

transplanted to other parts. The act seems to be absolutely *bona fide*, but it was not based upon a full appreciation of the purpose of the separate treatment of the subjects. In fact, the Select Committee was presented with a re-drafted Bill by the Ministry of Law. That I submit would be likely absolutely to mislead the Select Committee. It is this document which was printed on the 17th July 1948. It was prepared ready-made for the handy use of the Select Committee before it ever met and the Select Committee was presented with this Departmental Bill. I have already dealt with one point, that in this intermediate Departmental Bill a serious departure has been made, namely, different parts have been mixed up into one whole so to make it impossible to put separate parts back to their original shape. It can be done by a research student, not by Members of the House without any such tendencies or inclinations. I submit therefore, that the first mistake was committed by the Departmental Committee in mixing up entirely separate subjects. This introduces a serious and unprecedented constitutional innovation.

Then, Sir, the Departmental Committee has introduced very serious changes in their Departmental Bill. It will be extremely important when we consider the bearing and the effect of this Departmental Bill on the proceedings of the Select Committee. The Departmental Bill, as I shall attempt to show introduced many very important changes, though I must point out that neither the Honourable Minister for Law nor the Members of the Select Committee nor the Members of the House seem to be aware of the seriousness of the changes effected. In fact, the Minister for Law on the last occasion when he spoke in the present session in support of the motion for consideration pointed out the substantial changes made in the Bill. But he was careful to insist that all the changes had been made by the Select Committee. I took careful notes of his speech and this can be verified from the official reports. He pointed out with commendable thoroughness the departures made in the final Bill from the original Jogendranath Mandals's Bill. That show that the Honourable Minister was totally unaware of the serious changes made by his Department in the so called Bill submitted to the Select Committee. In fact, I asked a Short Notice Question of the Honourable Minister as to whether the Departmental Committee had been authorised to make any substantial changes in the original Bill. The answer was that they had no such authority. On the other hand, the Minister for Law took the entire

responsibility for the changes, if any on himself. To a supplementary question of Mr. Ramnarain Singh the Minister for Law stated "I introduced no changes". In fact, the point was whether the Departmental Bill had made any substantial changes, and he made it absolutely clear that he had made no such changes and that the Select Committee alone had made the changes. The entire House seems to be of the opinion that the Select Committee made the changes and that no substantial changes were made by the Departmental Committee. On the last occasion when I was on my legs, I was repeatedly asked to point wherein the Departmental Committee had made substantial changes. It is important that I should refer to this, because it shows that the Members of the Select Committee or the House or even the Minister for Law was not aware of any substantial changes really made, and I submit therefore, that, if I can show that substantial changes were really made by the Departmental Committee and very rarely by the Select Committee, it would open up before the House important considerations. The Select Committee were given a readymade new Bill and the assurance in the report of the Select Committee is that it contained no substantial changes and that the changes were rearranging the clauses, their re-numbering and such formal changes as are purely of a drafting nature. This is the assurance we get in the report of the Select Committee. I would therefore, like to point that those substantial changes were made by the Departmental committee. It is not easy to trace the changes and I cannot blame any honourable Member for failing to notice them. I had to prepare a comparative chart, not of the numbers alone, but of the clauses and sub-clauses of the three bills side by side. I asked for a copy of the Departmental Bill, but it was not supplied. I submit, Sir, that the Departmental Bill is a very important document and should be supplied to the Members. We have been supplied with a report of the evidence of witnesses before the Select Committee, but the most important document which played such a large part in the framing

3-00 P M. of the final Bill, has not been supplied. It was with the greatest difficulty that I have procured a copy, not from the Department, but through the courtesy of an honourable Members. Then, Sir, I prepared a comparative statement in parallel columns of the appropriate provisions of the original Bill and the corresponding provisions of the Departmental Bill and the final Bill, and I find it extremely difficult to explain the real significance of the changes except by reference to the comparative chart.

I am trying to get the Bills in parallel columns printed. I am sorry it could not be completed and it could not be placed in the hands of the Members for their convenience. But, I shall refer to the substantial changes made one by one. In doing so, I shall refer to the very important changes made by the Departmental Committee. It is on a consideration of the changes by the Departmental Committee that this point will be decided. I shall refer to the changes made by the Departmental Committee which has been officially denied by the Department and also unknown to the Members in the House. The House will be pleased to consider certain clauses of the original Bill.

It is in part I, clause 2, sub-clause (3)(a). The clause corresponding to this is clause 2 of the departmental Bill, sub-clause (2). The original Bill says:

“It shall be presumed until the contrary is proved that the whole of this Code applies to every person who is not a Muslim, Christian, Parsi or Jew by religion.”

The original Bill was thus a mere rule of presumption. But in the departmental Bill, it is no longer a rule of presumption but a positive rule of law. In the original Bill, it was to be presumed that, if a man was not a Muslim, Christian, Parsi or Jew, he would be “presumed” to be a Hindu. That would not be a rule of law but a rule of presumption. In the Departmental Bill this is changed to stand like this:

“This Code also applies to any other person who is not a Muslim, Christian, Parsi or Jew by religion.”

The difference between the two is that under the original Bill any man who is not a Muslim, Christian, Parsi or Jew, would merely be presumed to be a Hindu and would be presumed to be governed by this Act. In the Departmental Bill, it is said that.—

“the Code applies also to any one who is not a Muslim, Christian, Parsi or Jew.”

I submit, Sir, this is introducing a substantial change. While it was a rule of presumption in the original Bill, it is now a positive rule and not one of presumption, that the Hindu law applies to any one not being Muslims, Christians, Parsis and Jews.

In the proviso it is said:

If it is proved that the Hindu law does not apply to anyone, the Hindu law will not apply.”

