

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.

* **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.

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

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 shares 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.

* **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 6-00 P.M. 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.

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

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 things 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.

* **Shri Ram Sahai** (Gwalior State): (*English translation 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

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

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.

* **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 mat 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. Pattabhi 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,

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

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 *Tarai* 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 rationalize 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.

* **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.

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

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.

*** 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

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

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 "*Maniram 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.

*** 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

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

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 felt untouched by the provisions of this Bill. Sir, there are two explanations for the non-inclusion of agricultural property*. 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",

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

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: 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

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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, 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 me 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.)

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