

his report deserves careful consideration at the hands of the House. The opinions are again classified according to Provinces as according to subjects. With regard to the effect of the evidence, according to Dr. D. N. Mitter the opinion on each point is preponderatingly against the Bill for codification, for divorce proceedings and for other matters. The opinion of the public was directly against the codification. These opinions and evidence are preponderatingly against the principles of the Bill. The Hindu Law Committee Report is only a majority report. It was definitely opposed by Dr. D. N. Mitter but the other Members thought it fit to stick to their original Bill amended in slight respects here and there, not according to public opinion, but according to their own ideas. I therefore submit that the Bill has been framed in direct defiance of public opinion. That is the basis upon which my argument stands. Though Mr. Krishnaswami Bharathi said that the public opinion is behind the Bill, I venture to submit that public opinion is against it.

An Honourable Member : Question.

Mr. Tajamul Husain : No, not at all. It is for the Bill.

Mr. Naziruddin Ahmad: So far as the written opinion is concerned, it is definitely against the Bill.

I submit, therefore, that public opinion has not been properly consulted as a democratic Government ought to do. In fact, this Bill is a negation of democracy and it is conceived under circumstances which no longer prevail today. A full-fledged democracy is now in operation and public opinion should be taken into account and followed in giving effect to legislative proposals. I submit therefore, that so far as written opinion goes it is against the Bill, but what about the unwritten opinion? We have a large number of protests lodged in your own office and we hear of proceedings of large number of meetings. In fact, we had meetings in the very heart of this city. The meetings were largely attended and many honourable Members and also the Honourable Minister for Law were invited. Some Members attended but the Minister for Law did not.

Babu Ramnarayan Singh : He did not have the courage to attend.

Mr. Naziruddin Ahmad : He did not think it necessary to attend, because it seems to me that public opinion is not the criterion or his guide so far as this Bill is concerned. In fact, Dr. D. N. Mitter gave a clear analysis of the opinion. The Honourable Minister for Law said that he would quote an earlier of Dr. D. N. Mitter to contradict him.

The Honourable Dr. B. R. Ambedkar : What did the honourable Member say, I did not follow ?

Mr. Naziruddin Ahmad : That he would quote an earlier writing of Dr. D. N. Mitter to contradict his present report. We have his earlier writing as well as his later writing and I have considered both.

The Honourable Dr. B. R. Ambedkar : His later writing I have not seen. What is it ?

Mr. Naziruddin Ahmad : Later writing is in the report.

The Honourable Dr. B. R. Ambedkar: That you call later writing. I thought it was something after this.

Mr. Naziruddin Ahmad : The question is what was his earlier writing and what was his present writing and is there any change and if so what. He had long ago written a pamphlet.

The Honourable Dr. B. R. Ambedkar : A pamphlet ?

Mr. Naziruddin Ahmad : A book.

The Honourable Dr. B. R. Ambedkar: I thought you said pamphlet just now.

Mr. Naziruddin Ahmad: Give in any name you like. I do not quarrel with the name.

The Honourable Dr. B. R. Ambedkar : How big is that book ? Have you any idea ?

Mr. Naziruddin Ahmad : You will have it in the Library.

The Honourable Dr. B. R. Ambedkar : You call it a pamphlet. How big is that pamphlet ?

Mr. Naziruddin Ahmad : If I am to be cross-examined, I should be put in the witness box and I will then answer.

The Honourable Dr. B. R. Ambedkar : I should like to know that my friend has ascertained the facts before he refers to them. If it is a pamphlet I should be very much surprised. The book is a book of 700 pages, somewhere about that.

Mr. Naziruddin Ahmad : The most important thing is not the size, but the view expressed therein.

The Honourable Dr. B. R. Ambedkar : Yes, what was the view?

Mr. Naziruddin Ahmad : The view expressed therein was that the rights of Hindu women should be better safeguarded and given better rights. I cannot repeat everything to the honourable Minister because I do not like to trouble the House and I do not like to speak louder

than what, I am doing. In the present opinion he has opposed the Bill and the Honourable Minister evidently had his earlier writing in view and that is taken advantage of by the majority Members. I submit that the reason for the change of opinion has been given by Dr. D. N. Mitter himself. If change of opinion is a crime, blind adherence to an opinion, although it is proved to be wrong, is a worse crime than change of opinion based on reason. Dr. Mitter clearly expressed an opinion in favour of giving more rights to women. I have read the passage in Appendix II that the Government gave an undertaking to the people that the Bill will be re-shaped in accordance with public opinion. That was the thing that trouble Dr. Mitter. In fact, he found that his individual opinion was far ahead of public opinion in India which was definitely against it. So he has referred to this passage in the notification declaring the intention of Government to change the law in accordance with public opinion. Dr. Mitter was faced with a volume of opinion against the Bill and he changed his opinion. This is a legislation which affected the whole country and it was this reason which induced him to go against the Bill, because this is the public opinion. There is no illogicality in giving up one's personal opinion in deference to public opinion. I believe the Honourable Minister and other Ministers too have their personal opinions, but they have to subordinate them for the collective good. We have often heard Ministers speaking against their personal conviction. This is neither improper nor wrong. It is perfectly natural. Here Dr. D. N. Mitter had accepted a position of great public responsibility with the express object of ascertaining public opinion and changing and re-shaping the Bill in accordance therewith. I ask : is there anything improper if Dr. D. N. Mitter changed his opinion ? He accepted a job, and what was it ? To ascertain public opinion, and public opinion was against the Bill. He himself was present when the evidence was taken and there is one passage in the report on oral evidence which is very significant which has been specifically referred to. When the Committee was in Lahore and was sitting...

The Honourable Dr. B. R. Ambedkar : They were greeted with black flags ?

Mr. Naziruddin Ahmad : No black flags ; something more. A large number of ladies, thousands—I do not remember the exact number—I do not wish to trouble the House with the exact number.

Mr. Speaker : What year was it in ?

Mr. Naziruddin Ahmad : It was in 1945 in connection with this enquiry. They went to Lahore and a large number of ladies came and absolutely blocked the progress of evidence. They said, "We do not want it. It is not to our benefit. It is against our idea."