I think it is most unsatisfactory way of stating things. The final Bill applies it to them and this with the proviso, has changed the law.

Sir, I submit that this has introduced a serious change. I am not concerned with the policy of the law. But, I am concerned with the changes in the Departmental Bill of which the Select Committee seem to be unaware.

Then, Sir, coming to another part of the Bill. In the Departmental Bill.....

Mr. Tajamul Hussain : May I have your permission to raise a point of order ?

Mr. Speaker: Yes.

Mr. Tajamul Husain : My learned friend, Mr. Naziruddin Ahmad has been trying to show before the House that the Departmental Bill was considered by the Select Committee and not the original Bill and he does this after your finding of fact and ruling that the original Bill was considered by the Select Committee. I want to know your ruling now.

Mr. Speaker : I have been hearing his argument and I feel he is speaking in support of his amendment that the Bill be circulated for purposes of opinion and the other amendment is for recommitment to the same Select Committee. Therefore, though my ruling stands, I think, he is trying to make out a case that, there has been such a substantial departure from the original Bill as introduced by Sjt. Jogendra Nath Mandal, both in the scheme as well as in the content, that it is necessary now to recirculate or recommit it to the same Select Committee. His point, as I have understood till now, is that the original scheme of the Rau Committee in the first Bill was that the various parts of law should be taken in different compartments. It was possible to separate one from the other, but in the present scheme, the whole having been made as an organic whole, it is difficult now to take certain parts that the people agree to and drop out other parts, with which the people do not agree. How far he is right is another matter. therefore, he says that, it is necessary to recirculate the Bill for opinion. That is how I have understood the point till now. I do not think he is contradicting my ruling.

Mr. Naziruddin Ahmad : Not in the least. Sir, it will be too late in the day even to suspect that I have questioned your ruling. The ruling was on a point of law. It was very technical in nature. My point of order was based upon some assumptions which could not clearly be proved.

Mr. Speaker : The honourable Member may proceed with his argument.

Mr. Naziruddin Ahmad : I substantially agree that my point of view is that. But it is something more too. In fact, it is my purpose to show that if the honourable the Minister of Law, who is responsible for the Departmental Bill, and the Members of the Select Committee were not precisely aware of the substantial changes made in the Departmental Bill, can it be said that legally and also in fact they have substantially considered both ? They technically considered both, but did they as a matter of fact adequately consider them ? The question no longer arises as a matter of law on account of your ruling, the justice of which I respectfully accept. But the point I am stressing is that though they considered both, they were faced with the obvious difficulty that there was a Bill presented to them which was said to be a mere redraft of the original Bill and a re-arrangement of things of the clauses, with the express guarantee that no substantial changes had been made and yet in fact substantial changes had been made. My point is that though technically the Select Committee considered both the original Bill and the Departmental Bill, they did not and could not, as a matter of fact, give sufficient or adequate consideration to these undisclosed changes. My purpose is to make out a case for recommitment of the Bill to Select Committee or for circulation.

The next change made by the Departmental committee of a substantial nature is in clause 2, sub-clause (4). the change introduced here was made by the Departmental Committee. The change is absolutely new and it was not in the original Bill and is a substantial change. This was introduced by the Departmental committee in the Bill and not by the Select Committee. That is the most important point. The Departmental Bill provides:

“2(4). Notwithstanding anything contained in the Special Marriage Act of 1872 (HI of 1872) this Code shall apply to all Hindus whose marriages have been solemnised, under the provisions of that Act prior to the commencement of this Code.”

The original Bill did not contain anything like this and the original Bill left those who were married under Special Marriage Act of 1872 to be governed by that Act. That is divorce, maintenance and other provisions applying to those who were married under that Act would be governed by the provisions of the Special Marriage Act, 1872, which are entirely different. How different from the present Code is not very material. The present sub-clause however wants to make out

that those marriages under the Special Marriage Act of 1872, which took place before the Code comes into force, would be governed not by the Special Marriage Act but by this Code. I submit that this is a substantial departure or change introduced in the Departmental Bill and it was introduced by the Departmental Committee and was merely accepted by the Select Committee as a matter of course. This is a substantial change, whether it is good or bad, whether it is *bona fide* or not is not the point but a substantial change has been effected by the Departmental Committee and the Select Committee was not specifically informed of the change made. Though there are references to clauses of the original Bill, etc. given in the margin, still this subclause is absolutely new without any indication whatsoever that this was a change. Changes in sub-clauses have not been indicated. In fact in ordinary Bills coming out from a Select Committee all changes made by the Select Committee are either underlined or sidelined. The Select Committee has stated that this practice is unnecessary, because marginal references have been given. I submit that marginal reference is only to the clauses but this subclause (4) is absolutely new. The reference to this sub-clause is Part I, Section 6, page 2 and Schedule I, page 30. The change effected is neither indicated here either by reference or by suitable marking arrangement. At least it is a change of a substantial nature and the attention of the Select Committee was not in any manner specifically drawn to it, nor the nature of the change is indicated. That is change No. 2. I am dealing only with the more substantial and important changes. There are many. I hope at a future time to make available to Members as well as the public a publication which will clearly show the real changes introduced by the Department and the changes really introduced by the Select Committee. I again insist that the Select Committee made very few changes and most of the substantial changes introduced were made by the Drafting Committee.

I come to another part of the Bill. In the original Bill, Part I, clause 3, which deals with the operation of the code in relation to previous customs and usage, it is provided:

“In regard to any matters dealt with in this Code its provisions shall supersede any custom or usage not hereby expressly saved”

The original Bill would supersede only “customs or usages” not thereby expressly saved—all customs not specifically recognised by the original Bill would be superseded. Let us look at the corresponding

provisions in the Departmental Bill which also was accepted without question by the Select Committee. I may point out that the change was effected by the Departmental Committee and not by the Select Committee. In the Departmental Bill, it is clause 4 which corresponds to clause 4 in the final Bill. The marginal note is "over-riding effect of the code" which is much different but I lay no emphasis on this note as it is not part of the Bill. The Departmental Bill says:

"Save as otherwise expressly provided in this Code any text or rule or interpretation of the Hindu Law or custom or usage or any other law in force immediately prior to the commencement of this Act shall cease to have effect as respects any of the matters dealt with by this Code."

