. She is getting the keys of her own safe and so will you get the keys of the safe of another home." But that is not enough. It is not enough to be at the mercy of a husband, however dear that husband may be. A woman must have her own right and when she has her own right she is better respected by the husband and although the doctrine of self-effacement on the part of the woman has been carried on in our country and society for ages long, yet the fact remains that in the modern day the conception of self-respect has completely altered the position. One must be able to say that she has a little money to deal with in her own right.

Hitherto I have had a little doubt as to whether we are not depriving all the sons of the share to which they are legitimately entitled if the daughter also comes in for her share. Now the Bill before us gives a share in the *stridhana* to the sons to the same extent to which the daughter is given a share in the father's property. That largely equalises things and warns all parents that they should have an equal number of sons and daughters. That is the only condition that is imposed upon us and that will be able to balance our economy. We must also balance our progeny.

But there is another difficulty. After all as things stand, it looks as though we cannot say hereafter in marriage invitations that my daughter is being given in marriage to so and so. there will be a new language adopted. My daughter and so and so will marry each other. That is the new language adopted. Still the fact remains that except in Malabar, where the husbands go to their wives' houses, here our daughters generally go to their husbands' houses. Of course the position in Malabar is entirely the reverse of our conditions and it will take hours to deal with the question. I am not going to stray into that very interesting topic. Yet the fact remains when the daughter goes away from her father's

home, the wonder is whether she is able to enjoy the property that is given to her by her parents. I have asked my Muslim sisters and brothers as to whether the age-long custom of giving a half share to a daughter, half of the son's, is really practically, enjoyed. They said that except in towns it is not enjoyed. Somehow or other the brother does the sister in the eye and knocks off her property and gives her some compensation. That may or may not be so but the fact remains that there is that supreme danger and the greatest danger in this matter is that when you recognise the fact that 80 per cent of *pattadara* are able to pay only Rs. 10 as tax on 2 1/2 acres of wet land or four or five acres of dry land, where on earth is there a chance for them to give a share to the daughter, which she can carry with her or which she can enjoy. I doubt very much from the practical side but on the theoretical side at any rate the thing is unquestionably quite correct.

When thus you have raised the status of women in society and when you have conferred upon her the right to absolute property then you must also give her certain rights which self-respect engenders in her naturally. The conditions of marriage are not conditions of slavery. It is all very well to say that marriages are made in heaven and that once a husband always a husband or once a wife always a wife. It is a very good rule but at the same time there are conditions like drunkenness, persistent cruelty, immoral character on the part of the husband, diseases like leprosy, impotency and various other conditions which are enumerated by the Law Minister which justify a separation of the husband from the wife. If a man feels free and has the right to stray abroad and to whatever he wants to do, if he can marry a second time when the first wife is alive, then of course it must be equally open for the wife also to marry a second husband while the first one is alive. Imagine that condition. I sometimes ask friends when I see a young man dressed in hat, boot and suit and by the side goes a nicely clad Hindu lady dressed in all the beautiful folds of the Hindu saree " Will you kindly reverse your dresses? Will the husband wear a *dhoti* and the wife a hat and skirt of a European woman.. how will it look?" It will look absurd, as absurd as when you sign your name in your mother tongue over an English document. Once an officer asked me not to sign in Telugu over an English document. Then I said that the reverse situation of an English signature over a *Telugu* document is equally incongruous. Therefore, we must give full freedom to our sisters, mothers and daughters and enable them to have judicial separation, if necessary and divorce. But I trust and hope that the distinguished ladies who are here and who have been labouring for years in the cause of rights for women will preach and propagate the fact and the doctrine that divorce is a reserve fund not to be drawn upon for current expenses, that divorce should be the ultimate resort for causes which are otherwise irremediable. Public opinion, personal influence, family persuasion, all these are there. You must remember that the quarrels between a husband and wife

during the day are generally closed up in the night and therefore, there is not much chance of perpetuating these quarrels. We should not make much of them. In America there is a State called Indianapolis, where the porter cries "Indianapolis Station, Twenty minutes for divorce." The divorce court is in the railway station itself. Any husband and wife having a quarrel in the train, could apply for divorce and get it before the train departs. That should not be our position. Our divorce must be a kind of reserve fund like the jewellery on a woman's person, always to be drawn upon under conditions of the greatest necessity and never to be lightly utilised.

The question of adoption is a very difficult question, the Honourable Law Minister has assimilated the *Mitakushara* practice to that of the *Dayabhaga*. I suppose *Dayabhaga* obtains in Bengal and *Mitakashara* in South India and in Bombay there is a law called *Muyuka*, according to which amongst the non-Brahmins it is not necessary for the husband to give permission and the widow can adopt a child. I had read a judgment of the Privy Council some ten or twelve years ago. I want that law to be copied in other parts, where such adoption is not permissible according to *Mitakshara*. After all why does a family adopt a boy ? To perpetuate the family. Is it not the right of the widow to perpetuate the family as much as of the deceased husband? Is it only the exclusive right of the man who is deceased to perpetuate the family. If a boy could inherit the property, why should it not be open to the mother to adopt the boy in her own right apart from the written or the registered permission of her husband either by a document or by a will. In English law oral wills are permissible; whereas written wills require two signatures, oral wills require no such thing. After all, by oral wills properties worth lakhs and crores are alienated. " All to wife " on a newspaper bit is held to be a valid will. Then why should it not be permissible in law for a husband to give permission orally to his wife in order that she can adopt. These are points which the Select Committee will have to give its consideration to. (*An Honourable Member*: " Why permission at all? ") That is my contention. If permission is necessary why not oral permission? Relax the law regulating adoption as much as possible.

