

87 lay down is that there will be automatic disruption of every joint family existing in India, simultaneous with the enforcement of this Act.

**Shri L. Krishnaswami Bharathi;** There is difference between joint family and joint property.

**Pandit Mukut Bihari Lal Bhargava:** I am coming to that.

**Pandit Lakshmi Kanta Maitra :** They are trying to put you off the rails. You go on, please.

**Pandit Mukut Bihari Lal Bhargava :** The Bill provides in clauses 86 and 87 that no court of law will take cognizance of any claim on the basis of birth. On the day this Bill comes into force, and further, that every joint family will be deemed to have disrupted so that joint tenancy would be converted into tenancy in common, simultaneous with this legislation. But I ask, why do you want this? Is there any uncertainty in the law to-day, in the existing Hindu Joint Family Law ? I respectfully submit there is none. Everybody knows what is meant by coparcenary and what are the incidents of coparcenary property. Why do you want it to be partitioned? My respectful submission is that this is against what was provided even by the Rau Committee. And public opinion, scanty as it was, was taken not upon the Bill as it exists today, but upon the Bill as was drafted by the Rau Committee. Therefore there is absolutely no information why a point of such vital change in the structure of the Bill has been brought about.

Now, what are the advantages of a joint Hindu family? What are the advantages of having coparcenary property ? I submit that.....

**Shri B. N. Munavalli** (Bombay State): Are there no disadvantages ?

**Pandit Mukut Bihari Lal Bhargava:** Of course, there are disadvantages, if everybody wants to go on living in a selfish way, entirely for oneself, without any regard to their relatives. But if you look at society in the way in which the *Smritis* wanted us to, we should renounce something for others also, for the other members also, to sacrifice something to make the family, a joint family then there is no disadvantage. There is every advantage and no disadvantage. My submission is that it cannot possibly be accepted by every Hindu family.

One of my friends here reminded me that Mitakshara is not governing Bengal and Assam. But Sir, you must keep the whole country before you and .....

**Pandit Lakshmi Kanta Maitra:** The joint family is also there.

**Pandit Mukut Bihari Lal Bhargava:** You are dealing with a population of 300 millions—of 30 crores—and a population that is extending from Kashmir to Cape Comorin, a population that extends from Gujarat to the farthest end of the country. And you want to disrupt the status of the joint family system, and that will affect overwhelmingly vast population. Therefore, you must think thrice before doing such a thing as will disrupt such a vast population. In this legislation you want to disrupt the family. If it is decrepit, if it is dilapidated, if it is, as one of the Members said, in such a condition that we need not even shed tears about it, let it die a natural death. Why should you apply the axe of destruction and bring about its end ?

Then Sir, I proceed to the question of inheritance. Now, here I have got the greatest grievance. As my friend Mr. Naziruddin Ahmad said, the Rau Committee Bill was substituted by a departmental committee Bill and in this departmental Bill innovations were introduced. Clause 94 lays down that property will be excluded from the rules of succession laid down in this Bill. It is in the original Rau Bill it was that every piece of Agricultural property will not be governed by the rules of Succession laid down there, because under the Government of India Act it is not within the purview and jurisdiction of the Central Government. The Rau Bill did not say that there will be any exception in the case of the Centrally Administrated Areas, which are under the direct control and supervision of the Government of India

Now, Sir, in the departmental Bill the words “in the Governors provinces” were introduced with the result that every agriculturist in my province of Ajmer-Merwara as also in the provinces of Delhi and Coorg, which are the Centrally Administrated areas and even the agricultural property situated in these provinces will be governed by the rules of succession laid down here. Look at the anomaly that is sought to be perpetrated by this piece of legislation. The law that will govern the bulk of property will be absolutely different in the Governors Provinces, while it will be just the contrary in the Centrally Administrated areas. Is it the uniformity which is aimed at by this unique piece of legislation ? Whether this will be in consonance with the ideal of uniformity or it is the opposite of it. May I respectfully ask ? My submission is that all the rules of Succession that you have laid down in the provisions of the Bill if they are applied to the

