
SECTION I

**HINDU CODE BILL REFERRED TO
SELECT COMMITTEE**

17th NOVEMBER 1947

TO

9th APRIL 1948

*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.

*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.

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

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

***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.

***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
4 P.M. 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

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

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

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 *Mitakashara* 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 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 consideration 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 properly 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 judgment 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 realize, 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 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. 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 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.”

* **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 waiting 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 everchanging custom. Custom is a force which is generally patronized, appreciated and recognized 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 ruined the occupation. They said formerly they were manufacturers 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

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

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 inter-currency 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 altitude 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 throwing 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 hailing 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 100 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 2½ 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 *Mitakashara* 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 *Mayuka*, 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 propagandize these laws in order to educate our young girls in the direction of monogamy. That is very necessary.