Babu Ramnarayan Singh : Hear, hear.

Mr. Naziruddin Ahmad : In fact, the situation was so grave, that this gentleman when he was faced with the sad spectacle of thousands of ladies opposing the Bill, he could not proceed and it was difficult to repress them and their sentiment and so further evidence was absolutely stopped. This is what he has referred to. If he is guilty of inconsistency, he is certainly to be credited with some amount of honesty.

Babu Ramnarayan Singh : Hear, hear.

Mr. Nazruddin Ahmad : Does consistency lie in sticking to one's opinion although it is proved wrong ? This is inconsistency. This is doggedness. This is neither good nor fair. This gentleman when found that not only male opinion but female opinion was absolutely against him, he said he was also against it. Would it be fair or proper on anybody's part to quote that stray personal opinion of his ? If so, one could quote writings and speeches of the honourable Minister himself against him. This would not be fair. Every writing and speech has to be taken in the context. It may often happen that we have to act in public capacity and therefore, for that purpose, we have to sink our personal opinion. So Dr. Mitter acted patriotically and courageously in giving up his personal opinion in deference to the opinion of the public. In this Dr. Mitter performed a patriotic and obvious duty, and no blame should be attached to it. On the other hand, the other respected Members, what did they do ? I do not wish to be hard upon them, but they all of them, though they promised that the Bill would be considered in the light of public opinion, they

3 P.M. stuck to their own opinion, and actually taunted Dr. Mitter for having changed his opinion. Is it to be, Sir, that we should never change our opinions ? If that be so, then mankind would cease to be rational. We have got to change our opinions.

Mr. Speaker: Order, order. May I tell the honourable Member that on each point he need not necessarily go into the general principles and all the details. He may just invite attention to the point and then go to the next point; because if he carries on like this—he has now gone on for nearly two days—there will be no end to this discussion.

And I do not propose to allow him to go on in this manner. He must bring his remarks to a close within a reasonable time, and I think another fifteen minutes would be quite reasonable.

Mr. Naziruddin Ahmad : I bow down to your decision. I hops, Sir, that these fifteen minutes will be entirely mine.

Mr. Speaker: Yes, he may finish by 3-15.

Mr. Naziruddin Ahmad : Next I want to emphasise the fact that we are a democratic body. We are working as a democratic body. We cannot say that democracy is unfit for our society. It is democracy that has brought us into being. That democracy was sufficient to wrest power from the British Government. That democracy is sufficient to empower us to frame our Constitution. And I say that democracy would be intelligent and competent enough to understand its own interests in the matter of the Hindu Law. Therefore there should be no shirking, no by-passing, no flouting of public opinion. Where is the harm in ascertaining public opinion ? In fact, the Bill, I submit, has been mutilated. It has been interpolated upon. I do not mean to say there has been dishonest interpolations, but honest interpolations, but they are not the less interpolations. There have been interpolations in the Bible—honest interpolations. There are great authorities pointing out that fact. So, I say, there are interpolations in the Bill. The Bill, however, was presented to the Select Committee with the guarantee that there was no serious change, and that some changes made had been noted by the Members. Yet, is it possible, or practicable, Sir, for any one unaided to note all the changes ? In fact, all these changes, it is impossible to take note of. And therefore, the Select Committee was told, and they were asked to take it, that the Departmental Bill was merely a reproduction of the original Bill, and that no substantial changes had been made, and therefore, they failed to note and consider the changes. That is not their fault. In these circumstances, the Select Committee, although they tried their best, unconsciously, I submit, they must have omitted to note many important changes, on account of the guarantee. And then, Sir, if that is so, if there are so many changes, and when these changes are substantial, then the guarantee given by the majority of the Select Committee that the Bill was not so changed as to require re-publication is only the usual guarantee. They said that the Bill had not been so altered as to require, under Standing Order 41(5), any re-publication and that the Bill be passed as amended by the Select Committee. This is only the usual stock

certificate. I ask in all seriousness, is it contented, in the light of the disclosures of changes made that the Bill has not been substantially altered ? On the original Bill we have not got public opinion, and what public opinion we procured, was against it. We have, therefore, got to ascertain public opinion. And then, the Bill was sent to the various Provincial Governments for opinion. The opinions of the various Governments have not even been referred to in the House. They are collected and circulated to the Members. I shall, however, confine myself to the opinion of the Government of Bengal. I assert without fear of contradiction that in Bengal the opposition is the greatest. You propose to abolish the *Mitakshra* system of inheritance and do honour to Bengal by accepting their theory of family life. In Bengal you have the greatest objection.

An Honourable Member: Objection is from everywhere.

Mr. Naziruddin Ahmad: Of course, from everywhere there is objection, but the greatest objection is from Bengal. It is the most persistent, and so very authoritative. The whole of Bengal, including some educated and cultured ladies think that the Bill is not wanted there. In fact, many ladies like the wife of the late Sir Asutosh Mookerjee, the mother of Dr. Mookerjee, here, lady Ranu Mookerjee, wife of Mr. B.N. Mookerjee, and a host of other ladies have opposed this move.

Dr. Mono Mohan Das : Who are the other ladies please ? Please name them also.

Mr. Naziruddin Ahmad : I have to respect the request of the Chair to finish soon. I cannot give my honourable friend preference over the request of the Chair. Sir, the names are there in the report. My honourable friend's request to name them shows that he has not read the report. It is a pity that this volume of opinion has not been read. It is a pity that the Department has not supplied the report to all. It is a pity that private Members have to undergo all the labour and expense to collect the information and to supply the House with the information. But the names are on record, and it is useless for any member to ask questions about facts which are on the record. It is pity that I have got to refer to this matter.