The verbal changes are not important but you will please consider that several important new matters have been introduced by the Departmental Committee. "Any text, rule or interpretation of Hindu law" and later on "any other law in force immediately prior to the commencement of this Code are absolutely new. Let the House pause for a minute and consider the seriousness of the change. All custom and usage not specifically recognised by the original Bill would be absolutely gone. But the Departmental Bill would include also within its mischief any text, rule or interpretation of Hindu law. This is something which is entirely different from usage and custom. In fact any text of the sacred books, the *Vedas* and *Smritis* any rule or interpretation of the Hindu law, that is to say, all ruling of the High Court, the Federal Court and the Privy Council, all authoritative expositions of the original Sanskrit texts or the interpretations by the highest judicial authorities must perish as also any other law in force immediately prior to the commencement of this Code. The sacred texts and the rich case law for over a century and a half would be abolished altogether by a stroke of the pen. "Any text, rule or interpretation of Hindu law" probably includes all things. "Any other law in force immediately prior to the commencement of this code" would probably be included within the passage, but I submit that the Departmental Bill would try to legalize, if I may be permitted to use the expression, all texts, interpretation of Hindu law or rule not specifically recognised by the Bill, and they will all be gone. I submit this is a substantial change.

Shrimati G. Durgabai (Madras : General): On a point of order, is the honourable Member within his rights to question the competency of your ruling ? When he calls this Bill as the 'Departmental Bill' he is making very great insinuation against the members of the Select

Committee. The Members of the Select Committee have gone fully into the Bill and they have noted all the changes. He can no longer argue on the point by referring to it as the Departmental Bill. We want your ruling as to whether he is in order.

Mr. Speaker : I am afraid it is hardly a point for ruling. These are observations which, I appreciate, irritate some Members; but I do not think the honourable Member, when he uses the expression 'Departmental Bill' suggests thereby that the Members of the Select Committee did not consider the points. He is, as I have been noticing, using the expression 'Departmental Bill' for the sake of brevity instead of saying each time "the Bill which was drafted by the Department for the benefit of the Select Committee Members." I do not think it goes anything further than that and we should not read any meaning into it. Departmental Bill is only a short phrase for that. As I once pointed out—I do not know whether the honourable Member was present when another honourable member of the House raised this point, the point that he is making out is that the changes made by the Select Committee are substantial. And if the changes are substantial then he is certainly within his right to say that the Bill should be re-committed or recirculated. That seems to be the point though he is going his own way, doing so in a very elaborate way which he could do in a shorter time.

Shrimati G. Durgabai : My point is he is imputing ignorance to the Select Committee members.

Mr. Naziruddin Ahmad : Not in the least. I am imputing, not ignorance, but carelessness naturally following from the Departmental Bill which gave them no clues to the changes. (*Interruptions*).

Mr. Speaker : Order, order.

Mr. Naziruddin Ahmad : I withdraw the expression "ignorance". But they were effected by a mistaken faith in the Departmental Bill. (*Interruption*), Even if this is not yet apparent to him I am sorry for the honourable Member that he is still suffering from the obsession.

Mr. Speaker : Let the honourable Member proceed on a different line; let him say that they should have given more attention to this subject.

Mr. Naziruddin Ahmad : That is what I mean. In fact for my argument I do not require any hard expression—I rely more upon reason than upon an expression. If I have used any expression which is hard, even if not unparliamentary, I withdraw it. The point is we shall again begin with . . .

Mr. Speaker : He need not repeat it; he may proceed further.

Mr. Naziruddin Ahmad : The other point is that not merely have substantial changes been made without sufficient or any clear notice to the Select Committee . . .

Shri L. Krishnaswami Bharathi : That is what we want to object to. He cannot say so. We knew it fully well.

Mr. Naziruddin Ahmad : If the Honourable Minister for Law is unaware of the change and if honourable Members are repeatedly asking me to point out the substantial changes it shows that they are unaware of them and accepted the changes *bona fide* without knowing them. I think the changes were introduced by some over-zealous draftsman who thought of improving the Bill and he introduced some *bona fide* changes without realising that he was thereby making a new Bill altogether, and nobody saw through it.

The Honourable Dr. B. R. Ambedkar: I must really protest against this. It is a grave reflection on the Draftsman. My friend is almost suggesting that after the Select Committee had considered everything the Draftsman took it into his head to make changes in the Bill. I very strongly protest against it.

Shri L. Krishnaswami Bharathi : And we protest against the way in which he is insinuating against the Select Committee Members.

Mr. Speaker : Changes made after the Select Committee report ?

The Honourable Dr. B. R. Ambedkar : That is what he is suggesting.

Mr. Speaker : He means "before".

Mr. Naziruddin Ahmad : Yes, Sir, I am absolutely certain that I said that the changes had been made before the Select Committee met.

Mr. Speaker : There appears to be some misapprehension.

The Honourable Dr. B. R. Ambedkar: I have no idea. If I understand my friend's speech it simply means that the Select Committee blind-foldedly signed the report without going into anything or it means that after the Select Committee had done its work the Draftsman took it into his head to introduce some changes. It cannot have any other meaning.

Mr. Naziruddin Ahmad : As to whether the changes were made *bona fide* or in a careless or *mala fide manner* it is not material for us to go into.

Mr. Speaker : The honourable Member's point is that changes which he believes to be substantial are made.

