son. If a man died leaving a brother's son and a sister's son, under the original Bill, the brother's son would have inherited, but under the Departmental Bill the brother's son and the sister's son inherit together. I submit these are very substantial changes.

Then I come to Class IV of the original Bill. In Class IV of the original Bill, a man dying leaving a father's mother and a father's father have been treated differently in the original Bill and the Departmental Bill. Between the father's mother and a father's father being the heirs under the original Bill, the father's mother would have been preferred; the father's father would have been postponed. But under the Departmental Bill both have been put together and they inherit together. I ask whether this is not a substantial change.

Then, Sir, we have a certain class of heirs in Class IV, items (1A), (1B), (1C) and (1D). These were introduced by an amendment of the original report by the Rau Committee. In the original Bill, if there was a father's widow and a brother's widow, the father's widow would have been preferred to the brother's widow. In the Departmental Bill the father's widow and the brother's widow inherit together. I submit this is a very substantial change—whether good or bad, it is not the point. Then coming to two other heirs in the supplementary list introduced by way of amendment of the Rau Committee brother's son's widow and brother's son's son's widow are entirely omitted in the Departmental Bill. In the original Bill they would have inherited one after the other. In the Departmental Bill they are omitted. There is nothing corresponding to this in the Departmental Bill.

Then coming to item 2, Class IV, the father's father is very low in the original Bill but he has been brought up very much higher in the list prepared by the Departmental Committee.

Then Sir, we come to the father's brother and also to father's sister. Father's brother is No. 3 in the list. Father's sister is sixth in the list. So in the original Bill, if there was the father's father and the others, the father's father would be preferred. Then comes the father's brother, father's brother's son, father's brother's son's son and then the father's sister. In the Departmental Bill the father's father and the father's sister have been brought together, the latter being brought higher up.

Then there is a large list of heirs which has been entirely omitted. Nos. (4), (5), (7), (8) and (9) are heirs in the original Bill. They are nowhere in the Departmental Bill. They are entirely eliminated.

I know, Sir, that it is a tedious business to refer to this but I am discharging a duty and I undertook to supply every Member with **a** copy of the comparative statement which is in course of preparation. I shall ask the Members to verify each change and I shall be most glad if I am proved to be wrong.

The Honourable Dr. B. R. Ambedkar : I hope it shall be supplied free of cost.

Mr. Naziruddin Ahmad : If the Government thinks I am **a** charitable institution then I shall be glad to deserve the hope.

Mr. Deputy Speaker : Had it been supplied earlier all this time would have been saved !

Mr. Naziruddin Ahmad : The pity is that my printing press is worse than the Government Printing Press.

Mr. Deputy Speaker : If the suggestion had been made to the Honourable the Law Minister, he would have had it printed.

The Honourable Dr. B. R. Ambedkar : Certainly, I would have had it printed.

The Naziruddin Ahmad : I have the manuscript ready. I shall be glad if the Honourable the Law Minister would publish it.

The Honourable Dr. B. R. Ambedkar : Now it would be of no use because you have said the same thing on the floor of the House.

Mr. Naziruddin Ahmad : Now we come to Class V of the original Bill. By strange accident—I should be afraid to insinuate anything— everything in it has been omitted in the Departmental Bill. It contains nine classes of heirs and four other supplementary heirs. Thirteen heirs in Class V of the original Bill have been entirely omitted, whether by mistake...

The Honourable Dr. B. R. Ambedkar : Very deliberately !

Mr. Naziruddin Ahmad : But then why did the report of the Select Committee say that no substantial changes were made ? If these were omitted deliberately, then the only point is whether these are substantial changes. The House has been assured by the Honourable the Law Minister that no substantial changes were made. That these changes were made deliberately is now admitted. The question now therefore is whether these are substantial changes. But we have been assured that no substantial changes have been made.

The Honourable Dr. B. R. Ambedkar : That is a matter of opinion.

Mr. Naziruddin Ahmad : Then the question turns upon this whether these are substantial changes. It may not be very important from the point of view of the law-giver but it may be important to the heir. If you disturb the order of heirship in the slightest degree, it is a substantial change. Up to this time we had been assured that the changes that were made were only of a drafting character. The report of the Select Committee is that the Department made no substantial changes. The report is so clear and emphatic and they emphasize the points so clearly, that they say no substantial changes have been made—only renumbering and some merely verbal changes were made and that for this reason that the usual method of indicating the changes by side-lining or under-lining the changes had not been adhered to in the Departmental or the Final Bill.

Now the question of questions at last boils down to this : Whether these are substantial changes ? What is the test for this ? Upsetting of heirs' lists is not a substantial change ? I submit it is. If it is that I am arguing too much, arguing as if in a Law Court—if any honourble Member thinks it is so—then it seems that the seriousness of the changes has not been fully appreciated.

Mr. Tajamul Husain : Except by you !

Mr. Naziruddin Ahmad : It is very unfortunate that this should be appreciated only by one man ! Of course there is a highly paid department and a highly qualified Law Minister, who is able to appreciate the slightest differences and I am sorry that I have had to undergo all the trouble and expenditure of time and money to find out and explain all this. It has not been a very easy matter and the difficulty was further enhanced by the fact that the Department which introduced all these changes could not make available to me a copy of their draft Bill. It was after a great deal of searching that I could procure a copy. So the search has been prolonged and the consideration has been prolonged and it has been for me a very difficult matter. I do not mean to say that any other Member is not capable of appreciating it, but few have the time or the inclination to go through them. And why should they ? Isn't it the duty and the obvious privilege of every Member—and I say this in defence of Members—to rely on the Ministry of Law, to rely upon the express guarantee in the Select Committee report that no substantial changes have been made ? I think they would be fully justified and when an honourable Member said that none expect me knew this, I cannot blame him. The blame

lies with the Department. Now, is that the end of these changes ? By no means.