agricultural property in my province—and I can speak with some knowledge of my own province and the people inhabiting my province—I submit the law will be obeyed more in infringement than otherwise, because the rules of succession that you have laid down are so contrary to the established usage and custom of the people, that they will not accept them as a rule governing them, even at the risk of their lives. What are the rules of succession that you have incorporated in this Part VII, Chapter 2 and Schedule VII? Are they in accordance with the accepted principles of Hindu law either as propounded by *Mitakshara* or by *Dayabhaga* and where is the indication of it ? What is the basis you have taken for inheritance? You say it is 'natural love and affection'. So far as propinquity and consanguinity is concerned in the case of inheritance, one of the fundamental principles of Hindu Law is violated. One of the fundamental principles of succession in the Hindu law is that it depends upon the capacity and the liability of the descendants to offer *shraddhas* to their parents. This is the fundamental capacity which has to be taken into any law of inheritance. Of course, the view was that we are not going to care for Hindu Law; that is a different matter; then delete the word 'Hindu' from there, I have no objection, but if you are to incorporate the fundamentals of Hindu Law, the first thing that you have to take into consideration in the principles of inheritance, is the capacity and the liability of the descendants to offer *shraddhas* to their ancestors, and this is the basis of the *Dayabhaga*.

**The Honourable Dr. B. R. Ambedkar:** All of them can offer *shraddha* for you and get the property.

**Pandit Mukut Bihari Lal Bhargava :** What is the reason for the promulgation of this novel Rule of succession ? Brother and brother's son has been relegated to a very, very inferior position. Brother and brother's son comes after daughter's daughter, daughter's son, son's daughter. Is it in accordance with the accepted principles of Hindu Law ? Is it likely to bring peace to the family ? (Many voices : 'No, no.'). Will it not disrupt the family ? Will it not create perpetual disturbance, discord in the members of the family ? This is inconceivable. According to the Hindu society even today, though it has been the subject of outrage for centuries, even today there is love and affection between brother and brother. When I make certain observations, I keep the agricultural population in view. You go to any village and you will find that 9 out of the 10 families live jointly.

The brother is living with brother. He is not separate and as soon as you give the right of inheritance to daughter's daughter, to daughter's son in preference to the brother or the brother's son my respectful submission is that the society will not tolerate or even if it tolerates, the peace and quiet that exists today will disappear in no time. Therefore, you have to be very wise before laying any novel rules of succession so contrary, so repugnant to the accepted principles of Hindu law.

Now, I come, Sir to the doctrine of bringing daughter in the category of simultaneous heir with son.

**The Honourable Dr. B. R. Ambedkar :** I thought he had said something about it. No elaboration is needed.

**Pandit Mukut Bihari Lal Bhargava :** Now, Sir, it has been argued that the daughter had a specific share in the inheritance of her father according to the scriptures and the reliance is placed upon Manu and Yajnavalkya, but my cursory knowledge of these Hindu law texts is that whatever share is allotted is in the case of an unmarried daughter and we have no objection at all, even today to allot any share to an unmarried daughter. The question arises even today, what is the position? Can anybody deny that ? Not one daughter among thousands remains unmarried. The daughter is given, according to the status of the family, the best education and is treated on the same footing as the sons. When her marriage takes place she is given a dowry according to the status of the family. On marriage her relationship to the brothers is not cut off. As far as my experience goes, she is invited for every function in the family and on occasions of marriage in her parent's family a quota is assigned to her according to custom. Can anyone say that resort to a court of law will bring peace and tranquillity in the home? Such a step will only aggravate the situation and the provisions in the Bill for resort to court are there to our utter shame. We do not want that our daughters and sisters should go to a court of law. It was never contemplated by our sages that they should seek the help of the law. The position assigned to our daughters in the family is of such a unique character that it is difficult to find a parallel to it anywhere. Even after marriage, as I was saying, the daughter has a definite share in the family budget for festive occasions. The question was asked, whether she can go to a court of law to enforce her rights ? Sir, if in a family the father or the brother of a girl is unmindful of his duties to her, he is looked down upon by the

community. According to the well-established custom, every daughter of a family must be present at the time of her brother's marriage. I may tell honourable Members that there is particular ceremony which must be performed by the sister and her husband before the bride and the bridegroom can enter the house. These are time-honoured customs. We give the daughters a definite position. What will you gain by giving her a share in the family property ? One of the justifications for this reform is that there must be absolute equality between a son and a daughter. May I know is there any equality in fact ? Is it not a sham equality that you are going to assign to the daughter ? The conditions are absolutely different. The daughter has to go in due course to a different family. The son has not to go. These are the conditions inherent in the situation. Therefore, whatever law you make must be suited to the conditions and not in violation of them. If you make a law in violation of these conditions, the society will go to pieces.

Now, what is the percentage of property owners in Hindu society today ? It is a very relevant question because, according to the existing custom not only the father has the moral obligation to arrange for the marriage of his daughter, but even the brother, whether he inherits any property or not, thinks it his moral duty to arrange for the marriage of his sister in the absence of his father.