Then there is the question of monogamy. I am very sorry to note that young girls in their blooming youth do not understand all the conditions that must be observed in regard to the proper selection of match for marriage. We have an ancient saying which when rendered into English says: You must consider the prosperity, good looks, tradition, pedigree, culture—all these things you must consider before you select a husband. But now it has become rather common—and a very distinguished authority has confirmed the statement—that educated girls have the habit of picking readymade husbands who have already got a wife and five or six children. Why does this happen? It is due to the want of education during their college days about these matters. Somehow these things are considered taboo and everybody shrinks from

talking about them although a lot of private talk is inevitably done in regard to these matters. The forbidden fruit has never remained untasted. Therefore, it is necessary that we provide teaching in regard to these matters. I once spoke to a certain friend of mine—he has given freedom to his daughter with regard to the selection of his son-in-law—and in the course of his conversation he told me a story which I later related to his daughter and son-in-law much to their amusement. She was asked by him, " Do you wish to marry so and so, a boy who is handsome, good-looking, is well educated, passed B.L., or is in the profession, is the son of a rich man and has an upstairs house " and she said " No, father, has he got no motor car and electric lights? If he has got a motor car and electric lights, no matter to whom you give me in marriage I am willing to marry him". Such are the temperaments, tendencies and trends of untutored youth and therefore, it is very necessary that we should teach them about all these matters. It is not enough to make laws: but it is necessary to propagate these laws and propagandise these laws in order to educate our young girls in the direction of monogamy. That is very necessary.

I welcome every aspect of this Bill. If there are defects which are obvious here and there I daresay they will be remedied by all the distinguished personalities whose names have been mentioned in connection with the formation of the Select Committee. I have taken a little more time than necessary. Perhaps, I can hold forth for hours together. I have got the experience of 68 years covering a careful study of all kinds of conditions and I would have liked very much to continue except for the fact that today's time is limited and we must apply the guillotine at 7 O'clock and some of our sisters and brothers are very anxious to speak and I am also anxious to hear them.

<sup>[f6]</sup> **Mr. Naziruddin Ahmad (West Bengal : Muslim)** : Sir, I am in the most unfortunate position of having been charged with the communication of certain views which have been entrusted to me by some of my friends. They are some criticisms of the Bill. I must however assure the House that personally I would fully support the Bill. Its provisions are largely in accord with the laws which prevail in my own community and the Bill tries to do absolute justice to all regardless of practical results. It is however, with some amount of nervousness that I have risen to speak. When I find that sturdy members of the House who would have spoken against the Bill have quailed before a powerful array of five distinguished members of the fair sex, ready to stand to their guns, little courage can I muster in giving out the views which I am charged to communicate.

Sir, the Honourable the Law Minister has not told us anything about the opinions that have been collected and printed in the pamphlets which have been circulated to us. They were made available to us at a very late stage. If it was desired that Honourable Members should read them, analyse them and tell the House the result of their analysis I think the time is too short. There is a

pamphlet the Report of the Hindu Law Committee which contains a large number of opinions. I am sorry this was not circulated amongst the members.

*(An Honourable Member : " It was circulated ")*. It was not. This book was not circulated.

**The Honourable Dr. B. R. Ambedkar** : It was kept in the Library for a very long time.

**Mr. Naziruddin Ahmad** : It was not kept in the Library for a very long time. It has been placed in the Library very recently. I had to buy it from the market. It is only recently that some copies were kept in the Library.

**Prof. N. G. Ranga (Madras: General)**: What is it?

**Mr. Naziruddin Ahmad**: When an Honourable Member like Professor Ranga asks ' what is this?' it only shows.

**Prof. N. G. Ranga**: I asked what is it you are referring to.

**Mr. Naziruddin Ahmad**: The Report of the Hindu Law Committee.

**Prof, N. G. Ranga**: That is, the Rao Committee. Its Report has been before the public for a year.

**Mr. Speaker**: Whatever it be, the Honourable Member may proceed.

Mr. Naziruddin Ahmad: The Report has been published only recently. I submit that in this Report there is a dissentient minute of the late Justice D. N. Mitter. He has collected a large number of opinions against the Bill. I do not wish to read them. He has classified them province by province and subject by subject. There is no time to deal with them, but he has said that the principles of the Bill are opposed by the entire Hindu community, that is the orthodox section of the community.

I have studied as carefully as it was possible for me within the short time available, the recent opinions on the Bill obtained by the Government and circulated to us. I find there is a volume of opinion against the Bill. In fact, at the time when the Committee was hearing evidence the evidence in Bengal was also all one way. Now in the opinions circulated I find the opinion in West Bengal is all one way. It is clearly against the Bill. What is remarkable is that there is an opinion by the Secretary of the Government of Bengal in the Ministry of Law. That opinion is to be found in paper No. 4, opinion No. 17. That opinion is against the Bill. It says that this is not a proper time to take the Bill. *(An Honourable Member : ' When was that '?)* It bears no date. It has been circulated only recently—five or six days ago. In fact it says that the Bill is of far-reaching importance and enough consideration has not been given to the opinions expressed. The House will be pleased to consider the different categories of objections. One is that, this Bill should not be considered by a mixed Legislature consisting of members of various communities. It is for this reason that I am particularly anxious to speak as it was feared that men of different communities will rather support the Bill and spoil the cause of orthodox Hinduism. It is for this reason that I hasten to declare that I am not

supporting the Bill as the Hindu community is much against it.