Come to Class V-A. It was introduced by the Rau Committee by an amendment of their earlier Bill. They have noted that this Class V-A should be introduced after Class V. Class V-A has been entirely omitted. I humbly suggest that it is an inadvertent omission, but inadvertent or intentional, it is absolutely damaging to the integrity of the Bill.

Then, Sir, we come to Class VI.

(*Interruptions*)

Mr. Deputy Speaker : The honourable member will go on.

Mr. Naziruddin Ahmad : Then we come to Class VI, items (1) and (2)—mother's mother and mother's father. The mother's mother would be preferred to mother's father under the original Bill but they have been put together in the Departmental Bill. So they now inherit equally together. In item (3) of Class VI, the mother's brother and mother's sister inherit—the latter after the former under the original Bill, but under the Departmental Bill, they inherit together. Under items (4) and (5) mother's brother's son has been entirely left out in the Departmental Bill. Items (7), (8) and (9)—mother's sister's son, mother's brother's daughter, mother's sister's daughter are also entirely omitted.

Then item (3) in Class VI is also entirely omitted.

This concludes the list of inheritance in which there are no less than 20 transpositions, additions and omissions. Heirs have been entirely eliminated either intentionally or deliberately but this does not appear from the Select Committee's report. I have been repeatedly asked by honourable Members of the Select Committee in the House to point out where the differences lie. I do not want to blame any honourable Member for not noticing them. On account of the transposition or removal from their original places the changes would not be obvious. And there is the guarantee in the report of the Select Committee that there is no substantial change. These were changes through the Departmental Bill and may have escaped the attention of the Select Committee. At least their attention was not drawn to them in the Departmental Bill. There is a very respected and capable Member, Dr. Bakhshi Tek Chand who says in his minute of dissent that the Select Committee confined their attention to the Departmental

Bill, because they were assured that no substantial changes had been made. I would ask Dr. Bakhshi Tek Chand whether his attention was drawn by the Department or Dr. Ambedkar to these things. These large omissions and transpositions of places would not have been noticed by any Member unless he goes through the laborious process of comparing the two like a laborious lawyer.

Dr. Bakhshi Tek Chand (East Punjab : General): I would like to draw the attention of my honourable friend to page 9 of the report where my note of Dissent is printed. I have given there some of the substantial changes, at any rate changes which I considered to be substantial—and because of which I had suggested that the Bill should be recirculated for eliciting public opinion or in any case recommitted to the Select Committee. At page 9 the broad points on which changes had been introduced in the redrafted Bill, have been mentioned though not in such great detail as the honourable Member is doing today in his speech. It is not correct to say that no member of the Select Committee noticed them. Of course nobody had the industry or the patience which the honourable Member has, but the matter did not escape their attention. As he has mentioned my name I feel it my duty to bring this fact to the notice of the House. In the Note of Dissent I have referred to the changes to the order of inheritance which I considered to be substantial, and in regard to which I am in entire agreement with my honourable friend.

Mr. Naziruddin Ahmad : I am extremely grateful for this clarification, A respected Member with the highest judical experience thinks that these are substantial changes and he thought that they were so substantial that the Bill should be recirculated. That is the thing which I am asking for. There is at least one Member of the Select Committee who thought the changes to be substantial. He noticed them, but was his attention specifically drawn to them ?

Pandit Thakur Das Bhargava (East Punjab: General): Mr. Balkrishna Sharma has also signed it.

An Honourable Member : He has had no judical experience.

Pandit Lakshmi Kanta Maitra : He has had social experience.

Mr. Naziruddin Ahmad : Pandit Balkrishna Sharma is also of the same opinion. It is however enough to quote the name of Dr. Tek Chand. His authority and position will not be seriously enhanced by the addition of any other names. These respected Members felt

that these are substantial changes and therefore thought that the Bill required recirculation. There are changes in other parts of the Bill which would required herculean labour to find out.

In view of these changes made by the Departmental Committee and in view of the weighty remarks of Dr. Tek Chand that these were very substantial changes I think the matter should not admit of any doubt that the Bill should be sent to the Select Committee to reconsider these changes or to recirculate it.

An Honourable Member : The same Select Committee.

Mr. Naziruddin Ahmad : I have no objection to the same Select Committee. It consisted of men absolutely good and true, men with judicial and legal experience and who are practical authorities on those branches of the law. In fact, all kinds of talents were represented in the Select Committee. I have the fullest confidence in the Select Committee and I have not lost my faith in it. My point is that these matters should be carefully scrutinised and each change carefully weighed and deliberately accepted. Substantial changes have been quietly and deliberately introduced. We are assured by the Law Minister and again by the Select Committee that no substantial changes have been made. On the one hand we have the opinion of the highest legal talent in the House saying that these are substantial changes and on the other, another legal luminary says that he has deliberately introduced these changes and at the same time, that he has introduced no substantial changes. That is the guarantee under the signature of Dr. Ambedkar himself. So the Select Committee is hopelessly divided within itself. If two such eminent authorities differ on a broad matter like this I think the matter requires reconsideration by the Committee and that is what I ask for. Though the Law Minister thinks that these were not substantial changes only an unsophisticated House would agree with him. A man's right to inherit is a substantial right. To say that changes therein are not substantial changes would be to say something that is palpably and obviously wrong. I submit therefore that the changes being substantial and the guarantee being that no substantial changes have been made, on this ground alone the Bill should be sent back to Select Committee or for circulation with the positive direction that their attention should be directed towards these changes and they should consciously, intelligently, wilfully accept or reject them. There are other substantial changes.