The Honourable Dr. B. R. Ambedkar : I am quite prepared to hear any friend setting out *seriatim* the changes which he thinks the Select Committee has made. Assuming that certain changes were made by the Select Committee, I would like to know whether that in itself would be a sufficient ground for re-circulation.

Mr. Naziruddin Ahmad : Not at all : I never said they were made by the Select Committee.

Mr. Speaker : What I was suggesting to the honourable Member was that assuming that certain changes are of a substantial nature in his opinion have been made, his case is strong enough for pleading and he need not say whether the changes were made out of ignorance or *mala fides*. The Select committee with an open mind and considering the whole thing could have made the changes. Still he thinks that they are of a substantial nature and, therefore, the Bill should be re circulated. All people need not agree that these changes which he believes to be substantial are necessarily substantial. Opinions may differ.

Mr. Naziruddin Ahmad : The Honourable Minister for Law said that it is for me to show what changes were made by the Select Committee. I have been at pains to show that I am not drawing the attention of the House to changes made by the Select, Committee at all. That is I believe the mistake which is haunting the mind of the Honourable the Law Minister.

The Honourable Dr. B. R. Ambedkar : Nothing of the kind.

Mr. Naziruddin Ahmad : In fact he has been insisting that the ... changes were made by the Select Committee. The changes I have been mentioning so far are changes made not by the Select Committee but made by the Departmental Committee.

Mr. Speaker : Order, order, there the rub comes in. Whosoever made the changes so long as the Select Committee has accepted them they are changes by the Select Committee and not changes made by somebody else without the knowledge of the Select Committee. He need not make that kind of insinuation or assertion. By whomsoever they were made—even at the instance of a single Member or the Law Minister or the Drafting Committee or anybody else—he should proceed on the assumption that these changes are changes made by

the Select Committee and he should proceed to show that they are substantial.

Mr. Naziruddin Ahmad : My difficulty is I cannot stop at that. The Honourable the Law Minister insists that the changes were introduced by the Select Committee and not by the Drafting Committee, that would make it absolutely clear that the Select Committee faithfully and *bona fide* accepted the changes introduced by the Drafting Committee. If that is so the Select Committee did not apply its mind to it when accepting it, knowing it to be a change. If the Select Committee did not know, as the Honourable the Law Minister does not know, that these changes were introduced by the Departmental Committee, they accepted technically, but not with full appreciation, all the changes made. That is the point which makes my case stronger. It is not merely the changes made by the Select Committee willingly but the changes made by them of a substantial nature without realizing that they were accepting any changes which makes the case stronger. In fact, they obviously assumed that the Departmental Bill was a mere re-draft without any substantial change. This is corroborated by the fact that even the Law Minister supposes that I am pointing out changes made by the Select Committee. That is why I am constrained to argue that the Select Committee's attention was not specifically drawn to the changes. On the other hand they took the Departmental Bill as a substantial reproduction of the original Bill without any substantial change. I can say that without casting any reflection ; we can always argue mistakes or oversights or *bona fide* errors. I need not put the point better than that.

Sir, I submit that the Members of the Select Committee or the Minister for Law need not be very sensitive about this. It is a matter of record. In fact, even the honourable the Law Minister admitted that he introduced no change and he assumes that I am pointing out changes made by the *Select* Committee. They have been adopted: as your ruling must be accepted, they must have accepted these changes. But the question I am pointing out is that the consciousness or the legal mind was not directed towards these because they were not aware of it. The Honourable Minister insisted the other day on a question that the Departmental Committee introduced no substantial changes. The substantial changes are there and they were not indicated in the Departmental Bill. Therefore, there is no question of insinuation.

Mr. Speaker : Let us not go into that question again.

Mr. Naziruddin Ahmad : This is one substantial change. Sir, I thought I was treading on very solid ground. If any offence is meant to the Members of the Select Committee by pointing out obvious matters, I am very sorry.

Shri L. Krishnaswamy Bharathi : You cannot insinuate against Members.

Mr. Naziruddin Ahmad : What insinuation ? That they made mistakes ? To err is human. I was only suggesting that the Members of the Select Committee were human beings.

Shri B. Das : On a point of order. Sir, Can the honourable Member go on pointing out the defects of the Select Committee for three months continuously. The point was raised and settled. Whether I accept his words or not is a different question, but the honourable Member cannot go on talking in the filibustering attitude which my friend Mr. Baijnath Bajoria took some years ago on my Bill to amend the Child Marriage Act. He quoted *shastras* and read from the *Mahabharata* and other books. Here the poor Select Committee is being hammered by my friend Mr. Nazirudin Ahmed for the last three months. This is not a law court. Sir, you ought to ask him to produce his views that the Hindu Code Bill should not be passed. Why should we go on interminably talking against the Select Committee? As the oldest Member of this House, I cannot understand it.

Mr. Speaker : The honourable Member may indicate only the substantial changes.

Mr. Naziruddin Ahmad : Yes, Sir.

Sir, I object to my speech being called a filibustering speech. I think the honourable Member goes a bit too far. It seems that he has locked up his mind absolutely and he is not in a mood to hear.

Sir, may I ask you to consider this and see if I am in the least irrelevant or wrong ? Unless the change is substantial, palpably, obviously it rules out texts of the Hindu Law and rule of interpretation by the highest Courts. The original Bill did not contain anything of the sort and the change was introduced to the Departmental Committee. Is it not, in all fairness, a substantial change ? Mr. Das cannot listen to legal matters. He is good in financial matters but in legal matters he is rapidly approaching his second childhood.

Shri B. Das : We are here to legislate. We are not here to understand the interpretation of lawyers or High Court Judges. (*Interruption*).