Well, Sir, I was submitting that there is lot of opposition in Bengal. There are five High Court judges of the Calcutta High Court—and one of them now adorns the Federal Court and they are against it. Their opinion is to be found in the Report also, and it is referred

to in Dr. Mitter's report. Then there are ex-Judges of the Calcutta High Court. One of them is Mr. N. C. Chatterjee, and he is now a Judge of the High Court, and he was against it. The Hindu Mahasabha was then under the Presidentship of Dr. Shyama Prasad Mookerjee and it opposed the Bill, evidently, with the consent of the President, Dr. Mookerjee on a major matter like this. And then there is Dr. R. B. Paul, a distinguished jurist of continental fame, and he has opposed it. Their opinions are before us. In fact, in the face of all this opinion in Bengal, I am surprised that a Member from Bengal should have asked for names.

I submit, therefore, Sir, that the Bill should go out to the public for eliciting public opinion. If Hindu opinion is against it, why should you thrust upon it a law which is not wanted by them ?

An Honourable Member: It is dictatorship.

Mr. Naziruddin Ahmad: Yes, it is sheer dictatorship. There is the fear that if it is sent to the public before the elections, possibly it will lead to complications. But do you know what complications will come up if you pass it before the elections ? The illiterate people will get furious. This Bill will dislocate their lives. It is not easy for them to change their lives all at once under the dictator's command. Even in Russia, Lenin did not go so quickly or remorselessly as we seem to be going here, in utter disregard of public opinion. There is in Russia a desire and a pretence to respect public opinion. But here there is no such things. It is sheer dictatorship born of fear that if the Bill goes to the public it will be rejected. I find it is asserted that the public are in favour of it. If so, why not be public arm you with the authority to pass the law ? Sir, it is injurious to the Hindus in general; it is injurious to the ladies in the larger interests and it is injurious to the public at large, and it is no use forcing your opinion upon an unwilling public. Had it not been a matter of personal interest any one is entitled to enforce his opinion, but having come here as the Minister of Law in a democratic Government and basing their authority on public opinion, is it fair and proper for them to flout that public opinion and to bypass it, to circumvent it or avoid it ? It is a devious method, a circuitous course which is not warranted by any system of democratic Government. Why should you not go to the people if the law is favoured by them ? Are the people so backward in their ideas that they will not be able to determine what is good or bad for them ? The question is not what is good in the

abstract, but what is good in the circumstances, and that depends on local conditions. There are certain practices which are considered to be good and there are others which are not and you make every body uniform; you are trying to make all the people uniform. The Honourable Minister for Law should try to make everybody as intelligent and as forceful as he is. Why should you stop at inequality; inequality is not bad. It is nature that there should be inequality in diversity. India is a big continental countries and it has developed according to its own genius and each province has a distinct culture of its own and why should you by one stroke of the pen remove all this and make the law the same? In fact, the great Hindu law-givers, they were extremely...

The Honourable Dr. B. R. Ambedkar : This is only a peroration and not an argument.

Mr. Naziruddin Ahmad: They had tolerance and they did not enforce their law by force. A study of *Manu Smriti* will show that he never enforced his law. He said that the law should be enforced subject to the custom of the locality. That will be found by any one who has read it and therefore, the Hindu law givers did not like the law should be uniform. Their method of propagation of their law and their civilization was not by force, but rather by persuasion and they allowed free scope—I speak with authority, having read the whole thing; they allowed their law to spread on their own merit, not by their force. Local custom plays not only an important part now, but played an important part in the time of Manu and that is the reason why law is different today. It is an organic method according to local circumstances that leads to this difference of opinion. In fact differences are not bad. It is not a small country; it is a big country with all the attributes of a continent and this diversity as a matter of fact should not be done away with without adequate and careful thought.

Sir, Mr. Kamath compared the present Bill to a new *Smriti*, Dr. Ambedkar's 138th *Smriti*. I think this is not a *Smriti* at all, the *Smriti* proceeds from the *srutis*. There is a pretence to agree with the principles of these *srutis*. This is a Bill which is not a *smriti* but a new *Veda*, (*Pandit Lakshmi Kanta Maitra* : 'It is *vismriti* !'). It is *Vismriti* i.e., forgetfulness of the past. All sacred laws and customs, rules, laws, decisions, principles of the Privy Council are brushed aside by one stroke of the pen by Dr. Ambedkar himself in defiance of the report of the Rau Committee. Everthing is gone. It is *Vismriti*

as Pandit Maitra with good humour suggests. It is *vismriti*—absolute forgetfulness. It is a new *Veda*. There are four *Vedas*, the *Sama Veda*, *Rig Veda*, the *Yajur Veda* and *Atharva Veda*. I think the new *Veda* should be called *Dr. Amba Veda* and this is the fifth *veda* in utter defiance and disregard of all the four *Vedas* which it supersedes. Sir, I thank you.

* **Pandit Mukut Bihari Lal Bhargava** : Mr. Speaker, Sir, we have been discussing the Hindu Code Bill from yesterday. We had discussed it in February also. Before I proceed to discuss the merits of this measure, which is admittedly of a highly controversial nature, which aims at the utter demolition of the structure of Hindu society. I would like to put on record my emphatic protest against the way in which the Government is pursuing this measure of vital importance, a matter of life and death to the Hindu Society. It is well known that this Bill was rushed through in the legislature almost on the last day, that is on the 9th of April 1948, when it was not discussed even to the extent that a very ordinary measure is usually discussed in this House. Further, in this session, we find that instead of giving consistent consideration to this matter the Government on the plea of want of time due to the Budget session, wishes to rush this Bill through this House. I would ask respectfully, though humbly, is it fair to the House that a measure of this vital importance, an equal of which, I submit, has never been on the anvil of this legislature since its inception should be rushed through in this manner? However, it is for the Government to decide and I feel it my duty to sound a note of warning to the Government that it should pause and consider as to what is the haste and hurry about this matter, and why in preference to a number of very important and emergent measures, this Bill is being rushed through. I would ask what will happen to the Hindu society if the Hindu society could survive the onslaught of centuries of foreign aggression and foreign rule? Will it die out of existence if this measure is not brought on the statute book? I submit, Sir, this unusual haste and hurry is due to the fact which was hinted by my learned friend Mr. Naziruddin Ahmad, that my honourable friend, the Law Minister is now sure that the public opinion of Hindus is behind the measure. I take courage even to submit, Sir, that the weight of public opinion is against the measure. What is the criterion to judge whether the public opinion is in favour of this measure or against it? The only criterion that can possibly be applied to is: What is the weight of

* C.A. (Leg.) D., Vol. III, Part II, 2nd April 1949, pp. 2276-89.

opinion that has been on record ? I should submit in all humility that the weight of opinion that was sounded by the Rau Committee was predominantly against every section of this measure. Consequently, Sir, without any fresh sounding of public opinion, it would be presumptuous on the part of any person, including the Law Minister, to claim that this measure has the support of public opinion in the country.