Shri B. N. Munavalli (Bombay States): He is simply repeating the same arguments.

Mr. Deputy Speaker : I thought he had concluded that topic. If he has no other topic he may sit down.

Mr. Naziruddin Ahmad : I have other very serious changes. The point I would like to know is for how long the Honourable Law Minister would insist on saying that there are no substantial changes.

Shri Khurshed Lal (Deputy Minister of Communication): Till you have finished.

Mr. Deputy Speaker : Does the honourable Member with his experience as a lawyer ever expect the mover of a Bill to admit that what he has done is wrong ?

Mr. Naziruddin Ahmad : Sir, I bow down to this weighty observation of yours. But this is not a law court for us to take sides. It is a Legislative Assembly where we have no sides. We may express our opinions honestly but we do not take sides for the sake of fees: we are not committed to one side or another. I submit that in the Legislature, a Law Minister responsible to the Legislature should make it his duty to make an admission if he is wrong. I therefore have a faint hope that this accumulation of errors, of changes, would induce in a slight degree the Law Minister to admit that he had made substantial changes and thereby to make further progress of my argument absolutely unnecessary. But in view of the fact that the honourable the Law Minister stands to his gun like a good fighter—he has been a fighter all his life and he is famous for his grit and moral quality—as he stands to his gun, I have to submit to him more and more changes just with a faint hope to induce him ultimately to concede.

Shri Khurshed Lal : I do not wish to interrupt, but is it his intention to go on in this-manner till he has made the Law Minister admit that he has made a mistake ?

Mr. Deputy Speaker : Why the Law Minister alone ? Possibly other Members also agree with him for he has carried the House with him.

Shri B. Das : How do you say so, Sir ? We can howl him down.

Mr. Naziruddin Ahmad : It is not so very easy. Sir, I have been threatened with being howled down. I am yet to see a Member who can howl me down here—I have yet to see him. I respectfully invite anyone to howl me down. He will find that I do not even require the microphone to be heard in the House in the midst of howlings.

Mr. Deputy Speaker : I request that the challenge need not be accepted on the floor of the House !

Mr. Naziruddin Ahmad : He will not find it safe to challenge me outside the House.

Mr. Tajamul Husain : You did not like us to interrupt and therefore I want your permission first to seek a point of information. The point I want to know from my honourable friend is that today is the 1st of April. Is that the reason why he is taking up the whole day on this Bill ?

Mr. Naziruddin Ahmad : That question should be addressed to the Honourable Law Minister for bringing the motion on the All Fools Day !

Mr. Deputy Speaker : Whether it applies to anyone or not let the honourable Member proceed with his speech.

Mr. Naziruddin Ahmad : Then we come to the next clause of Part II of the original Bill.

Dr. Mono Mohan Das (West Bengal : General): Sir, it appears the honourable Member is not prepared.

Mr. Naziruddin Ahmad : I could not catch the honourable doctor.

Mr. Deputy Speaker : He may go on. I hope he will conclude his speech at least today.

Mr. Naziruddin Ahmad: I do not know.

Mr. Deputy Speaker : I would only say that enough has been said so far on this point about changes of substance. After all it is not the honourable Minister in charge of the Bill who alone need be satisfied. He holds his point of view.

The Honourable Dr. B. R. Ambedkar : The House will decide.

Mr. Deputy Speaker : Yes, the House will decide it ultimately. Therefore the honourable Member need not take further time in driving it home to one individual Member however important he may be. He may try to carry the House with him. As I have already said, enough has been said in regard to the matter of substantial changes. I thought he was going to refer to other matters of substance like marriage, divorce, adoption. I do not think the honourable Minister would be dogmatic and I am sure that though in respect of this he may have strong views he would like to wait and see how far there are arguments on the other side, and he may be convinced. I thought the honourable Member would come to matters of substance. A long time has been spent on this point already.

Mr. Naziruddin Ahmad : I must frankly express my gratefulness to the Law Minister for listening to me so patiently. I submit that I have other points indicating changes which I shall show briefly.

Mr. Deputy Speaker : Leave along the changes. There are changes I may put it this way. I am not letting down a secret and there is no secret from the House as I conceive. When a matter comes before the House after having been referred to Select Committee, the Select Committee might commit a mistake and it is open to the Members to say that it is wrong and the wrong has to be corrected. Except one or two matters as for example what each member said in the Select Committee which ought not to be placed before the House as things are in a fluid condition and it would result in a disturbance and antipathy. I may say this. So far as the Select Committee is concerned any draft may be considered. The draft was of the Ministry here. At the outset it is said in Para. 2 of the Select Committee's report here:

> "The draft Hindu Code, as introduced in the Legislature, did not receive any Departmental scrutiny prior to its introduction, and the Ministry of Law (*which certainly includes the Minister of Law at its head*), which had an opportunity to examine the Bill during the period between the end of the last session of the legislature and the beginning of the present session, have now produced a revised draft....."

The draft was placed before the Select Committee and the ruling of the Speaker is that the original Bill that was sent to the Select Committee, along with the draft—which we will assume is the complete list of all the amendments which the Law Minister wanted to introduce—was all considered by the Select Committee. It is open to the honourable member to say that the Bill and the clauses in it are wrong, that they upset society and that sufficient attention was not paid to the changes that were effected in the Select Committee to the original Bill. I think that would help the House to come to a conclusion regarding either the whole Bill or individual clauses in it on matters of substance. We have already spent a lot of time over this matter. It is necessary that on this matter there may be clarification and I do not think anyone here wants to dogmatise upon a particular matter.

The Honourable Dr. B. R. Ambedkar : I might say openly that I have not an empty mind but I have an open mind.

Mr. Deputy Speaker : That is what we expect.