Mr. Naziruddin Ahmad : Sir, much depends on the substantial changes. Have not these been introduced by the Departmental Committee ? On that issue the whole case depends. If it was introduced by the Departmental Committee and if it is a substantial change, then the Select Committee was not informed of it. It has been repeatedly made clear that the Select Committee considered the Departmental Bill and not the original Bill. If this is insinuation, I am sorry I shall have to discharge my duty faithfully but absolutely fearlessly though very respectfully. I submit the Select Committee was absolutely cajoled into believing that the Departmental Bill was a substantial reproduction of the original Bill, and even the Honourable the Law Minister is persuaded to believe that there was no change. It is not insinuation, it is a fact. Who has made the changes ? If it were the Law Minister, then he would have been aware of it. Is it somebody else ? Then is it improper for me to point out that somebody else has made the change ? I say he has done it by mistake or *bona fide*. Would it be proper for me to suggest that these changes were made fraudulently ? I do not suggest anything of the sort. The only thing I could do is to assume that these things were done *bona fide*—just a little flourish of the pen to improve upon it. “Why merely rule out customary law ? Let us abolish all the rulings of the Privy Council.”

Sir, criticism is proper. If any language I have used is improper, I withdraw it. But what about the criticism ?

Shri L. Krishnaswami Bharathi : Let us hear the other points.

Mr. Naziruddin Ahmad : Why be anxious? Why not listen to this?

Mr. Speaker : Order, order. We cannot carry on the discussion of the Bill in this manner. There are Members who want to support the Bill and others who want to oppose it. Let everyone have his say in any manner he likes, without being offensive or speaking unparliamentary language. That is the only objection. Otherwise, at every stage there will be interruption and those who want to support the Bill will be the sufferers in the long run, because time will be spent in unnecessarily carrying on this kind of discussion. The Member honourable will have his say and if he says that the Select Committee did not give attention to this or that or that these points were not examined by the Select Committee, where is the ground

for taking insult in that ? He is perfectly entitled to say so. But he should not insinuate something else; that is what I have to guard against. But I believe he is entitled to express his views.

There is another point also to which I was going to invite the attention of the honourable Member. He says that because the Law Minister is unaware of a substantial change, therefore somebody else introduced the change. There is another aspect to it. If the point which he considers substantial is not considered by the Law Minister as substantial, then the Honourable Law Minister is perfectly entitled to say that he is not aware of any substantial change. Therefore, it does not necessarily mean that some other party in ignorance or behind the back of the minister, introduced it in the Select Committee. Let the points be substantial and let the controversy be limited to the question as to whether the points are substantial or not. That I believe is the chief point in dispute.

Mr. Naziruddin Ahmad : I stand subject to correction. It may have been done by the Law Minister without realising or without believing this to be a substantial change. But the matter is exactly where it was. These are substantial matters, whether introduced by the Law Minister consciously or by anyone else unconsciously, in any manner. It is not proper for us to argue on that. But by one stroke of the pen all texts, rules and interpretations of the Hindu Law have been abolished. The effect of this will be that all learned rulings of the Privy Council, the Federal Court and the High Courts are all gone, by one stroke of the pen. In fact, if this is not seriously interfering the original Bill, I do not know what is. There may be difference of opinions. But to one approaching the question absolutely impartially, and with a free mind, there would be no difficulty in agreeing with me that this is very serious interference with the Original Bill.

Shrimati G. Durgabai : Please speak of other substantial changes.

Mr. Naziruddin Ahmad : This is dealing very lightly with a very serious matter. But I say these are very serious changes which verge on interpolations, *bona fide or mala fide*, it does not matter.

Then Sir, the next cage made by the Departmental Committee is to remove the definition of 'caste' in Part I clause 5 sub-clause (b) which contained a definition of caste. This has been entirely omitted.

Mr. Speaker : What clause does the honourable Member refer to ?

Mr. Naziruddin Ahmad : I am referring to Part I, clause 5, subclause (b) which has the definition of 'caste'.

Mr. Speaker : Is he referring to the original Bill ?

Mr. Naziruddin Ahmad : Yes. And that definition has been entirely omitted in the Departmental Bill without any indication being given anywhere about this omission. There is a mere reference in the margin to the original clause. This sub-clause has been omitted, and there is no indication to be found of it. I submit, Sir, that the Select Committee's attention was not specifically drawn to this omission, and whether these are substantial matters or not, there cannot be much difference of opinion. At any rate the Select Committee was entitled to be told that these changes were made ; whether these are substantial changes or not may vary from individual to individual. But the Select Committee was entitled to know that these changes were made. But they were not told.

And then we come to sub-clause (f) of the same clause and here we find that the definitions of *Gotra* and *Pravara* have been omitted. And then in sub-clause (j) the definition of *Stridhan* has also been omitted. Therefore the definition of Caste, the definition of *Gotra*, the definition of *Pravara*, and the definition of *Stridhan* are entirely omitted. What effect this would produce on the Bill, cannot be explained shortly on the floor of the House.

Shri A. Thanu Pillai (Travancore State) : May I know from the honourable Member whether even if the definition is not of a term required in the law, it should be defined ?

Mr. Naziruddin Ahmad : I think the honourable Member is not proceeding as cautiously as he should. In fact, whether a definition is wanted or not wanted is not the question. A definition was in the Bill and that was removed by somebody, without any authority. The Departmental Committee removed it, and the attention of the Select Committee, who was alone competent to remove it, was not drawn to this fact.

Shrimati G. Durgabai : The Select Committee takes full responsibility for it.

Mr. Naziruddin Ahmad : This was not considered by the Select Committee.

Shri M. Tirumala Rao (Madras : General): Are you sure that the compositor did not omit it ?

Mr. Speaker : Those who interrupt can also be called obstructionists. If interrupted he will take longer time over it.