One of the objections is that the introduction of women's sparses would introduce litigation. There are many opinions that this would lead to excessive fragmentation that it will lead ultimately to the destruction of that joint family system amongst the Hindus which has saved the community from the destructive effects of fragmentation from which the Muslims most terribly suffer. It is said also that the Hindu law—the *Vedic* literature and the *post Vedic* literature known as the "*Srutis*" and the "*Smritis*" have a divine origin. But the present Bill goes, it is said, against the very structure, the very religious basis and the very religious structure of the Hindus. It is on this ground that is seriously opposed. It is argued that you cannot, regard all this religious law, all this sacred literature as so much nonsensical superstition. They have kept the Hindu society alive for ages though it is quite true that society cannot remain stagnant. It must move. But it must move cautiously and with experience.

The present Bill makes a change with a sweeping stroke. Another point that has been made apparent in these objections is that the present Legislature was elected on one issue, namely the attainment of independence. The present Bill, which is really of a very sweeping and complicated character, and its principles have not been before the public and it would therefore, be better to wait to digest opinions and to pass a constitution and hold elections making this a definite issue before the public. It will then be seen whether the public at large really desire it. In fact it is said that the Bill was not properly circulated. Many associations got only a few days' time or even a few hours time to consider and give their opinions. In these circumstances it is argued that the Bill should not be taken into consideration at this stage.

Then there is another important aspect of the question. The Bill attempts to make the law applicable to Hindus uniformly throughout India, but it has been pointed out that the effect of uniformity will not be attained in view of the shortness of time. It is well known that agricultural land is beyond the purview of this House. It is a provincial subject. Whatever law we may pass will affect only non-agricultural land, whatever that expression may mean. That expression is also vague. It has been defined in the Income Tax Act for the purpose of taxation and this Bill as well as many other Acts have taken that as the basis. There may be lands which lie midway between agricultural and non-agricultural lands. In fact, apart from this distinction, a large proportion of our property—about 80 per cent—consists of culturable land. Thus it is perfectly clear that the Provinces will have to deal with them and they may deal with them in a different manner and some provinces may not deal with them at all. And then again we have the acceded States. Though Hindu Law is to be the same—and it is attempted to make it uniform—the States people may legislate or may not legislate, and in case they legislate they may make different provisions. In fact the Provincial Governments and the States will be

largely guided by local custom and local opinion and I believe it will be extremely difficult for the West Bengal Legislature to pass a law which is so much against the opinion of that Province. It will therefore come to this that if we pass this law the result would be that in the case of a man having two classes of properties—a house or building and certain agricultural land—one set of law will apply to non-agricultural land and another set of law will apply to agricultural land. Whatever law you pass, it should be uniform and it would be far better to collect opinions from the Provincial Governments and to ask for their consent to give jurisdiction to this House to pass a comprehensive legislation as we have done in some cases. If comprehensiveness and completeness is the objective, it is better that the Central Legislature should be armed with their consent and deal with it on an all-India basis, and it would also be a proper thing to ask the States to co-operate in this matter. These are some of the difficulties. As we are working against time, it is impossible, as the Honourable the Law Minister has pointed out, to deal with even some of the salient features of the Bill. It is also impossible to deal with some of the objections except from the border point of view. One thing that strikes me is that the opinions have not been very carefully studied. We have not got any analysis of these opinions collected point by point and supplied to the members to enable them to deal with them. It is very difficult for private Members to read the opinions at a high speed and to analyse them, store them in different compartments of their brains and use them in a classified form. On a matter of such great importance as this, it would have been extremely desirable for the Honourable Minister's Department to classify the opinions, as was done before in such cases, and circulate them to enable members to consider each point in the light of the objections or support in respect of each of them.

**Shri L. Krishnaswami Bharati** (Madras : General) : It is there in the Report of the Law Committee, classified, analysed and all that.

**Mr. Naziruddin Ahmad**: I am grateful for the remark, but the opinions of which I am speaking have been received and circulated after the report. In fact the opinions which have been circulated by the Department were received only recently and they are on the Bill as it is. But the opinions collected in the Report of the Hindu Law Committee were collected before the drafting of the Bill, that is during the enquiry stage. The Honourable Member has missed the point that the opinions I am speaking of are not those published in the Report. They were separately printed and circulated. These are the opinions which I talk of. I think these should have been carefully analysed and printed along with the various points. Sir, I do not wish to labour the matter. Personally I am in favour of the Bill, but these are some of the objections which I have been asked to put forward by certain of my friends. That is the reason why I have put them before the House. There are a large number of other points, but they are of a minor nature. In view of the shortness of the time at our disposal I think I should cut

short my speech. Then again legislation should rather follow public opinion. It should follow rather than create or override public opinion, and I am giving a quotation from a famous authority, the father of modern politics, Edmond Burke. He said on a famous occasion:

" To follow, not to force the public inclinations, to give direction, a form and technical dress and a specific sanction to the general sense of the community is the true end of legislation."

But it has been pointed in the objections that there is no public opinion behind this Bill. It is pointed out in some of the objections that only some of the educated section and some of the ultra-modern section are behind it, but the masses, most of whom are ignorant, are indifferent to it and it has not been fully circulated in the way a subject of this importance should have been. In these circumstances, I submit this for the consideration of the House that it would have been better if the House gave directions to the Select Committee in matters of a disputed nature, but in this case we are sending the Bill without any directions. I should seek a little clarification from the Honourable Minister for Law. With these few words. Sir, I hope the points raised in the objections would be carefully considered and due decisions would be reached.

With regard to the personnel of the Select Committee, nothing could be said. The ablest, the most authoritative and most well-informed of the Members have been taken in it and I hope and believe that they will do full justice to the objections raised against the Bill.