Mr. Naziruddin Ahmad : I am very grateful to him. Sir I come to another branch of the Bill. I would like to draw the attention of

the House to clause 102 of the Departmental Bill which corresponds to clause 101 of the final Bill. This was introduced for the first time by the Departmental Bill. The Select Committee made some changes, but the Departmental Committee had introduced a serious change. It is provided in the Departmental Bill that if there was a male and a female in the same line, the male shall take double of the female. In the final Bill their shares are made equal. As regards the justice of the final Bill, it does not matter, but I submit this new introduction is a departure.

Mr. Deputy Speaker : Even if there are, say, 100 departures, is it necessary to exhaust all the 100 departures ? Only some ten or fifteen—even these are many—by way of illustration will be enough. He may take a few departures and say that for these reasons the matter should be sent back to the Select Committee or sent round for eliciting public opinion. I thought the honourable Member concluded that portion referring to various items where there is a departure. There are departures and the list which has been circulated contains a list of departures extending over thirteen pages, though it does not state how the departures have been made.

Mr. Naziruddin Ahmad : Departures have not been noted.

Mr. Deputy Speaker : True, they have not been noted in the manner of departures. It is admitted there are departures but only some important items may be taken for the purpose of showing that on account of these departures the Bill should be sent to the Select Committee or to another Select Committee or that it must go round the country for opinion. I think we are taking too much time on this.

Shri B. Das : Sir, I said that all along.

Mr. Naziruddin Ahmad : I can quite appreciate the exasperation of one or two Members.

Shri B. Das : Sir, he is using the same word !

Mr. Naziruddin Ahmad : Sir, I draw attention of the House to clause 103 of the Departmental Bill which corresponds to clause 102.....

Mr. Deputy Speaker : I have already pointed out with reference to this.

Mr. Naziruddin Ahmad : This is an important matter.

Mr. Deputy Speaker : I can only suggest to the honourable Member. I cannot argue for him. I can only say that instances need

not be multiplied. According to him there are a sufficient number of instances, but if he thinks he has forgotten one point which is more important than others then he may point it out.

Mr. Naziruddin Ahmad : Clause 103 of the Departmental Bill corresponding to clause 102 of the final Bill restricts the agnates to five degrees. The change restricts the heirship to five degrees only. In case there are no enumerated heirs, then according to the Hindu Law the property will go to the agnate, but the definition of agnate has been seriously curtailed and reduced to five degrees. In the next clause, clause 104 of the Departmental Bill corresponding to clause 103 of the final Bill, cognates are also similarly restricted to five degrees. This is a serious departure from the conception of the Hindu Law and from the original Bill. Any agnate, however distantly connected, would be an heir in the absence of preferential heirs. With regard to cognates also, in the absence of agnates any cognates, however distantly connected, would be heirs. So, with regard to cognates the change is entirely new. With regard to agnates it is a serious departure from the original clauses. They merely described that in the absence of enumerated heirs they go to agnates, and in the absence of agnates they go to cognates.

Mr. Honourable Dr. B. R. Ambedkar : Cognates or agnates ?

Mr. Naziruddin Ahmad : Cognates.

I submit these are serious changes. According to Dr. Ambedkar these are not serious because he has made the changes.

Shrimati G. Durgabai : Serious and substantial changes !

Mr. Naziruddin Ahmad : Substantial if you like. I think thay are not merely substantial but also serious. *Serious* goes a degree further. In fact, this restricts the right of heirship of certain people.

Mr. Deputy Speaker : Is the honourable Member not closing at five? Enough has been said on this topic.

Mr. Naziruddin Ahmad : No, Sir. Not enough to convince some of the Members. I want to absolutely convince them.

Shri Khurshed Lal : Then you will have to argue till doomsday.

Mr. Deputy Speaker : If he has not been able to convince for five hours now, he will not be able to convince him at the end of another five hours.

Mr. Naziruddin Ahmad : The Honourable the Law Minister has though not a vacant mind, an open mind and he will in the long run be convinced.

An Honourable Member : He will ponder over your speech tonight.

Mr. Naziruddin Ahmad : Clause 10 of the original has been entirely omitted in the Departmental Bill—absolutely forgotten. In fact in the Hindu law, as in the Muslim law, in the absence of enumerated heirs, in the absence of agnates, cognates other unrelated heirs succeed. They are the preceptors, acharyas, *shishyas* and *sahabrahmacharis* and pupils under the same tutor, are the heirs. According to the Departmental Bill, the respect for *acharya*, respect for *sahabrahmachari* and consideration for them is entirely thrown overboard. This again is a serious change. The cumulative weight of these serious changes as well as many numerous others will I hope succeed in ultimately winning over the Minister of Law to my side.

Then we come to clause 109 of the Departmental Bill and 108 of the final Bill. This provision is absolutely new. In that clause some new heirs have been introduced which were not in the original Bill.

With regard to succession to *stridhan*, some changes have been made. And then in Part II, clause 14, where heirs stay together

Mr. Deputy Speaker: If the honourable Member is likely to
5 P. M. conclude soon, we will stay on for a few minutes more.

Mr. Naziruddin Ahmad : No, Sir.

Shrimati G. Durgabai : We will stay on for five minutes more, if the honourable Member will conclude.

Mr. Deputy Speaker : I shall leave it to the speaker.

The House now stands adjourned to 10-45 a.m. tomorrow.

The Assembly then adjourned till a Quarter to Eleven of the Clock Saturday the 2nd April, 1949.

* HINDU CODE—*contd.*

Mr. Speaker : The House will proceed with the further consideration of the motion that the Bill to amend and codify certain branches of the Hindu Law, as reported by the Select Committee, be taken into consideration.