Shri L. Krishnaswami Bharati : I may cut short further arguments by saying that the Select Committee's attention was actually drawn to all these things. The honourable Member is unnecessarily harping on this point, that the attention of the Select Committee was not drawn. But as a Member of the Select Committee I may say that all these points were fully considered, all aspects of the matter were considered by the Select Committee. Therefore the honourable Member need not go over this matter over and over again.

Mr. Speaker : I will say that even if the question has been fully considered, the honourable Member is perfectly within his right in giving his views. Honourable Members will see that he is making a case for re-committal of the Bill to the Select Committee, and for this he has been putting forth his arguments. The Select Committee might have given full, adequate, proper, reasonable attention, but in his opinion, it has been inadequate. Therefore, he is insisting that the attention given has been inadequate and the Bill should be re-committed to the Select Committee. That is the line of argument he is following ; and if he is following that particular line of argument, he must maintain that stand. As regards the fact of adequacy just as the Select Committee Members cannot be absolute judges of the fact, as to whether the Bill was given proper or adequate attention, similarly, his judgment also is not final. But he is placing his opinion. Let us proceed on that basis. Otherwise there will be no end to this discussion.

Shri L. Krishnaswami Bharathi : I was only referring to the question of fact.

Mr. Speaker : It is a question of opinion. What the honourable Member supposes to be a question of fact, is actually a question of opinion. Adequacy of attention or not is a question of opinion and not merely a question of fact.

Mr. Naziruddin Ahmad : The question is the adequacy of consideration.

[At this stage Mr. Speaker vacated the Chair, which was then occupied by Mr. Deputy-Speaker (Shri M. Ananthasayanam Ayyangar)]

Mr. Naziruddin Ahmad : Sir, I have been interrupted almost continuously the other day, and again a series of interruptions are made to-day.

Mr. Pandit Lakshmi Kanta Maitra : I am supporting you all along.

Mr. Naziruddin Ahmad : There is my friend Mr. Bharathi. Is he right in telling the House what took place in the Select Committee ? If so, I have equally strong authority, also from the Members of the Select Committee themselves to the contrary. It would be very wrong to compare one Member's statement with that of another and I would rather draw a veil on what happened in the Select Committee. The honourable Member need not assure us that the Select Committee has considered everything. If he is so sure, I am equally sure that for many reasons, adequate consideration could not be given.

Shri L. Krishnaswami Bharathi : I was talking only about myself.

Pandit Lakshmi Kanta Maitra : You could not understand things.

Mr. Naziruddin Ahmad : In fact, it is not the case of one man. It is the whole Select Committee and not a one-man affair. If one man has followed, it does not mean that others also have followed it.

Pandit Lakshmi Kanta Maitra : Yes, one swallow does not make a summer.

Mr. Naziruddin Ahmad : Exactly, "One swallow does not make a summer". If there is one man of the Select Committee who believed that no change was made, that would be enough to make out a case for recommittal of the Bill to the Select Committee. And I again submit that these are very serious changes. And then how many of them ? My friends wonder how many changes there are. I can show them many, many such changes. Take the...

Shrimati G.Durgabai : In the meantime, on a point of information, may I ask whether the changes made by the Select Committee are absolutely binding on this House. Cannot the House accept the changes or reject them ?

Mr. Naziruddin Ahmad : I submit with all respect that it is irrelevant to ask if the Select Committee's changes should be accepted or rejected by the House. The Select Committee can make any change and the House can make further changes too. The House can make changes. There is no doubt about it. But the point is that the Select Committee for some reason did not or could not or failed or omitted to discharge its duties fully. If that is so, the right to go fully into the question rests with the House and it is for this reason that I appeal from the Select Committee to the larger House. There is of course the still larger house, the entire electorate of India. I now come to clause 7 of the original Bill. (*Interruption*). I think some Members have lost their heads.

Mr. Tajamul Husain : I must strongly protest against the statement that the Members have lost their heads. I raise this point of order seriously. He must withdraw it unconditionally.

Mr. Deputy Speaker : I think it was not necessary for the honourable Member to say all that.

Mr. Tajamul Husain : Let him withdraw it. Was he in order in making that statement ? He has all along been making violent gestures against honourable Members.

Mr. Deputy Speaker : I do not think it is proper for the honourable Member to say that the Members have lost their heads. It detracts from the dignity of the house. At the time I must say this: I have been noticing one member or other using language which may not be liked by the person addressed. There must be some amount of patience shown. There should not be interruptions either by the spoken word or by signs. Therefore when the honourable Member is turning over the pages of some of his papers, if they interrupt him he will miss it and their interruptions are likely to ginger him up.

Mr. Naziruddin Ahmad : Sir, I was told across the table that I had lost my head.

Mr. Deputy Speaker : The honourable Member has lost his thread—the thread of his argument.

Mr. Tajamul Husain : May I know whether he has lost his sacred thread?

Mr. Naziruddin Ahmad : I will proceed with my arguments, Sir. Clause 2 of the original Bill gives the definition of 'son' thus 'son' includes a *dattaka kritrima* or *godha son*, etc, but not a *dasiputra* and others. This has been entirely committed in the Departmental Bill.

Shri L. Krishnaswami Bharathi : When an honourable Member reads out something, should he not do so correctly ?

Mr. Naziruddin Ahmad : I find that this has been omitted. If it is anywhere the definition or in any other part of the Bill, my attention may kindly be drawn to it.

Mr. Deputy Speaker : The honourable Member who just now interrupted the speaker has been again and again giving advice. Mr. Naziruddin Ahmad may be a bit slow in making the references he desires to make. He need not be interrupted.

Mr. Naziruddin Ahmad : I submit that the definition of 'son' has been omitted. If I am wrong, the mistake may be pointed out to me.