The question arises where is the necessity and what is the utility of the codification of Hindu law ? Who demands the codification of Hindu law ? We know, codification is essential only in two conditions. If on a particular point there is a serious conflict of judicial opinion, it becomes essential for the legislature to intervene and clarify the ambiguity. This is one condition. The other condition is that public opinion wants to have a change in the law. These are the only two conditions which could justify the attempt at codification of Hindu law. In this particular case, I would submit that neither of the conditions exist. So far as the main principles of the Hindu law are concerned, I venture to submit that they are well understood and well settled. In many text-books of Hindu law the principles of it as deducible from *Smritis* and *nibandhas* as orally interpreted and construed by the judicial courts in India, have been published. It will be quite obvious that on every intricate point of Hindu law there have been clear interpretations. It has been pointed out by the Law Minister, in his speech while moving for the consideration of this Bill, that Hindu society or the joint families as was originally conceived in Hindu law, have by judicial opinions been shorn of their characteristics. But does this afford any justification for this Code ? The judicial opinion of the Privy Council and of the High Courts have by now laid down the principles which are not open to any doubt at this stage. Whether it may be the powers of the *karta* or manager of a joint Hindu family when he happens to be a non-father, whether it may be the powers and functions of a manager of a joint Hindu family as father, his rights and powers stand well defined in Hindu law. The disputed doctrine of the pious obligation which for some time was the subject matter of serious conflict of opinion between the different High Courts and the Privy Council has also been settled. And we know what are the duties of the son and we know the extent of his liability for the debts of his father. Similarly in the spheres of marriage, etc. the Hindu law is quite definite. The question then arises, is there any opinion and overwhelming public opinion in the country which requires the

Government to codify the Hindu law ? My respectful submission is that there exists none and there is no justification for this attempt at codification of Hindu law.

So far as the history of codification goes, this is not the first time that an attempt has been made. I would respectfully invite the attention of the House to the various efforts that have been made during the British rule for the codification of Hindu law and submit that on each such occasion the matter was deferred and for very cogent and sound reason. As early as 1833, a Commission was appointed by Royal Charter. In the year 1853 a Law Commission was appointed. The reports of these Commissions published in the year 1856 turned down the proposal for the codification of Hindu law on the ground that it would be a vain attempt and that it would stunt the growth and development of Hindu law. Similarly, in the year 1861 and again in 1921 the Secretary of State for India in the former case and the Governor-General of India with the sanction of the Secretary of State in the latter case appointed Law Commissions. Their decision on the point of codification was identical with the findings of the Law Commissions. On 23rd March 1921, one distinguished Member of this House tabled a non-official resolution requiring the appointment of a Commission for the purposes of codifying Hindu Law. When that motion was debated in this House the Department of Law was in the hands of a very distinguished scholar on Hindu Law and a jurist of eminence, I mean Dr. Tej Bhadur Sapru. The motion whether codification was essential or not, was necessary or not, would be to the good of Hindu society or not, was hotly debated. I would respectfully invite the attention of the House and of the Honourable the Law Minister to the reply given on behalf of Government by Sir T. B. Sapru who was himself an authority on Hindu Law. He pointed out that the codification of laws of the personal laws of the community was not an easy matter, that it was a stupendous task and one which would entail the best energies of the best legal talents for centuries. He invited the attention of the House to the German Code which was drafted and codified after 50 years of labour, from 1834 to 1896 and to the fact no less than three Commissions drafted the Code. He pointed out that it was not until 1896 that the final form of the German Code was reduced to writing and after a continuous hard struggle for and against codification between the two sections of eminent German jurists represented on the one hand by Savogry and on the other by Thebaut

and that even then it took no less than 4 years. Thus, it was only in 1900 that the Code drafted after almost 50 years of continuous labour was sanctioned by the Imperial German Government. Similarly, Sir, the Swiss Code in the continent of Europe as well as the other Codes were the result of continuous efforts for a number of years by the best legal talents of the country. Compare those territories and their condition with the conditions of India and the ancient history of India and the continuous streams of law that have been flowing into the development of Hindu law from ancient times upto the present time. I would submit that it will be a vain effort to codify the Hindu law. It will be futile to attempt codification of the personal laws of the Hindus. What is the source of this law I would respectfully ask. It is obviously not human in the sense that no human power ever attempted to promulgate Hindu law. The sanction behind the law was not of a sovereign power but a moral sanction of learning and the result of meditation of the sages. It is difficult to trace its origin; the *smritikars*—138 as they are said to be—did not purport to create the laws. They based their *smritis* on the *Vedas* and we know the *Rig Veda* is the oldest book in the world. Even Vigneshwar and Jimuta Vahana, the learned authors of the two main treatises which have held sway in India, did not attempt to codify the Hindu law or create new law for society; they only based their commentaries upon the *smritis*. And during the long years of British and Muslim rule what has been done is simply an interpretation of the well known principles of Hindu Law. Now why should there be any codification of Hindu Law ? If the German and Swiss nations—which are no insignificant compared to India—took 50 or 60 years to bring about a satisfactory code to control their relations, why should we in India, where the origin and source of Hindu law are shrouded in mystery, try to codify the law ? We are told that it is sought to introduce uniformity in this land of diversities ; the other reason advanced is that women in Hindu society have been subjected to age-long oppression and tyranny at the hands of men from which they have to be relieved. With regard to uniformity I submit that it has not been achieved in this present measure and cannot be achieved at all.