[f7] **Shrimati Hansa Mehta** (Bombay : General) : Mr. Speaker, Sir, I congratulate the Honourable Minister for bringing this Bill even at this late hour of the Session. I also congratulate or rather I express my sense of gratitude to Sir B. N. Rau and his colleagues for the great labour they have bestowed on the Report on which these recommendations are based. This Bill to codify the Hindu Law is a revolutionary Bill and though we are not quite satisfied with it, it will be a great landmark in the social history of the Hindus. But since this Bill was drafted many things have happened and one of the biggest things that has happened is the achievement of our political freedom. Our new Constitution is in the making; we have already agreed upon the fundamental principles on which this new Constitution is to be drafted. The new State is going to be a democratic State and democracy is based on the equality of individuals. It is from this point of view that we have now to approach the problems of inheritance and marriage etc. that are before us. The Select Committee will therefore, have to see that the new Bill is drafted on these principles.

It is true that the Code has abolished the six discrimination with regard to inheritance. A woman is recognised as an heir and she is also entitled to enjoy her property in her full rights; that is, the Code has abolished the limited estate of the woman. Even then we feel that it does not go far enough. A daughter who is recognised an heir inherits the property, but she inherits half the share

of the son. This violates the principle of equality on which we have again and again said that our new Constitution is going to be based—a Constitution which aims to secure for the people of this country justice, social, political and economic. We, therefore, feel that the daughter should get an equal share in the property of her father with the son and the son also should get an equal share in the property of his mother with the daughter. It is also argued that a daughter gets her share from her father as well as from her husband, while the man does not get anything, from his wife. We have already proposed, that is the Women's Organisations have said, that the husband can also inherit the property of his wife in the same way that the wife inherits the property of her husband. In the Indian Succession Act the provision for the inheritance of husband is already there and I think we shall do well to copy that provision.

People have argued, and the honourable friend who spoke before me has said that if a daughter is given her share, especially in a landed property, there will be fragmentation of land. But why is this argument trotted out in the case of a daughter's inheritance? The same thing applies if a man has more than one son; if he has, say, four or five sons the land has to be fragmented; why is the argument not trotted out then, and only trotted out when the question of daughters inheriting the property comes up? The better thing would be that there should be law against fragmentation and the property should be sold if it goes below the prescribed limit. Or there is another alternative and that is collectivisation of the land.

Then with regard to the question of marriage. I am gratified, and the women of India will be very happy to know, that the principle of monogamy is recognised, and if the Code comes into being then the principle of monogamy will be established. Sir, we have felt that all civilised nations, all civilised communities have adopted the principle of monogamy. Disrespect for women and all the atrocities that we hear of perpetrated on women are I think due to the fact that this principle of polygamy exists. If we had monogamy, I do not think that women would have been abducted, married off or other things would have happened to them. This is a very wholesome principle and I hope the House will accept it. -

But with regard to some of the conditions of marriage there are one or two points that I would like to suggest. With regard to the marriage of the *sapindas* and the definition of *sapinda*, that requires a little revision; we are not quite satisfied with the definition that is given in the Code. Then again, we would like the age of marriage also to be a condition of a valid marriage. We have got the Sarda Act but that is not satisfactory; that has not satisfied the people because it has not been able to prevent child marriages; it is not effective. For that reason we would like the law to be more drastic. If we want sixteen to be the age of marriage, then it is very necessary that it should be included as one of the conditions of valid marriage and I would like the Select Committee to make

that change.

Then with regard to divorce, even that from the point of view of some does not go far enough. There is, however, one thing that I would like to bring to the notice of the members of the Select Committee and that is, the time given for desertion. If a man or a woman deserts his or her spouse, it has been provided, he or she can divorce her or him after five years. Five years is the period given in the Code. Even in " *Narad Smriti* " it is given that a childless woman should wait for three years. After three years she can marry again. So why not also bring that particular provision here that if a woman is childless, she need not wait till five years, but can divorce her husband after three years? If a woman has got children, then five years would be the right period, but for a childless woman three years would be a reasonable period.

With regard to guardianship, here also the Code has not made any changes in the present law. Father is the natural guardian of the children. The mother does not come in. We would like the mother also to be a co-guardian of the children with the father.

With regard to adoption, I think the whole chapter should be scrapped. We are a secular State. We want to be a secular State. Adoption in Hindu law is for religious purposes. Why should a secular State have anything to do with a religious custom? What we are concerned with is whether adoption which is for religious purposes should be recognised by the State for purposes of inheritance. We say that it should not. If a child is adopted—whether it is a boy or a girl—we would like a daughter also to be adopted—if a child is adopted not for religious purpose, but for real purpose, i.e. that the parents want a child, then that child should have the same rights as the natural child. But, if there is adoption for religious purposes, only then I think that adoption should not be recognised for purposes of inheritance.

These are some of the important points that I would like the Select Committee to consider. Speeches have been made, at least my Honourable friend Dr. Pattabhi has made a very long speech—praising all sorts of timings about our past traditions. We have looked too much to the past. We must now look to the future. It is for the future generation that we are making this law. It is not for us, but for the future generation that is coming after us that this law will be applied. We have to look to the future conditions. After all, it is the conditions that determine the law. The law reflects the society. The law reflects the conditions in which the people live. We have to see that the future generation is not fettered by our own prejudices with regard to marriage or divorce or with regard to any other ideas that we may have today. I hope the Select Committee will consider that and produce a Bill which will be a great boon to the future Hindu society.

<sup>[f8]</sup> **Shri Ram Sahai** (Gwalior State): (*English tmnslution of the Hindi speech*)  
Mr. Speaker, Sir, I have nothing to say particularly in reference to the Bill. I

appreciate the manner in which this Bill has been drafted after keeping in view the needs of the present day Hindu Society. But, I find in it one or two defects, and I think it necessary to explain them for the consideration of the Select Committee.