Dr. P. S. Deshmukh (C. P. and Berar : General): I think the honourable Member is wrong.

Mr. Deputy Speaker : If honourable Members go on interrupting in this way it will be impossible to conduct the business of the House in an orderly manner. Mr. Naziruddin Ahmad may go on without putting questions to other honourable Members.

Mr. Naziruddin Ahmad : As I said the definition of son has been omitted as also the illustrations found in Part II, sub-clause (3) of clause 2 in regard to intestate succession. Four illustrations have been omitted. These are substantial changes. I am only trying to draw attention to the nature of the changes made. According to me these are omissions of a very serious nature. They are not omissions of a drafting nature. I am not questioning the right of the Select Committee to improve the Bill, or to make these omissions. These changes, however, were made not by the Select Committee but by the Drafting Committee and the attention of the Select Committee was not particularly drawn to these omissions.

Then I come to another important part of the Bill to show the very serious changes introduced by the Drafting Committee. In Part II, clause 4 of the original Bill, the list of heirs has been given. It says that the inheritable property of a male intestate shall devolve according to the rules laid down in this part: (a) upon the enumerated heirs referred to in section 5, if any; (b) if there is no enumerated heir, upon his agnates, if any ;(c) if there is no agnate, upon his cognates, if any; and (d) if there is no cognate, upon the heirs referred to in section 10, if any.

Mr. Deputy Speaker : I do not know if the honourable Member has not a copy of the Hindu Code Comparative Tables, which was circulated to all honourable Members. The original Hindu Code as drafted by the Rau Committee has been revised in the Ministry of Law and the changes made have been indicated there. I would therefore suggest that the honourable

4 P.M. Member need not labour this point. I think he has spent sufficient time over the first point. I personally think that the point is sufficiently clear and of course illustrations can always be multiplied. If it is a point here and there, the House will take it into consideration. There are certain points which when made are sufficient in number. I agree they can be made clearer, but the changes made in the tables, are sufficient.

Mr. Naziruddin Ahmad : Sir, the list is neither complete nor accurate and does not indicate the changes made. In fact the remarks against the original clauses of the original Bill and as to the changes are extremely meagre. I have now come to a very important change, namely the inheritance. It has been so changed as to make it impossible to recognise with the new Bill or the departmental draft nor is it a substitute for the original Bill at all. I submit that with regard to the inheritance a larger number of changes had been made.

I shall show first of all that in clause 4 of the Bill in Part II (a) regarding the enumerated heirs ; I am in a position to show that serious changes have been made in the enumerated list. In the original Bill was one and in the revised draft by the Departmental Committee they are completely different. The original arrangement has been made entirely topsy-turvy and then it is said that if there are no enumerated heirs the property devolves upon agnates. The definition of agnates is well-known. That was in the original Bill, but in the Bill as revised by the Departmental Committee the word 'agnate' is now very much restricted. So in case of the enumerated heirs failing the agnates, even the distant agnates would be entitled to be heirs according to the Hindu law, according to the Muslim law and every other law and that was according to the original Bill. But in the revised draft by the Departmental Committee the word 'agnate' has been seriously modified to be within certain degrees. So agnates which are beyond those degrees would have been entitled to inheritance under the old Bill, but under the Departmental Bill, they would be shut out. Similarly, cognates are also restricted in the Departmental Bill and this is a substantial change as it eliminates the distant Agnates and distant cognates. Then, Sir, in clause (d) of 4, the words preceptor and others are entirely eliminated. The scheme of inheritance in clause 4 of Part II of the original Bill is changed at every step and very serious changes have been made and the enumerated heirs have been changed. The agnates have been restricted; the cognates have been restricted and the other clauses have been entirely eliminated. I can quite understand that these changes may be legitimately made on a full consideration by the Select Committee, but these were changes not by the Select Committee, but by the Departmental Committee and Members asked me "Tell us what are the changes made ?"

Mr. Deputy Speaker : Am I to understand from the honourable Member that if the Select Committee Members all got up and they

address themselves to that, will the honourable Member be thoroughly satisfied with what has been done by the Select Committee.

Mr. Naziruddin Ahmad : The point is that the Select Committee Member were not made aware of the changes.

Mr. Deputy Speaker : It serves no useful purpose. It is not a question of law whether this House has got jurisdiction over the Select Committee's piece of handiwork. It has been decided and sufficiently discussed to show that the Select Committee has looked into every one of the clauses to come to a conclusion. But on matters of substance, the old law has been widely changed. There is some substance in that. Those are the matters on which the honourable Member should address the House. I do not say that all that has been said is out of place, but sufficient has been said.

Mr. Naziruddin Ahmad : To many honourable Members sufficient has not been said. It is said that these are not substantial changes and I shall take care to point them out. The difficulty is that the changes are too numerous to ensure the attention of the House. In fact the changes are very serious and very various and very substantial and my point is that they were introduced not by the Select Committee and whether they accepted them or not is a different matter. My thesis is that they were presented with a ready-made Bill with the assurance that no substantial changes had been made and so the attention of the Select Committee was not sufficiently drawn to that matter. Now let us consider the actual changes in the list of inheritance. In fact in the original Bill the list of inheritance is to be found on pages 4, 5 and 6 in the body of the Bill. This has been bodily lifted from this place in the departmental Bill and transported to the Seventh Schedule. While the other parts remain in the body of the text, the list of inheritance, strangely and for unaccountable reasons, removed. It is not very easy to compare the original list with the new list as it appears in the Seventh Schedule; there have been serious and substantial changes. The Honourable Minister wanted to know what are the changes made.

The Honourable Dr. B. R. Ambedkar : I am quite aware of them. So far as I am concerned, you need not spend your labour in enlightening me at all.