Shri Mahavir Tyagi (U. P. General) : May I know, Sir, till what time we will discuss this Bill, for there is some Government business and so we want to be sure as to how long the consideration of this Bill will take ? Now filibustering is going on at this stage and all the Members are anxious to speak and they may not get any chance to speak for two or three days. I would like to know, Sir, as to how long they are going to discuss this Bill, for the present.

Mr. Speaker : It is difficult for me to say as to how long a particular Bill is going to be discussed. It much more depends upon the Members themselves. All I can say is that excepting perhaps one day, *i.e.* the 4th, I think all the days in the next week are allotted to Government business; and it is a matter for Government to say as to what Bills they want to bring or not to bring before the House and it depends on the priority with which they look upon the different measures.

Shri Mahavir Tyagi : May I through you, Sir, request that the Government might be pleased to take over urgent business first and leave the consideration of this Bill to the end or let us know definitely as to which Bills are to be taken, so that we can come prepared for the next Bills. We are anxious to participate in the discussion of the other Bills.

Pandit Lakshmi Kanta Maitra (West Bengal : General): Sir, the question raised by my honourable friend, Mr. Mahavir Tyagi has really got some importance. I quite appreciate the observation made by you just now that in such a matter the House decides how long a Bill should go on and this necessarily means that when there are a sufficient number of speakers and they want to continue for a sufficiently long time, they may continue. This is what I understand to be meaning of that observation. Of course, I quite see that it is not in the hands of

*C.A. (Leg.) D., Vol. III, Part II, 2nd April 1949, pp. 2246-89.

the Chair to say how many days are going to be allotted. At the same time, I think, the Chair would realize how difficult it is for Members who want really to speak on this motion and debate it fully that they know at least if any more Bills are going to be taken up during this session. I was submitting yesterday at the very beginning when this motion was taken up that most of the members had the impression that this Bill was not going to be taken up again in this session. As a matter of fact when a Bill of this importance and magnitude, was to be brought again for consideration, we expected that sufficient notice would be given to the Members in time. It was not done. The whole importance of my contention arises in this way that if we are to know that this Bill will be discussed and that it will continue only up to day, we can understand, but on the other hand we are given to understand that additional days would be provided in this session, it becomes another matter. Members who want to speak for, or against it, would not be able to come and participate in the discussion. We started yesterday and many honourable Members had already left, for instance, Mr. K. M. Munshi came here to speak on this motion and he went away and there were many members who wanted to speak one way or the other on this important Bill and if the House could get to know through you—it is for you to say—it is possible for you to do so— that some additional days are going to be provided, that will be really helpful; otherwise, we do not know where we stand with regard to this important Bill.

Mr. Speakers : I should like to know if the honourable the Law Minister is in a position to enlighten us.

The Honourable Dr. B. R. Ambedkar (Minister of Law) : The only thing that I can say is that this Bill will be debated. What would be the next stage, I am quite unable to say, because the question of the arrangement of the business of the Government is entrusted to a Committee of the Government, which is called “the Priorities Committee”. That Committee have assigned these days to this Bill. This Committee will be meeting in the afternoon and be taking its own decision. I am unable to say anything further than that.

Pandit Lakshmi Kanta Maitra : In view of this, I would submit respectfully to the Chair that the Chair has sufficient inherent powers to see that this procedure is not adopted with regard to this Bill unless sufficient notice is again given, to the honourable Members when this motion comes, it is certainly within your competence to say : “I am

not going to allow this motion to come, because that prejudices the right of honourable Members to participate in this important debate." That the honourable Minister cannot make up his mind, is exactly my grievance from the very beginning about the way in which the consideration of this Bill is taken up from time to time during this session. This itself has been a subject of great adverse comment on my part as well as other honourable members. Even today the honourable the Law Minister is not in a position to say if any other day is going to be or not going to be allotted for this important Bill. If that is so, I hope you will sternly turn down any proposal brought at the end of this week if a motion for consideration of the Bill is brought on a very short notice.

Mr. Speaker : Any way that question is at present hypothetical. Today we are going on with the Bill.

Pandit Mukut Bihari Lal Bhargava (Ajmer Merwara): It is obviously very unfair that the Government are not able to make up their mind even today. On 30th March you were pleased to ask the Leader of the House as to what the position was. A specific question was put by Mr. Maitra as to whether the Hindu Code was going to be taken up or not. No answer to that query was given by the Government Bench with the result that on the 31st, for the first time, we knew that the Bill was going to be taken up. Mr. Chaudhuri who wanted to participate in the debate left for Assam on the presumption that this Bill would not come before the House. It is therefore obviously unfair to the members that it should be brought up in this fashion. The Chair has ample power to protect the rights of Members.

Seth Govind Das (C. P. and Berar : General) : You will remember that on that date the Leader of the House announced that very probably we would be adjourning on the 7th April. I raised the question whether the Hindu Code Bill was going to be taken into consideration in this session or not and you, Sir, said that it was not your business to say anything in that matter and that it was for the Government to arrange their business for the House. Now, at this fag-end of the session, when many members are absent, it is not proper to proceed with a controversial Bill of this nature. I would join with the Members who have just spoken and submit that the protection of the rights and privileges of the Members of this House is your responsibility and you have that right vested in you. Therefore I would request you to say to the Government that at this fag-end of the session and without giving

sufficient notice to Members it is not proper to proceed with this Bill. I would request you at least to adjourn the debate on the consideration stage of the Bill this evening, so that this business may be taken up in the next Session of the Assembly, when we meet in the autumn.