It has been laid down in Section 3(6) of Part IV of the Bill that in case of minor girls, the consent of her guardian must be obtained for her marriage. But so far as the question of declaring the marriage as invalid is concerned, it has been stated in Section 5 that it shall not be deemed to be invalid merely on the ground that such consent was not or had not been obtained. I fail to understand why it should not be deemed to be invalid when it has been expressly laid down

that the consent of the guardian must be obtained. If the consent of the guardian had been obtained by means of fraud or force, that marriage can be deemed to be invalid, but if the consent had not been obtained at all, then why should not the marriage be deemed to be invalid? On the contrary it has been laid down that the marriage will not be deemed to be invalid merely for this reason. This is the one defect which should be considered by the Select Committee.

Another point which I have to mention is in regard to ' Succession ' and which Mrs. Hansa Mehta has just referred to in her speech. But I do not see eye to eye with the views expressed by her and am of the opinion that the manner in which the order of succession has been prescribed ignores the fundamental tenets of *Dharam Shastras* (Hindu Code of Law). I do not mean that the women should not be given any rights. I am of the opinion that, they have been given more rights here than men. I may point out that while a daughter gets a share both in her patrimony and the property of her husband's family, there does not exist any such provision in this Bill which gives a man a share in the property of his father-in-law in addition to his patrimony. The men are thus, being subjected to the same injustice which has upto now been done to the women. On the contrary, it can be argued that the share which his wife will get in her patrimony will make up the deficiency. But after considering objects underlying the Bill and the worldly conditions which have necessitated it, it is felt that the real problem remains unsolved. The reason for this is that the property which a woman acquires out of her patrimony shall be treated as her Stridhana and her husband will have no right to that, therefore, he will not derive any particular benefit from this. In this way, I submit this second point for consideration by the Select Committee which is very essential.

I have yet to say another thing. Whatever may be the differences between the tenets of *Dharam shastra* and the present day conditions, I feel that we must follow the fundamental principles propounded therein; and keeping these in view we should decide all the issues. We should make only those changes which are considered necessary in view of the present conditions and trend of

the society. We should not resort to introduce any change merely under excitement or in imitation of the western civilisation which may obstruct the growth of our society and produce some sort of difficulties that may not be desirable.

Therefore, I would submit that those who are members of the Select Committee should consider these things and try to make necessary amendments.

<sup>[f9]</sup> **Dr. B. V. Keskar** (U.P. : General) : Sir, I take this opportunity of congratulating the Honourable the Law Minister for bringing this Bill forward in spite of the inordinate delay that has taken place since this idea was first conceived. Sir there is no doubt that this is a very, very important Bill. As my Honourable friend. Dr. Pattabhi said, I do not think there has been any bill so radical and so revolutionary which is trying to change the very foundations of Hindu society, a society which has remained fossilized for the last thousand years. No doubt and it is to that that I want to draw the attention of this House and the members of the Select Committee, the very fact that this society has remained fossilized for the last thousand years and has developed such inertia, such lethargy, in the body politic that all manner and all kinds of forces will come forward to impede the passing of this Bill and passing of any Bill to change the existing structure of Hindu society. It is to this inertia, this lethargy of Hindu society which has probably become its bane, that the members of the Select Committee and the honourable the Law Minister will have to look to, because I have no doubt that until this Bill is passed, to the very last moment every sort of effort, will be made to see that this Bill does not become a law. The changes that are suggested are such that there is a fundamental change in Hindu law. I know that orthodoxy will try in every way. My honourable friend, Mr. Naziruddin Ahmad was good enough to voice the alarm of a certain section of the orthodox society about the revolutionary nature of this Bill. No doubt, some of the changes suggested appear revolutionary. But as Dr. Paltabhi rightly observed the changes are really not revolutionary. They are due to the fact that for the last so many centuries, Hindu society has not been allowed to evolve. So we have to try to change in a few days what would have been done in centuries. I would, therefore, ask the Members of the Select Committee not to fall a prey to the pressure of what is called the so-called orthodox opinion which is really the opinion of the inertia of so many centuries which does not want anything to change, but after thinking over it for years and years, which really considers that any change is an attack *on* Hindu religion. I would ask them to guard against these and go forward in spite of all this pressure.

There is no doubt that quite apart from the question of making any radical change in Hindu law, the necessity for consolidating the Hindu law was very urgent. Sir, the present day Hindu law is a maze; it is a jungle like the *Turai* or *Sunderbans* in which all sorts of practices and traditions come up; in which all

that *puranic* book and prevailing customs in many parts of India, in many regions and provinces, in many castes, sub-castes; sub-sub-castes come into play and which is naturally a paradise for lawyers. This to a certain extent might not have been undesirable, but it has grown to such an extent that the time has come when this maze of traditions and counter-traditions should be put an end to and we must rationalise and consolidate the law. This is quite apart from any question of changing the Hindu Law. So from both points of view, I consider that a bill of this kind is overdue.

I rather would warn the members of the Select Committee to see that the Bill is not delayed too much. Already the first Committee was appointed in 1944. The idea and some of the proposals about the Bill have been circulating for the last so many years and even now we find before us proposals which will circulate it the more. Now, I would like them to try to curb this period of discussion as little as possible and to bring this Bill before the House, the latest before the next session. Sir, I welcome this Bill.

[f10] **Begum Aizaz Rasul** (U.P.: Muslim) : Sir, I do not desire to take up much time of the House, because I know that the time is very limited, but I think I would be failing in my duty if I do not stand up and welcome the measure that has just been brought before the House by the Honourable the Law Minister. Sir, it is in the fitness of things that with the achievement of freedom in this country and the establishment of a National Government, a measure of this kind should have been brought before this House. I only hope that the Select Committee will not delay giving its report and that this House will have an opportunity of passing this measure into law and putting it on the statute book as early as possible.

There is no doubt. Sir, that the provisions of this Bill are extremely far-reaching and the provisions about marriage, divorce, inheritance and adoption that are being brought forward are extremely radical measures. It is an extremely important matter and the codification of Hindu law will certainly be looked upon as one of the most momentous pieces of legislation that has ever been brought forward in this House.