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

Even in regard to the law of succession, in cases where the rule of primogeniture exists by custom or in case of grants or *inams* they

have said that the rules of succession as laid down in this measure would not apply. Similarly in clause 7 although marriage between *sapindas* has been prohibited, it is said that it will be subject to local custom and so allowed where it prevails by custom. So the ghost of uniformity which haunts the draftsman of the measure is still there, and the so called freedom from slavery of women ends in nothing. I submit that those who want to deal with Hindu law and the place of women in Hindu society should look at the question not through Western glasses but through the glasses of our own civilisation. We must know how our own law-givers approached these very difficult and intricate questions. The views prevailing in eastern and western countries on these questions are diagonally opposite. Our life, we believe, has connection with our past life and will have connection with our future life; and therefore the rules of law will stand on a special footing. That is why our sages approached these questions from the point of view of the well-being of Hindu society as a whole. And in attempting to frame our law we have to keep in view the ideals that motivated our law givers in framing the law in a particular manner. Unless we can do that we cannot appreciate its value.

Sir, I would not mind if the Law Minister had honestly declared that this measure stands on its own merits, moulded on his ideas of Hindu society as it now exists. But what has pained me is that he asserts that its provisions are in consonance with the accepted principles of Hindu Law. It is well known that Satan can quote the Bible. I submit that every provision of this measure—whether in relation to marriage or divorce, adoption or inheritance—goes against the fundamental principles of Hindu law. Then the result that I envisage is not a very happy one. In fact every House in Hindu society will be converted into a hell in which there will be a quarrel between the brother and sister, between the husband and the wife and between the children and their father. The very fundamentals of Hindu society are sought to be demolished by this law. It is a question of vital concern and there must be a plebiscite on it or a referendum to find out whether public opinion in the country is in favour of this measure or against it.

I was submitting that there was no necessity for the codification of Hindu Law. The question then arises whether the uniformity that is sought to be achieved by the enactment of this law will be achieved if it is brought into force ? What is our experience of the statutory

law ? The Government of India in the year 1923 appointed a Civil Justice Committee and that Committee after going through the various statutes made a recommendation that the Transfer of Property Act, the Contract Act, and the Law of Evidence should be modified and their revision should be taken in hand by the Legislature at an early stage. Has the Legislature found time for it ? What is the result ? The result is that the law is being administered in accordance with the provisions, which according to the authority itself; has outlived the utility for which they brought it into existence. That will be the condition if the Hindu Code is brought on the Statute Book and is made a rigid code upon which the rights of the people will depend. The Hindu law will lose its vitality, its elasticity, its adaptability to the prevailing conditions and will be reduced to immobile rigidity. May I know whether the object of reducing conflicts and of fighting differences of opinion will be achieved by the codification of Hindu Law ? I dare to suggest it will not and our experience of the various pieces of legislation leads one to support my conclusion.

Take for instance, the Hindu Law Remarriage Act which was enacted in 1871. Now, Sir, it is a very simple piece of legislation but has there been an unanimity of opinion in respect of the construction of the various provisions of that Act ?

Shrimati G. Durgabai (Madras : General): Are you opposing the Widow Marriage Act also ?

Pandit Mukut Bihari Lal Bhargava : I hope my friend will have the patience to hear me. We must learn tolerance and patience for opposite opinions. My point was that mere bringing in of an enactment does not lead to uniformity or to the resolution of a conflict of opinion. Even in the interpretation and the construction of the provisions of this Hindu Widow Remarriage Act of 1872, we find that there is a serious conflict of opinion between different High Courts about the construction of section 2. The question arises whether a woman who remarries according to customary law loses her rights in the property of her husband. This is the point, and we have the opinion of the Allahabad High Court and Oudh Chief Courts to the effect that merely because she remarries according to custom she does not lose her right in her previous husband's property. The other High Court has taken the other view. Similarly, in this Act there has been a serious conflict of opinion upon the interpretation of the simple word "sister". Some High Courts say that the word "sister" does not include a "half

sister” : while the Nagpur Chief Court, after an elaborate consideration of this word came to the conclusion that it is included. My submission is that in view of the above, the difficulty that exists today in the construction of the Hindu Law will not come to an end by the fact that the Hindu Code Bill is there.

Shri L. Krishnaswami Bharathi: Do you mean that the conflict should be permitted to continue ?

Pandit Mukut Bihari Lal Bhargava : I say that even if this Bill becomes an Act, the conflict will be there and it will be open to the High Court to interpret its different provisions in a different way. The divergent opinion and the divergent points with regard to the Hindu Law will not be resolved because it will be open to the High Courts and to the Supreme Court to give their construction on any particular provision and the conflict is bound to arise as our experience of the previous legislation shows. My respectful submission is that it is a vain and futile attempt to codify the Hindu Law and any attempt in that direction is bound to deprive Hindu Law of its mobility, its elasticity and its vitality, which by no stretch of imagination is advisable in the present circumstances.

My next point is a very important one. How did the present legislation originate and did the circumstances in which it originated justify its being pursued any further ? I would respectfully invite your attention that in the year 1941 the Hindu Law Committee was appointed and it considered the question of the codification of Hindu Law by compartments and two Bills were prepared by this Committee. One was the Bill concerning the Intestate Succession of Hindus and the second was the law relating to Marriage. When these two Bills came before the Legislature there was a joint meeting of the two legislatures (at that time our Legislature was of a bi-cameral character) and it was decided that it would be better if the Hindu Law was enacted as a whole rather than by compartments, and with this object in view the present Rau Committee came into existence.