Mr. Speaker : Just at present the question is a hypothetical one, because the Law Minister does not say that he proposes to continue the debate. The question as to when, if at all, the consideration motion is to be discussed further, (*Interruption*) depends, as he said, upon the decision of the priority Committee. I shall try my best to see that all 'equitable and reasonable demands of Members for debate are acceded to as far as it lies in my power in the House. On the question of the arrangement of Government business, I think, it is a bit too much to ask me to interfere. The Government are the best judges of priority of their business. As regards this particular Bill, I do not think anything further need come from them, in view of what is said in the House. I believe they are responsive to the feelings of Members. I do not think we need go any further into this matter. We may proceed with the motion under consideration.

Shri H. V. Kamath (C. P. and Berar : General): May I know from you, Sir, who has the last word on the arrangement of business here ?

Mr. Speaker : So far as Government business is concerned, it is -the Government. I have nothing to do with the arrangement of business so far as priority is concerned.

Seth Govind Das : The ultimate authority rests with you. They can bring any business they want to put before the House. But, after all, the ultimate authority is yourself.

Mr. Speaker : At present, it suits the honourable Members to vest it in me I think that responsibility is too great for me. I am not acquainted with all the details and the needs of the Government administration. I do not think I can interfere with their discretion to adjust their business in matters of this kind. The best way is for honourable Members to let the Government feel the pressure of their opinion. Then the things will be adjusted. All I can do is to see that a reasonable debate takes place. From that point of view I shall certainly do what I can.

Seth Govind Das : We are requesting the Government through you.

Mr. Speaker : There are many other channels for Members to do so.

Shri Arun Chandra Guha (West Bengal : General): We should be informed now as to when the House is going to be adjourned. If

this is not done we would find it difficult to make arrangements for our business.

Mr. Speaker : As regards that; the position was made clear by me the other day. I requested the honourable the Prime Minister to give the information and he said that this may go on for a day or two. It is not possible for him also to say definitely, because there may be some urgent measure which they might wish to put through, without stilling discussion. So, that matter also rests with the Members. But I may say that we are not going to sit beyond the 9th April.

11 A.M

Shri Arun Chandra Guha : In that case, urgent matters may be taken up first.

Mr. Speaker : That is a matter of opinion as to urgency.

Maulana Hasrat Mohani (U.P.: Muslim): To remove this difficulty of Dr. Ambedkar I would make a suggestion. I think that any legislative measure involving social reform should not be made part of official business, I could understand a Bill of this kind involving social reform being introduced by Shrimati durgabai or Shrimati Renuka Ray. To thrust an official Bill of this nature on an unwilling public is absolutely unreasonable. I would therefore invite my honourable friend to take courage in both hands and, realising that discretion is the better part of valour, postpone consideration of this Bill and withdraw the Official Bill leaving it to be sponsored at some future date by an ordinary Member who, in consultation with public opinion, may bring forward measures of this kind involving social reform.

Mr. Speaker : The honourable Member need not further argue the matter. It is enough he has made a suggestion.

Mr. Muhammad Ismail Khan (U. P.: Muslim): As the honourable Minister told the House, the priorty for this Bill has to be determined by the Cabinet Committee. Surely we arc entitled to know from him whether he is going to urge for priority for this Bill or not.

The Honourable Dr. B. R. Ambedkar : I do not wish to add anything, All that I want to say is that the Government has no intention of getting this Bill passed by a snap vote.

Mr. Speaker : Mr. Naziruddin will finish his speech now. I do not wish to impose a time limit on speeches. He has spoken the whole of yesterday and I believe had spoken for 48 minutes on the previous occasion. The time taken in all comes to 3 hours and 28 minutes, to

be more exact. I am not measuring his speech by the length of time taken. What I would like him to do is to take into consideration the fact that the present is a general motion for taking the Bill into consideration. It will not, therefore, be either in order or proper to go into the details of every clause. The honourable Member's argument, as I understood it yesterday, is that there are some substantial changes made in the Bill and that, therefore, the measure has to be considered a new or that public opinion has to be consulted in the matter. For developing that argument he need not go into each and every clause of the Bill and suggest that every change made is a substantial change. He need only point out, by way of illustration, a few instances of really substantial changes made. I think that should be enough for the purpose of his argument at the present stage. When the Bill comes up for discussion clause by clause, he will have every facility to move any amendment he likes.

*** Mr. Naziruddin Ahmad** (West Bengal: Muslim): Sir, I am grateful to you for that suggestion. I dealt with substantial changes yesterday but today I shall confine myself to a few more substantial changes. (*Interruption*).

Mr. Speaker : There is one difficulty that I feel about interruptions. They distract attention from the original point and my hands are weakened in pulling up the speaker and bringing him up to the proper scope of relevancy in debate. If there are no interruptions, therefore, the matter will be shortened.

An Honourable Member : But it becomes very dull.

Mr. Speaker : Of course it gives relief from dullness but too much of it is dangerous for the House. Therefore, let there be no interruptions or side remarks because they sidetrack the issue.

Mr. Naziruddin Ahmad : I shall confine myself, Sir, to a few more substantial changes introduced by the Departmental Draft. I shall turn to part III of the original Bill and draw attention to sub-clause (2) of clause 126 of the Departmental Bill which corresponds to sub-clause (2) of clause 124 of the Final Bill. It is a new sub-clause which introduces a new principle, namely, that any transfer of property would not defeat the right of maintenance paid therefrom. In fact, maintenance has been made a statutory charge on the property. Whether good or bad, it is a new matter which has been introduced not by the Select Committee but by the Departmental Committee.

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*C.A.(Leg.)D.,Vol.III, Part II, 2nd April 1949, pp. 2249-76.

Then turning to part III-A of the original Bill which deals with succession, clauses 1 and 2 which are important substantive provisions have been entirely omitted in the Departmental Bill and of course also in the Final Bill. I will not deal with them in detail but leave them for consideration by the Honourable Minister.