Mr. Naziruddin Ahmad : If these are intentional changes, then what is the point in saying that no changes were made by the Drafting Committee, and that all the changes were made by the Select

Committee, and for the Select Committee say: "We confined our attention to the Departmental Bill". Therefore, it follows that their attention was not drawn to this. It is a very simple conclusion.

The Honourable Dr. B. R. Ambedkar : Give it in your own way.

Mr. Naziruddin Ahmad : It seems to me that the Honourable the Law Minister found himself in an inconvenient position and somehow or other, though the mistake is admitted, it is not done pointedly. In fact changes of a substantial nature were made. I was asked on the last day by the Honourable Law Minister himself: "Let us know what are the changes made by the Drafting Committee", and now he says : "I know everything". Of course he must have studied them later on, but these changes are of a serious nature. They were introduced not by the Select Committee, but by the Departmental Committee and the question is how far the Select Committee did actually notice them. At least in the note of dissent Dr. Bakshi Tek Chand says: "We confined our attention to the Departmental Committee Bill and not to the original Bill" because they were assured that in the Departmental Bill they did not introduce any substantial changes at all. So taking this into account, I do not know where to go. In fact, if that is not a serious irregularity and a matter requiring attention of the House. I do not know, what is. When the Department has committed an error of judgment, I think it is better and proper to admit it than to say: "I know all this but no changes were made; every change was made by the Select Committee" and when I say that the Select Committee did not make the changes and they were made by the Departments Committee then it is said: "I know it". Then we ought to know where does the Department stand ? If the Department makes a change.....

Shri B. Das : This is not a law court for us to hear point by point. The honourable Member should make a speech and sit down.

Mr. Deputy Speaker : The honourable Member, Mr. Das made this statement when the Speaker was in the Chair. It is a law court in some sense and not a law court when he wants to impress upon honourable Members as if he is arguing a case in a court of law. In any case we ought not to interrupt him. That kind of talk ought to be avoided as far as possible.

Shri B. Das : We are talking among ourselves.

Mr. Deputy Speaker : The honourable Member has no right to talk when another honourable Member is on his legs and he ought not to disturb.

Shri B. Das : He is talking at us.

Mr. Deputy Speaker : You ought not to talk. No honourable Member has the right to talk while another honourable Member is speaking. He ought to listen and not cause noise in the House.

Shri B. Das : You understand the exasperation. I am ready to get out, but the honourable Member's speech should not exasperate Members of this House.

Mr. Deputy Speaker : This is wrong. No honourable Member's speech ought to be called exasperating, unless he uses bad language or unparliamentary language. We may or may not agree, but the honourable Member is putting his case before the House. Nobody has a right to dub an honourable Member's speech as exasperating.

Shri B. Das : I accept your verdict. But he used terms such as "fraudulent" about the Law Minister.

Mr. Deputy Speaker : The Honourable Law Minister is sufficiently strong to take care of himself.

Mr. Naziruddin Ahmad : I beg to submit that the honourable Members should compare the original clause.

Mr. Deputy Speaker : Are there any matters of substance by which the honourable Member can induce the House to change its mind ?

Mr. Naziruddin Ahmad : There are substantial changes. I shall have to point out these things. In fact, I shall have to go on enumerating a large number. The best thing is to admit the mistakes or listen patiently. I must enumerate all the points and if I repeat my argument or be irrelevant, I can be called to order. In Part II, clause 5, there is Class I. Sons, widows, daughters and so forth. A change has been effected in this by the Departmental Committee. Son of a predeceased son of predeceased son has been newly introduced in the corresponding part of Class I in the 7th Schedule in the Department Bill. In fact, the Schedule has been so far removed from its place in the original Bill that it is not easy to notice it unless the two Classes are placed side by side, to find out the change. In act, the son of a predeceased son of a predeceased son did not find a place in the original, but it has been introduced in the Seventh Schedule of the revised Bill by the Departmental Committee.

Then we come in the other lists. The first in the list in the original Bill after the enumerated heirs in item No. 2 is daughter's son. In the Departmental Bill, the daughter's son has been brought further down. Then comes the father and the mother. According to the original

Bill, the mother would have been entitled to inherit in preference to the father. Here the father and the mother have been placed together in the Departmental Bill and their order has been changed and whereas under the Departmental Bill they inherit together under the original Bill the mother would have inherited first to the exclusion of the father, and in the absence of the mother the father would have inherited. The daughter's son as has already been pointed out, has been brought down further in the Departmental list. It should be obvious to any one who cares to consider this matter that these are substantial changes.

Then we come to Class III of the original Bill. The brother's son's son who was first in the list of Class III in the original Bill has been entirely lost sight of in the Departmental Bill. If this was deliberate an intentional, then we would have got some indication of it in the report of the Select Committee or in the speeches. I want to know if this is a substantial change. It may not be substantial to a man who is not the brother's son's son, but to the brother's son's son, it is a substantial change, because in the absence of, other heirs he would have been entitled to property.

Next in the list comes the sister. We have now the brother and the sister inheriting together in the Departmental Bill. The brother who was very high up in the list in the original Bill has now been transferred and brought down to of Class III and is inheriting with the sister (*Interruption*).

Am I to stop my argument ?

Mr. Tajamul Husain : The honourable Member has no right to speak to another honourable Member. I object to it very strongly, Sir.

Shri Lakshminararan Sahu (Orissa: General): There is no quorum it seems.

Mr. Deputy Speaker : There is quorum.

Mr. Naziruddin Ahmad : Supposing a man dies leaving a brother and a sister. Under the original Bill the brother would have inherited, the sister would have been postponed; but under the Departmental Bill the brother and the sister inherit equally. The brother is now brought down on a line with the sister having been superseded by 11 others in the list. I submit this is introducing very substantial changes.

Then we come to brother's son. He was very high up, in Class I. He is by the Department brought down to Class III along with sister's