Now, Sir, when a lady member addressed the House—of course a zealous enthusiast in favour of this piece of legislation—she said that this piece of legislation had been before the country for a number of years—say for 10 years, and the Rau Committee has examined thousands of witnesses and has had an extensive tour of the country. I respectfully submit that there was little truth in the declaration made by the lady because let us examine what was the quantum of evidence

that was before the Committee. And what was the weight of that little quantum of evidence ? The Rau Committee which came into existence on the 20th January 1944 drafted a Bill which was circulated to selected and distinguished lawyers for opinion. After their opinions had been received the Committee decided that the draft which they had originally prepared should be circulated throughout the country. The Bill was translated into Indian languages and about 6,000 copies were distributed. Opinions were invited on the 5th August 1944 and the opinions were to be submitted by the 31st December 1944. After the opinions had been received the Committee toured the country. I would like the House to note the extensiveness of the tour undertaken by this Committee. It visited the leading towns and cities of the provinces and as far as I remember it is not more than a dozen—Allahabad, Bombay, Calcutta, Poona, Patna, Lahore and others. This was the extensive tour of the Committee. What is the population of these few leading towns and cities as compared to the total mass of population of the country ? Can the tour undertaken by this Committee for the purpose of examination of witnesses in these cities by any means give an indication of the real feeling of the country on this Bill ?

What was the extent of the evidence recorded ? Let us see. In all 121 witnesses and 201 associations represented by about 257 persons gave evidence. This was the total evidence taken. May I venture to ask a very pertinent question: Is this by any stretch of imagination sufficient evidence, considering the vastness of the country and considering the fact that the real India, the real Hindu India resides not in the cities but in the villages. They are agriculturists who represent 90 per cent, of the population. Can it be pretended by any stretch of imagination that the examination of witnesses by this Committee was in any way sufficient and commensurate with the vastness of the country and with the great divergences of opinion prevailing in the different provinces ? I respectfully submit that it was not.

Let us further analyse the result of that evidence. My submission is that on every basic point which forms the basis of the present Code the opinion was predominantly and overwhelmingly against any change. Look at for instance one basic doctrine that is propounded within the four corners of this piece of legislation—introduction of simultaneous heirship of sons, daughters, widows etc.

Mr. Deputy Speaker : A widow is a simultaneous heir today under the existing law.

Shri L. Krishnaswami Bharathi: Even that he is opposing now. Perhaps he wants it to be repealed.

Pandit Mukut Bihari Lal Bhargava: For the introduction of simultaneous heirship of daughter with son the witnesses number only 78 and the number of those against was 215. Regarding conversion of widow's limited estate as a female heir into an absolute estate the opinions for were 49 and against 107. In case of divorce options for were 112 and against 119. In case of adoption and the changes that are introduced opinions for were 36 and against 38. On other points the opinions against change were overwhelmingly larger than for it. Where is the justification, I ask, for pursuing this legislation ?

Some Honourable Members: No justification.

Pandit Mukut Bihari Lal Bhargava: It is claimed by a number of Members of this House that public opinion is over-whelmingly in favour of this piece of legislation.

Shrimati G. Durgabai: What about monogamy ?

Pandit Mukut Bihari Lal Bhargava: I will come to that also at the proper stage. My submission is that if this is a democratic legislature, if this legislature claims to legislate in consonance with the predominant volume of public opinion in the country, the only course for it is to throw out this piece of legislation, because whatever public opinion there was in the country distinctly points out that it is against it. I am sorry I have not got with me the particular newspaper in which the opinion given by the Law Minister was published. It was a few days before we commenced the consideration of this measure in February and he took his stand not upon the quantum of evidence in his favour, nor upon the public opinion in his favour but upon its quality. That was an open admission by no other than the Law Minister himself that the weight of public opinion so far as number was concerned was against him. If it is a fact that a few individuals, however distinguished they may be, because they wish this legislation to be thrust upon the country, it cannot be accepted. The only criterion of public opinion is the public opinion taken by the Rau Committee. There is absolutely no other criterion upon which it is open to any Member of the House to say that public opinion is in favour of this piece of legislation and not against it. Similarly, we are receiving a number of representations from different bodies

Babu Ramnarayan Singh : Daily.

Pandit Mukut Bihari Lal Bhargava: from different distinguished High Courts and other Civil Judges also, from Bar associations in different parts of the country. As far as I have been able to go through the opinions very few persons. I find, favour the enactment of this piece of legislation and public opinion is overwhelmingly against it.)

The next point is this. Even assuming that public opinion is not so far of a decisive character where is the necessity of pursuing this legislation in the present legislature ? As has already been pointed out,

4 P.M. and I will not repeat the argument, but I would respectfully submit that the present legislature is to frame the Constitution as also to legislate on emergent matters about which legislation is absolutely essential. It can by no stretch of imagination be asserted that the Hindu Code Bill is a piece of legislation that the Government should not pursue this piece of legislation in the teeth of public opposition in the country.

I would now proceed with the examination and scrutiny of the various provisions incorporated in this piece of legislation. As I had remarked I feel—and I feel honestly—that the fundamentals of then provisions that stand incorporated in this piece of legislation are fatal to the existence of Hindu society as envisaged by our sages and therefore it is my painful duty to oppose this measure tooth and nail provision by provision. The question arises what are the basic changes that are sought to be brought about in Hindu society through the medium of this piece of legislation and how far those contemplated changes are in consonance with Hindu ideology and Hindu ideals. My respectful submission is this Hindu Code may well be styled as Islamic Code rather than a Hindu Code.

Shri A. Karunakara Menon (Madras: General): That is the reason why our friend Mr. Naziruddin Ahmad is opposing it.