Then coming to clause 131 of the Departmental Bill (clause 130 of the final Bill), sub-clause (1) which deals with maintenance is a new matter which introduces a very substantial change. Again clause 133 of the departmental Bill (clause 132 of the final Bill) lays down certain tests; they introduce an innovation of a very substantial nature. Part (b) of sub-clause (2) of this clause is an innovation which corresponds to clause 6(1) of the original Bill, part III-A.

Then parts (g) and (h) of sub-clause (1), part III-A in the original Bill are also important provisions which have been entirely omitted in the Departmental Bill and also in the final Bill. Again parts (g), (h) and (i) of clause 133 (2) of the departmental Bill are very important and are entirely new.

In part III-A the proviso to sub-clause (1) of the clause 6 in the original Bill has been omitted in the Departmental Bill rather unceremoniously. This is omission of a very important matter.

Sub-clause (2) of clause 134 of the Departmental Bill (clause 133 of the final Bill) deals with marriage expenses of an unmarried daughter. This is a new provision which was not in the original Bill.

Then I come to clause 7 of part III-A of the original Bill dealing with the maintenance of a widow residing outside the family house. This has been omitted in the departmental Bill and also in the final Bill.

Therefore in part III-A of the original Bill, there are sins of omission and commission of an important character. I refer to them because I wish to rely not only on the individual changes made but also on the cumulative effect of those changes.

Then I come to part IV of the original Bill dealing with marriage and divorce, corresponding to Part II of the departmental and final Bills. I shall deal only with the salient points. Provisions about marriage have been entirely and radically changed and require some detailed consideration. With regard to sacramental marriage the form of that marriage prevalent in Hindu society is well known. The original Bill left those forms to be applicable according to custom and social

practice. There was no provision in the original Bill for registration of a sacramental marriage as a condition of the validity of the marriage. I shall try to show that the Departmental Bill has introduced such changes. They may be unconscious but the change to me appears to be that no marriage will be valid unless it is registered. Registration has not been made optional as in the case of Muslims, but in this case by the Departmental Bill the optional character of the old formalities have been interfered with and the validity has been made subject to registration; otherwise, as I shall try to show, the marriage would be invalid.

The original Bill, Part IV dealt with this subject. In clause 2 it was laid down that there shall be two forms of Hindu marriage, namely, the sacramental marriage and the civil marriage. Leaving aside the civil marriage, with which I am not at present concerned, "there shall be two forms of Hindu marriage—sacramental marriage and civil marriage". That is what was provided in the original Bill. The forms were left to the well-known custom and well-known requirements of Hindu marriage and provide nothing for registration. The House will be pleased to consider the corresponding provisions in the Departmental Bill. The original Bill merely said that the sacramental form of marriage will be one of the forms of marriage. Details were left to the descretion of the parties.

In Clause 6 of the Departmental Bill which also corresponds to Clause 6 of the final Bill, the following provision is made.

> "Save as otherwise expressly provided herein, no marriage between Hindus shall be recognised as a valid marriage unless it is solemnized either as a sacramental marriage or as a civil marriage in accordance with the provisions of this Part."

The original provision was that marriage might be performed in the sacramental form in the usual religious form well known to Hindu society, but in the departmental Bill it is said that no marriage shall be valid unless it is performed in accordance with this Part.

Let us consider the provisions of this Part. We come at once to another part of the Bill, namely, clause 6 of part IV of the original Bill corresponding to clause 9 of the departmental Bill as well as the final Bill. (*An honourable Member:* 'Please note that Dr. Ambedkar is away.') Clause 9 deals with registration of sacramental marriage. In the original Bill it was stated : "For the purpose of facilitating proof of sacramental marriage, rules may be prescribed for the entering of

particulars relating to such marriages in such manner as may be prescribed in the Hindu Civil Marriage Certificate book kept under section 6 of this Chapter."

Babu Ramnarayan Singh (Bihar : General): On a point of information, may I know who is listening to the debate on behalf of the Government ?

Mr. Speaker : There must be someone !

Shri L. Krishnaswami Bharathi (Madras : General): I am taking notes for him.

Mr. Naziruddin Ahmad : The Minister should, in courtsey, be here.

Shri B. L. Sondhi (East Punjab: Genral): The Law Minister is there—just coming.

Mr. Naziruddin Ahmad : The original clause provided for rules made by the Government for the entering of particulars in a register for the purpose of facilitating proof : that is, it left the validity of marriage absolutely intact. It gave additional facility in the matter of proof that particulars of marriages might be registered in the Hindu Civil Marriage Certificate book and this could be provided by rules. This was only to facilitate proof. This was not a compulsory condition, nor any condition affecting the validity of the marriage. All that was laid down was a very usual rule, a very salutary rule, that particulars might be entered in a register and that might be prescribed in the rules. It would be only for the purposes of facilitating proof. It would not affect the validity of the marriage at all. In fact a marriage of which the particulars are not entered in this register would be perfectly valid, but registration would offer, or supply a ready-made method of proof of marriage, and a certified copy of the entry would be taken judicial notice of by a Court of law and much evidence would be dispensed with. But in the corresponding clause in the Departmental Bill, it is like this :

> "For the purpose of facilitating the proof of any sacramental marriage, the Provincial Government may by rules provide *(and here the sting comes at the tail)*—
>
> (a) That particulars relating to such marriages shall be entered in the Hindu Marriage Certificate book....."

In fact the compulsion is not yet complete, but only begins here.

Then, Sir, we come to clause (b) of the Departmental Bill. Subclause (3) of clause 6 of the original Bill says :

> "The making of such an entry shall not be compulsory."