Sir, without going into the different clauses of this Bill, I welcome this measure. Sir, it is by the status of the women of a country that the society of that country is judged and there is no doubt that the Hindu women were very backward in India. The Muslims have taken pride in the fact that the *Shariat* law gives them great rights. I agree with my Honourable friend. Dr. Pattabhi when he said that although the *Shariat* has given many rights, they are not followed in the letter and I do know that there are many parts in India today where in spite of the fact that Muslim women do enjoy all the rights given to them by *Shariat*, they are not being followed in the letter at all. In the Punjab the customary law still prevails and the daughters are absolutely disinherited from the property of their fathers. In the same way in the U.P. although in some

parts of the Province *Shariat* has prevailed, Muslim women do not share in the property amongst the *talukdars* and therefore, I am glad that this piece of legislation that is being brought forward will put the Hindu women on a par with Muslim women as far as their rights are concerned. As I said. Sir, I hope that no section of society will oppose this measure. There is no doubt that this being such a fundamental treasure and also connected in many ways with religion, there will be certain sections of society amongst the Hindus who will oppose it, but. Sir, it needs courageous minds to bring forward courageous measures and therefore, I hope that orthodox opinion in the country which looks with disfavour upon this legislation will not stand in the way of its being passed and I hope that this Bill that is going now to the Select Committee will come out even in a more improved form and that this measure will not be delayed. Society should not be static and as we go forward on the road to progress, it is necessary that women should come into their own and unless the women of India stand on their own feet economically, it is absolutely impossible for India to go forward on the road to progress. With these few words, I give my whole-hearted support to this measure.

[f11] **Shri Rohini Kumar Chaudhuri** (Assam : General) : Sir, I think I must congratulate the Honourable Minister-in-charge of this Bill. He must have greatly liked this hour of the day when he has received so much ovation from certain sections of the House. But, I think, I should not be considered to be criticising in a wrong spirit when I say that the title of this Bill is a misnomer; it is not a Hindu Code but it should more appropriately have been called a Hindu Women's Code. Sir, I do not understand why only three or four days after we passed the Resolution about having a secular Government and stopping of communal organisations we should have gone out of our way to legislate in such a hasty manner only for a particular community. After having decided to eschew all communal organisations I should like to know why we should not have been given time to think out and draw up a piece of legislation which would include all subjects of the State, Hindu, Muslim, Christian, etc. If the Honourable Minister is not led away by fair influences in this House, I think it is not yet too late to withdraw this Bill and if he withdraws it with a promise to bring in a more comprehensive Bill at a later date, his action in so withdrawing would have greater merit than the withdrawal which he made a few minutes ago. I know that some women of our country are very anxious to snatch away a portion of inheritance from their brothers; I know some influential women of this country are anxious to put an end to marriages to which they were unwillingly led and which they have found unbearable. It is also perhaps a fact that some educated and progressive ladies of our country who cannot think of polygamy of any kind are now anxious to have legislation for the removal of these things. By enacting this Hindu Code you are revolutionising the whole structure of Hindu life and law and custom. But for whom are you doing it and who is going

to be benefited by it? The large mass of people who depend on agriculture and agricultural property are outside the pale of this legislation. Are the poorer Hindus in our villages clamouring for divorce? Are they clamouring for properties to be got from their parents? Not at all. You want this legislation for what you call the enlightened section of our people, men and women. It is for the rich man who gave his daughter in marriage to a poor man who hoped to give his wife some position but has not been able to give it and his daughter has become unhappy; and so he wants to get rid of this marriage. This legislation is going to help that kind of individual.

Then, Sir, with reference to custom and usage, custom plays a very important part in Hindu law as administered in my province. I want to lay particular stress on our province because there is no one who represents us in the Select Committee. As all lawyers would know, the customs which have taken the place of Hindu law in Assam are very peculiar. I can cite the Privy Council case of "*Muniram Katita*" versus "*Keri Kalitani*" which has practically revolutionised Hindu law as administered among the Hindus.

Then there is the question of tribal people. According to this Bill they would be considered Hindus and they are really Hindus if they have not adopted Islam or Christianity or Buddhism, etc. Are you going to thrust on them this piece of legislation? If you ask them to have this system of inheritance they will simply revolt against you. There are different kinds of custom in Assam. Amongst the *Khasia* people of Assam the youngest daughter inherits the property. Now you are giving it to the widow, the son's widow, the widowed daughter, the son's daughter-in-law and so forth. Will they tolerate it for a moment if you introduce this legislation among them? You have introduced sacramental marriage and civil marriage. Shall I tell you how the *Cacharis* get married? Some boy and girl come to know each other and the girl is forcibly taken away from the parents after which the ceremony of marriage takes place. Will you ask them to go to the Registrar's Office and get married there?

Then we are very much against dowry. These rich people who can afford to give dowry get their daughters married very quickly, even though they may be blind or ugly. If I had no money I would mortgage my house and everything that I possess in order to give a dowry and thus get rid of my daughter. But what will happen now? The daughter will inherit part of the property. So when I seek brides for my sons—fortunately I have five sons—I shall look forward to that family where the daughters will inherit something and not go to an ordinary person who will have to borrow or mortgage his property. Are you going to legislate for poor people in this way? Among the poor there is only agricultural property. If you include the tea gardens that is different, but there is no agricultural property among them. And there is no question of big inheritance and therefore, the poor man's daughter, however beautiful and accomplished she may be has no chance. I think this measure requires very serious

consideration, so far as customs and usage and other points are concerned and it is not proper to pass this legislation in such hurry. I should have said something more also. Sir, but in this House there are persons who are still unmarried; so it would not be fair on my part to disclose all my objections to this Bill.