Pandit Mukut Bihari Lal Bhargava : Of course this remark cannot apply to me. I feel as keenly as the learned member on it. Now Sir, the main question is about the Second Part of this piece of legislation under the head Marriage and Divorce. These are incorporated in clause 5 to 51. Let us see how far the type of marriage that is envisaged in these provisions of the Bill is akin to the Hindu conception of marriage. My respectful submission is that the show of a sacramental marriage provided in clause 7 of this Bill of an absolutely different character than what is the conception and ideal of Hindu marriage. It is only a camouflage to conceal the real type of marriage that is

envisaged. Otherwise the incorporation of the provision in clauses 10 and 21 would not have been there. To Hindus—and I think there cannot be any dispute on this point—there is no two opinion on the subject. Of course if we aim to dare Hindu ideals and ideologies, if we intend to say good-bye to them, then it is another matter. To a Hindu the marriage is sacramental and as such indissoluble. It is a religious bond of unity between the couple. It is not a union for such purposes which may be brought to an end at any time. It is not a contractual relationship. It is a relationship that has got some spirituality about it. By no stretch of imagination can it be brought to an end by the sweet whim and caprice of any of the parties. That is the conception of Hindu marriage. I would challenge any *smriti* or citation of any scripture, so far as Hindu scripture is concerned, which would negative this idea of sacramental marriage and will propound any other sort of marriage that is understood by *smritis*. Therefore my submission is that so far as the provision about civil marriage in this Chapter on Marriage and Divorce as incorporated in clause 10 is concerned it is absolutely foreign to Hindu law and should not find a place therein. Civil marriage has been in vogue in this country ever since 1872 when Act III of 1872 came into force. It was further amended in the year 1929. Civil marriage as envisaged by that piece of legislation must continue. But it should not find any place whatsoever in the Hindu Code. I want to ask why should civil marriage find a place in the Hindu Code. Is it in consonance with any *smriti* ? I ask this question because you claim that there is nothing revolutionary, nothing radical in this measure, and that in fact everything is just in accordance with Hindu conception, ideology and ideals. It is a preposterous claim which I must refute. My submission is that the incorporation of a provision like clause 10 in this Bill, which envisages marriage of a civil type, is absolutely unknown and foreign to Hindu ideals. Previously I have asserted that this form of sacramental marriage is only a comouflage for the other type of marriage and it is quite obvious if a reference is made to the provisions of clauses 7, 10 and 21.

So far as clause 7 is concerned it lays the conditions for sacramental marriage. Here I respectfully invite the attention of the House to clause 6. This says that it will not be open to the parties to contract any marriage if they happen to be *sapindas*. If we proceed to clause 10 which lays down the requisite conditions of a valid civil marriage it omits the provision contained in sub-clause 6 of clause 7 therefrom and restricts it to the other five sub-clauses of clause 7. Thereby a

marriage between *sapindas* is perfectly valid if it happens to be a civil marriage under clause 10. This is the difference or gap between the validity of the sacramental marriage and the validity of the civil marriage. What does clause 21 lay down ? It says that it is open to the parties who have entered into a sacramental marriage of the type envisaged in clause 7 later on go to the Registrar and ask him to register it as a civil marriage and the poor Registrar will have no option. What is the legal effect of these three provisions read together ? Whatever sanctity is attached to the sacramental marriage is eliminated. Mind you, one of the requisite conditions of a valid sacramental marriage is that there should be no marriage between *sapindas*. This condition does not exist in section 10 and the poor Registrar, inspite of the fact that the sacramental marriage was an invalid marriage because of this, has to register it as a civil marriage. Therefore, the camouflage, the curtain of a sacramental marriage is lifted here and the effect of invalidity, because it was a marriage between *sapindas* is circumvented by this device. I ask, is it in accordance with Hindu ideals of marriage ? Will not all persons be inclined, wherever they choose, to celebrate a marriage between *sapindas* ? They can do it as a sacramental marriage and subsequently go and cure the invalidity by undergoing civil marriage.

We come then to provisions of Section 9. It has been stated that even the sacramental marriage must be entered into a marriage certificate register and that if it is not so entered the defaulter may be punished under the law. As regards its validity, it is very doubtful whether it will be valid or not. Of course, the Rau Bill did not go so far. The Rau Bill left it at the option of the parties to either get an entry made in the register or not. The only object with which such a provision was incorporated in the Rau Bill was to facilitate the proof of marriage. But that object has been told good-bye in the present Bill. What is stated here is that it will be open to any Provincial Government to make the registration of sacramental marriages compulsory. The provision of section 6 says that a marriage in order to be valid, must be in accordance with the provisions of the Bill. If not, then it is not a valid marriage. Therefore, the conclusion is irresistible from the reading of Sections 6,7,10 and 21 that any marriage which has not been registered by the married couple in the certificate register will be invalid. I respectfully submit, what are the legal consequences flowing from this sort of a provision ? Are they not repulsive to the very ideal of Hindu society, to the very injunctions

of the *shastras* which lay down that a marriage solemnly entered into is an indissoluble tie and cannot be brought to an end ? Here if the married couple was foolish enough not to get an entry made to that effect in the register, their marriage will be invalid.

Coming to the next important provision in this Bill, that is, the provision regarding divorce. The question arises about past practice and we were quoted the *smritis* of Narad and Parasar by the Honourable the Law Minister to prove that divorce did exist in the Hindu society. I respectfully submit what has been pointed out by Mr. Dwarka Nath Mitter, the dissenting Member of the Rau Committee, before whom these very scriptures were put forward; he has interpreted them not merely on his own knowledge of Sanskrit but upon the knowledge of learned pandits. He says that the only and the reasonable interpretation and construction of Narad and Parasar is that there can be a breaking of relationship only upto the betrothal stage, not after the actual marriage had taken place. Therefore, it is no use relying upon the *smritis* to establish the practice of divorce.

One of the arguments advanced by the Honourable the Law Minister, and repeated by Pandit Thakur Das Bhargava, was that divorce already exists in 90 per cent of the Hindu society. Accordingly to Pandit Thakur Das Bhargava, not only in 90 per cent of the Hindu society but even in 95 per cent it exists. I would respectfully ask, if what you say is a fact, where is the necessity of enacting any piece of legislation on divorce ? You are expected to legislate for the majority and not for a hopeless minority. The divorce of the form you have introduced in this piece of legislation will make the life miserable of the 90 or 95 per cent of the Hindu society amongst whom you say divorce already prevails, because according to the provisions of the present Bill it will be incumbent upon each party to the marriage, before it can resort to divorce, to go for the dissolution of marriage before a competent Court of Law. As has been pointed out by one of the gentlemen who wrote a dissenting note to this Select Committee Report in most of the parts of the country among the agriculturists divorce is resorted to in a very simple manner by the execution of a deed of relinquishment or in any other manner, before the *panchayat* of the village. You must take into consideration the effect your legislation will have upon the agriculturists who form 90 per cent of your population. What will be the effect if clause 34 is brought on the Statute Book? Every couple, every Member, every party to the marriage will be compelled to knock