I shall ask you, Sir, to consider the corresponding language of the Departmental Bill. The original Bill—I shall repeat with your permission—is

"That the making of such an entry shall not be compulsory."

Shri Mahavir Tyagi : Does it mean that the married parties will go to the Registrar's House?

Mr. Naziruddin Ahmad : According to the original Bill, the making of such entries is not compulsory. That is absolutely clear. But let us consider the corresponding provision of the departmental Bill:

"The making of such entries shall be compulsory."

Shri Jaspat Roy Kapoor (U. P.: General): In which place ?

Mr. Naziruddin Ahmad : I shall come to that later on. "Which place" is also mentioned. It is at very inconvenient places !

So the original law was that by rule particulars of marriages might be entered in a book for the purpose of facilitating proof, "but the entry shall not be compulsory". But in the revised clause in the departmental Bill, the particulars shall be entered and the making of the entries shall be compulsory in such cases.

And then, what is more, there is sub-clause (2) and clause 9 of the departmental Bill which reads :

"In making the rules under sub-section 1, the Provincial Government may provide that a contravention thereof shall be punishable with fine which may extend to Rs. 100"

The position is a little vague as to whether the compulsory character attaches to the registering officer or is addressed to the party. But more of this later on.

Shri Mahavir Tyagi : Which clause are you referring to ?

Mr. Naziruddin Ahmad : Clause 9(2) of the Departmental Bill as well as to clause 9(2)of the final Bill. In fact it gives authority to the Provincial Government to impose a fine for not complying with it or even a vague suspicion that parties who fail to register or have them entered, will also come within the mischief of this provision. But the matter has not been left in doubt and it is clear later on.

Mr. Speaker : The validity of the marriage is not affected, in which case, where is the substantial change? It is only a matter of detail which, it would be as well for the honourable member to speak on, when we come to clause by clause consideration of the Bill.

Shri Mahavir Tyagi : It is a matter of importance, Sir. In that case it is a great change. The parties will have to be directed to the house of the Registrar instead of the House of the father-in-law.

Mr. Speaker : The scope of the present discussion is with reference to changes in the substantive law as proposed by the Rao Committee and as adopted by the Select Committee. A minor detail of registration is made compulsory. So far as validity of the marriage is concerned, it is not affected at all. I do not want any discussion on that. I do not say as to whether the change is desirable or not but for present purposes a discussion on that would be outside the scope.

Mr. Naziruddin Ahmad : I would like to refer to one or two sentences in that connection as well as on the final Bill. Clause 138—

Power to make rules—(2) sub-clause (ii) reads:

> "The cases and areas in which particulars of sacramental marriages shall be compulsorily entered, and the punishment for any contravention thereof,"

This provides for compulsory registration, I am coming to the question how it affects the marriage. (*An honourable Member :* 'It is in the discretion of the provincial government') It is in the discretion of the Provincial Government no doubt. But the Government is given a new power which it may enforce.

I come back again to clause 6 of the departmental Bill. It also corresponds to clause 6 of the final Bill.

> "No marriage between Hindus shall be recognised as valid unless it is solemnised either as a sacramental marriage or as a civil marriage in accordance with the provisions of this Part."

According to the clause in the original Bill these formalities were not required. The "provisions of this part" in the departmental Bill require compulsory rgistration of the marriage. In fact sacramental marriage and civil marriage are brought on a par with each other. In civil marriage of course registration is compulsory. The combined effect of the change of phraseology in clause 6 of the departmental Bill as well as the compulsory requirement of registration would make it appear that a marriage which is not registered—of which particulars are not entered which is made compulsory under this clause—would be an invalid marriage. No marriage shall be valid unless it is done in accordance with this Part.

Shri L. Krishnaswami Bharathi : Where is it ?

Mr. Naziruddin Ahmad : That is my interpretation which is submitted for the consideration of the House. In fact it may be farthest

from the mind of the honourable Law minister to effect this result. He made it quite clear in his speech that the provisions relating to marriage are not compulsory but rather optional. It may be that the effect was unintended. But whether intended or not, the effect is the same. No marriage shall be valid unless it is performed in accordance with this Part, which also carries the liability of a fine for an omission. However reluctant the house or even the author of the Bill may be to put this interpretation, it is yet a question of interpretation and it is not a question of sentiment. The point is whether this interpretation is valid. If that is so, it introduces a very important change. To provide, though indirectly that a marriage would be invalid unless it is registered would be a dangerous proposition and it would lead to wholesale breaches of the law. The registering officer may live miles away from parties living in inaccessible regions, and at this stage of the civilisation of our country, especially for the backward people, this provision would be absolutely tyrranical and meaningless.

Shri L. Krishnaswami Bharathi : If you would permit me,

Sir .....

Mr. Speaker : Let there be no discussion on the merits of the argument.

Shri L. Krishnaswami Bharathi : Only for the purpose of clarification that I rise.

Mr. Speaker : If we enter into clarification and further discussion, it would be an unending speech. The point is that the honourable Member is putting his interpretation. I have drawn his attention to the fact that, it does not affect the validity of the marriage. If he wants still to persist in that line of argument, let him do so. That will cut short the speech.

Shri L. Krishnaswami Bharathi : If you would permit me, Sir, there is only one point which he may clarify. The clause begins with the words "For the purpose of facilitating the proof of any sacramental marriage ....."

Mr. Speaker : That point is quite clear to my mind. I put it to him though not in that form. I pointed out to him that this does not affect the validity of the marriage at all. Still he thinks it does. How can we go on convincing him ? Let him proceed now. That would be the shortest way of having his say before us. Otherwise we shall have to discuss with him every provision in respect of which, he is giving his inferences. When honourable members are hearing his speech in