<sup>[f12]</sup> **The Honourable Dr. B. R. Ambedkar:** Mr. Speaker, my task is considerably lightened by the fact that the Bill has received such an ample measure of support from this House. I shall, therefore, confine myself to replying to some of the points which have been made by the speakers who have participated in this debate.

I would begin with the observations made by my honourable friend, Mr. Naziruddin Ahmad. Sir, I thought that the Legislature was not a court and that a Member of this House who is a lawyer certainly does not come here either to practise or to plead. But somehow my friend either for fee or out of pure generosity, undertook the task of representing the views of some of his clients who probably had not the courage to say what they had in their mind. I shall, however, not raise any technical objections but deal with the points that he has made.

Sir, his complaint was that the Bill had no sufficient publicity and that the public was not given as ample an opportunity as the importance of the measure required. I should have thought that the clients of my honourable friend had rather misinformed him on this point. This Bill had its origin in a legislation which took effect in the year 1937. Ever since that year the provisions of this Bill have been bandied from one side to the other, from committee to committee. For instance in the year 1941, the Home Department appointed a Committee to consider some of the difficulties that arose out of the Women's Rights to Property Act of 1937, to report upon the difficulties and to suggest remedies. This Committee which is known as the Rau Committee made its report on the 19th June 1941. My Honourable friend, if he had referred to this report would have seen the immense amount of publicity that Committee gave to its proposals, the number of questionnaires that it issued, the statements that it received, the witnesses that it examined and the peregrinations it undertook from province to province in order to ascertain local public opinion. Again in 1942 this very Committee submitted two draft Bills, one on succession and the other on marriage. The Hindu Succession Bill was introduced in the Assembly in 1943. That was referred to a joint Committee of both Houses. That joint committee again invited public opinion and a volume of them were collected and circulated to the then legislature in existence. Having regard to all these, I am sure that the statement made by my honourable friend that the Government had not given sufficient publicity cannot be accepted as truth.

He also referred to the report, the Minority Report of Justice Mitter, where

also he has analysed the *pros and cons* of the various points contained in this Bill. Sir, I do not like to say anything derogatory of a member of a Committee, who has done such useful work, but I cannot help saying that this member really ran away from his own opinion. If my honourable friend, Mr. Naziruddin Ahmad were to read the report of the majority he will find that all the propositions contained in that Bill which give rights to women were really based upon a publication of this member of the Committee in the year 1930. In that book he had propounded the view that the case law which had limited the rights of the women had no foundation. Ultimately for reasons best known to him he did not submit that there is no point in this argument.

My honourable friend also referred to the fact that this Bill is after all confined to property other than agricultural land. The conclusion he drew from that fact was that this codification was only a partial codification, because a large part of the property which is the subject matter of inheritance is left untouched by the provisions of this Bill. Sir, there are two explanations for the non-inclusion of agricultural property<sup>[f13]</sup>. My honourable friend, if he refers to the Schedules to the Government of India Act, where the subject matter of legislation for Centre and the Provinces have been set out will find that land is put in the " Provincial List ". As a result of the judicial interpretation given by the Federal Court it was held that the word " land " or item " land ", which is included in the " Provincial List " not merely covered tenancy land but also covered succession to land and consequently any provision with regard to the succession to land made by the Central Legislature would be *ultra vires*. In order that this may not happen, the Committee very deliberately exempted agricultural land from the provisions of this Bill. But what I would like to say is something different. I should have thought that the omission of land from this Bill far from being a flaw or a fault in the Bill was probably an advantage because I believe there is no necessity that a uniform law of inheritance should apply to all sorts of property. Property varies in its nature, varies in its importance in the social life of the community and consequently it may be a matter of no mean advantage for society to have one set of law of inheritance for agricultural property and another set of law for non-agricultural property. It may be that on a better consideration of the situation, Indian or Hindu society may come to the conclusion that land which is the foundation of its economic life had better be governed by the law of primogeniture so that neither the junior sons nor females may take part in the inheritance. As I said, the question having been left open it is to the advantage of the society that it may consider the matter *de novo* and afresh. I do not, therefore, regard that the comment made by my honourable friend on the part of this Bill is really a matter to be apologised for.

Coming to my friend, Mr. Chaudhuri, he considers, this piece of legislation as a communal legislation. I agree that in as much as it refers to Hindu society, which is one of the many communities inhabiting this country, it might well in a

logical sense be called a communal piece of legislation. But what is the alternative? If my honourable friend's alternative was that there ought not to be communal laws of inheritance and communal laws of marriage but there ought to be a common civil code, applying to all sections all communities, all persons: in fact applying to citizens without discrimination as to religion, creed or caste, I am certainly one with him. Certainly, that is not his conclusion. His conclusion is, if I understand him, that this legislation by reason of the fact that the other day a view was expressed that the future society here stated would be secular had no right to legislate for a secular community: that would be a most disastrous conclusion. This country is inhabited by very many communities. Each one has its special laws and merely because the State desired to assume a secular character it should withdraw itself from regulating the lives of the various communities, undoubtedly would result in nothing but chaos and anarchy. I certainly myself am not prepared to subscribe to that sort of a proposition.

His second comment was that the Bill had not taken into consideration the customary law. He cited some ruling of the Privy Council. I should have thought that at this hour of the day it was unnecessary to cite the authority of the Privy Council because it has been well established by a long course of decisions, that so far as the Hindus are concerned custom would override the text of the "*Smriti*". We all know this. But what are we doing? What are we doing is this. We are shutting down the growth of new customs. We are not destroying existing customs. The existing customs we are recognising because the rules of law which are prevalent in Hindu society are the result of customs. They are born out of custom and we feel that they have now grown so sturdy that we can indeed give them flesh and life in the body politic by our legislation.