at the door of the Court of Law, to go to the district court and also in appeal and till that takes place no divorce can come into effect. I submit this will not be to the advantage but to the great disadvantage of the overwhelming majority of people amongst whom you say the custom of divorce prevails. Therefore, by enacting provisions of this type you are not helping the hopeless minority of 5 per cent but you are putting to disadvantage the majority of 90 per cent. Therefore, until and unless your provisions undergo a drastic change and amendment they should not and ought not to be brought on the Statute Book. I now come to the question of adoption. Here also the learned author and the draftsmen of this Bill have ignored the fundamental conception underlying adoption in Hindu law. As far as my meagre knowledge goes, adoption is not recognised by any other law. In Muslim law it was in vogue by custom, but even that has been brought to an end by legislation. According to Hindu conception, the life of a Hindu is so inter-mixed and inter-mingled with his religious conceptions and religion that it is impossible to separate the two.

Shri H. V. Kamath : Is the Honourable Minister for Law resting or meditating?

The Honourable Dr. B. R. Ambedkar: I am hearing the honourable Member.

Pandit Mukut Bihari Lal Bhargava: I was submitting that adoption in Hindu law rests upon religious belief which says that it is essential for the salvation of the soul of a departed man that he should have a son who may be able to give him oblations so as to make him attain *moksha*. So if you are going to legislate about adoption, you must keep in mind the underlying conception. Otherwise, you eliminate it. If you keep it, you keep the spirit underlying the doctrine of adoption. (*An Honourable Member:* What is the spirit?) What are the criteria you have fixed in this Bill for *validity* of adoption? While the Hindu law says that the eldest and the only son cannot be taken in adoption, instead of retaining that very salient principle, you want to reverse it and say that even the eldest and the only son can be adopted. (*An Honourable Member:* 'It is unfair.')

Babu Ramnarayan Singh : It is due to ignorance.

Pandit Mukut Bihari Lal Bhargava : It cuts at the very root of the conception of adoption, because according to Hindu law there must be the eldest or the only son to attend to the oblations for the departed natural father.

Similarly, what are the qualifications you have laid down in this Bill for a boy to be taken in adoption ? The three conditions laid down are that his age must be below 15, he must not be married and he must be a Hindu. I would respectfully submit that by putting a provision like this, you are putting the Hindus in great trouble, because according to the well known conception and custom of Hindu society relating to adoption marriage is not a disqualification, nor is age a disqualification. Why, I ask, are you imposing these limitations ? Has your experience of the administration of law in the past convinced you that these restrictions are necessary ? As far as my meagre knowledge of law goes, there has been no case where any difficulty has arisen. In fact, law by custom has recognised the validity of the adoption of a married boy. Similarly, whatever his age may be, the adoption is valid. What are the difficulties experienced that make the change in the existing law necessary ? It cannot be disputed that when you attempt any change you must have cogent reasons; otherwise, you must recognise the existing law.

Then, about the effect of adoption. You have given a good-bye to every well-established custom of Hindu law. The Rau Bill proposed that the effect of adoption would be to digest ownership of property vested within three years of the adoption. The present Bill goes further and it says that as soon as adoption takes place, there will be no, question of divesting of property. From that date half will go to the widow or the man and the other half to the boy. My respectful submission : why do you want to bring in a novel doctrine of adoption ? Where is the reason for it ? Has any difficulty arisen in the past ?

Then the question of disruption of the joint Hindu family. To me it appears that a most vital and fundamental change is sought to be brought about. Why should the time-honoured institution of Joint Hindu family be an eye-sore to you ? It has been said that the joint Hindu family as it was originally conceived has been shorn of its true characteristics by a galaxy of case law. I admit. But if the institution of joint Hindu family is an institution worthy of respect then your duty is not to bring it to an end because it has been dilapidated in the days of foreign rule, but to legislate for removing the difficulties and defects that have cropped up in the joint Hindu family institution and restore it to its previous position. We should have restored it to its previous vigour. That has not been done. I have not heard a word from the Honourable the Law Minister pointing out any fatal defects

that existed in the joint family system. His only point is that true characteristics have been shown off by case-law and therefore, the institution should be put an end to. I say it is a counsel of despair. That is a view which, at least I for myself cannot support. To me this joint family institution is an institution of which any nation in the world can well be proud of. It is an institution, Sir, which anticipated the socialistic and communistic form of society, centuries before our time. It is an institution, Sir, where even the invalid and the disabled members of the family have equal right to the corpus of the family. It is an institution which

Sirjut Kuladhar Chaliha (Assam : General): It is not prevalent in Bengal.

Pandit Mukut Bihari Lal Bhargava : Bengal, as far as my meagre knowledge goes is partly governed by *Mitakshara* and partly by the *Dayabhaga* system.

An Honourable Member: No, all by *Dayabhaga* system.

Pandit Mukut Bihari Lal Bhargava : Therefore, Sir, my point was that the axe of legislation should not have been applied by the learned Law Minister to cut at the very root of the joint family tree, if it does not rest on such firm and solid foundations as it did at the time of our ancients. Legislation should have been undertaken to protect it. In the time of the British, because we were subjected to foreign rule, and they were not at all interested in keeping in tact our time-honoured institutions. In fact, they had contempt for them. When our own national government has come into power, is it too much to expect that they should attempt to revive and restore this time-honoured institution to its previous glory rather than destroy it. I submit, Sir, by this Bill, the Hindu joint family is being shattered to pieces. What the Rau Committee proposed was not so fraught with danger as what is proposed in the provisions of this Bill. I invite attention to clauses 86 and 87 of the present Bill. The Rau Committee in clauses 1 and 2 of Part III-A only laid down that on the demise of a coparcenar in the family, the right in the property will not devolve by survivorship but will be by succession. That is intended to keep intact the coparcenary for at least one generation. Even that was not tolerated or liked by the present Select Committee and some of its members, including the Law Minister, with the result that what sections 86 and