He also said that we had not taken into consideration the question of the tribal people, whose life is undoubtedly governed in a large measure by customary law. If my friend had read the definition in this code as to who is a Hindu and who is not and to whom this Code applied, he would have seen that there is a clause which merely said that persons who are not Muslims, Parsis or Christians shall be presumed to be Hindus: is: not that they are Hindus. The result is that if a tribal individual chooses to say that he is not a Hindu it would be perfectly open to him under this Code to give evidence in support of his contention that he is not a Hindu and if that conclusion is accepted by the Court he certainly would not be obliged by anything contained in this Bill.

**Shri Rohini Kumar Chaudhuri** : My point is that he did not like to be called a Hindu and still wanted to retain all the customs of the Hindu!

**The Honourable Dr. B. R. Ambedkar** : The position taken is this : that once a person chooses to call himself a Hindu, he must accept the generality of law which is prescribed for the Hindu. We do not want this anarchy. A Hindu is a Hindu for all purposes. If a tribal person does not want to be a Hindu the way is

open to him to prove that he is not and the Bill will not apply to him.

Then my friend, Dr. Sitaramayya asked me to tell him whether the rule of law contained in this Bill, whereby the women will acquire absolute estate in the property which they inherit, will apply to widows who have already taken the estate before the passing of the Act. I am afraid I must say that the Bill has no retrospective effect.

Nor would it be possible to give retrospective effect to the principles of the absolute property of women for the simple reason that long before this Bill will come into existence, vested rights would have been created in that estate and it would not be right and proper to divest them however much our sympathy may be with the widow.

Mrs. Hansa Mehta raised several questions indicating that the women and particularly herself were not satisfied with some of the provisions contained in the Bill relating to the rights of women. It may be that in an ideal sense the Bill does not come up to expectations. But I would like to tell her that she must remember that this society is an inert society. The Hindu Society has always believed that law-making is the function either of God or the " *Smriti* " and that Hindu Society has no right to change the law. That being so, the law in Hindu Society has remained what it was for generations to come. Society has never accepted its own power and its own responsibility in moulding its social, economic and legal life. It is for the first time that we are persuading Hindu Society to take this big step and I have not the slightest doubt in my mind that a society which has bucked up courage enough to tolerate the large step that we are asking it to take by reason of this Bill, will not hesitate to march on the path that remains to be trodden and reach the goal that she has in mind.

Sir, much has been made of the fact that there is a great deal of public opinion which is opposed to this Bill. I have certainly not weighed the opinions that we have received but I do like to say this, that this is hardly a question which we can decide by counting heads. This is not a question which we can decide in accordance with the opinion of the majority. When society is in a transitory stage, leaving the past, going to the future, there are bound to be opposing considerations: one pulling towards the past and one pulling towards the future and the test that we can apply is no other than the test of one's conscience. I have not the slightest doubt in my mind that the provisions of this Bill are in perfect consonance with the conscience of the community, and I have therefore, no hesitation in putting forth this measure although it may be as a matter of fact that a large majority of our countrymen do not accept it.

**Mr. Speaker:** The question is:

" That the Bill to amend and codify certain branches of the Hindu Law, be referred to a Select Committee consisting of Shri Alladi Krishnaswami Ayyar, Dr. Bakshi Tek Chand, Shri M Ananthasayanam Ayyangar, Shrimati G. Durgabai, Sim L. Krishnaswami Bharathi, Shri U. Srinivasa Mallayya, Shri Mihir

Lal Chattopadhyay, Dr. P. S. Deshmukh, Shrimati Renuka Ray, Dr. P. K. Sen, Babu Ramnarayan Singh, Shri Kishorimohan Tripathi, Shrimati Ammu Swaminadhan, Pandit Balkrishna Sharma, Shri Khurshed Lal, Shri Brajeshwar Prasad, Shri B. Shiva Rao, Shri Baldeo Swarup, Shri V. C. Kesava Rao and the Mover with instructions to report not later than the last day of the first week of the next session of the Assembly and that the number of members whose presence shall be necessary to constitute a meeting of the Committee shall be five."

The Motion was adopted.

**Mr. Speaker:** This brings to a close our long session which commenced on the 28th of January and I heartily thank all the Members for the sincere co-operation, which I have always had from them.

*(The Assembly then adjourned sine die.)*

## Section II

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[f1]\* Constituent Assembly of India (Legislative) Debates [Hereinafter called C.A. (Leg.) D.L Vol. I, 17th November 1947, p. 41.

[f2] C.A. (Leg.) D., Vol. I, 11th February 1948, p. 599.

[f3] C.A. (Leg.) D., Vol. II, 26th February 1948, p. 1288.

[f4] C.A. (Leg.) D., Vol. IV, 9th April 1948, pp. 3628-33.

[f5] C.A. (Leg.) D., Vol. IV, 9th April 1948, pp. 3633-39.

[f6] C.A. (Leg.) D., Vol. IV, 9th April 1948, pp. 3639-42.

[f7] C.A. (Leg.) D., Vol. IV, 9th April 1948, pp. 3642-44.

[f8] C.A. (Leg.) D., 9th April 1948, pp. 3646-47.

[f9] C.A. (Leg.) D., Vol. IV, 9th April 1948, pp. 3647-48.

[f10] C.A. (Leg.) D., Vol. IV, 9th April 1948, p. 3648.

[f11] C.A. (Leg.) D., Vol. IV, 9th April 1948, pp. 3648-50.

[f12] C.A. (Leg.) D., Vol. IV, 9th April 1948, pp. 3650-53.

[f13]\* Misprinted as ' non-agricultural property, in the Debates at p. 3651.