**Shrimati G. Durgabai:** Do you think he would not discharge his moral duty if he allows his sister a share ?

**Pandit Mukut Bihari Lal Bhargava :** The honourable Member is talking of a share while I am talking of a family without property. What will become of the sister in such a family ? You may go to any village or town. You will find cases where the father is dead and the unmarried sister is living with her brother. This brother thinks it his moral duty to arrange for the marriage of his sister and he even borrows money for this purpose. Unless and until he has discharged that sacred trust he never thinks of himself.

**Mr. Deputy Speaker :** Is the honourable Member likely to finish soon ?

**Pandit Mukut Bihari Lal Bhargava:** I require one hour more, Sir.

**Mr. Deputy Speaker:** Then the House stands adjourned.

*The Assembly then adjourned till a Quarter to Eleven of the Clock on Monday, the 4th April, 1949.*

---

\* HINDU CODE—*contd.*

**Mr. Deputy Speaker:** We will now proceed to the further consideration of the Bill to amend and codify certain branches of Hindu Law, as reported by the Select Committee. Shri Mukut Bihari Lal Bhargava will resume his speech.

**Shri R. K. Sidhva** (C. P. and Berar : General): Before we proceed to the further consideration of this Bill, we would like to know what is going to be the programme in regard to it. Will it go on indefinitely? I would request that by common consent some time-limit may be fixed on the speeches of members so that as many members as may be possible to be accommodated may participate in the discussion.

**Mr. Deputy Speaker :** I may inform the House that this is an official Bill and they have provided for two days. The Speaker has not concern with it.

**Pandit Mukut Bihari Lal Bhargava** (Ajmer-Merwara): Sir, I have to resume my unfinished speech on the Hindu Code. But before I do that, Sir, I have respectfully to draw your attention to the declaration that was made by the Hon. Prime Minister on the opening day of this momentous session.

Sir, the Hon. Prime Minister was pleased to characterise this measure as a piece of simple and essential legislation. I respectfully protect that the measure that is for consideration before the House is not a simple one. I may also be permitted to point out that some of the opposers of this Bill have been accused by the Hon. Prime Minister of adopting delaying tactics. Those are well conversant with this Assembly and the proceedings that have taken place here will readily recognise that this measure has not at all been sufficiently discussed this vital measure which affects the life and death, as I would say, of the Hindu society has been on the anvil of this legislature for only a very short time. If you refer to previous occasions when social legislation like the Sharda Act and the Hindu Women's Rights to Property Act was brought before this legislature, you would find what an amount of controversy they raised. Compared to those Bills, this Bill is enormously of great importance. It affects the entire structure of Hindu society. This Bill, Sir, if placed on the Statute Book—people may differ with me, the Hon. Prime Minister may differ from me,

---

\* C.A. (Leg.) D., Vol. VI, Part II, 12th December 1949, pp. 464-91.

but I do feel so—will result in the utter extinction of the Hindu society, not in the sense that thirty million Hindus will cease to exist, but that the distinctive features and characteristics of the Hindu society will cease to continue.

This is not a simple measure. But the fact is that this Bill aims at the utter demolition of the entire structure and fabric of Hindu society. It aims at changing the law of marriage, the law divorce, the law of adoption, law relating to minority and guardianship, the Law of the Hindu joint family, the law of succession and everything that constitute and what remains of the features of Hindu society. The very foundations not only of one pillar but of all the pillars on which the Hindu society rests, are shaken. Therefore, Sir, it is but neat and proper that we as legislators, we who are the guardians of the interests of the people should discharge our duty to the best of our ability and see how far the measure that we are considering is wanted by public opinion in the country. To characterise this measure as a simple piece of legislation is, I respectfully submit, not fair.

My further submission is that if it is not proper to characterise it as a simple piece of legislation, it is still more unbefitting to characterise it as an essential measure. What is the need, I respectfully ask, for this measure ? What will happen if this Bill is deferred and not brought on the Statute Book till the new legislature, the sovereign Parliament to be elected in free India on adult franchise is elected ? Is there any malady from which the Hindu society is so vitally suffering that if a few months pass without this Bill being placed on the Statute Book, the whole society will crumble ? I submit that in no sense of the term is it essential. We can very well afford to wait for one or two years more. The Hindu society which had successfully stood the test of centuries, the clash of many civilisations, the clash of foreign aggression and had been subjected for centuries to political subjugation can very well survive without this piece of legislation for a year or two more.

Sir, if we wait for . . .

**Shri S. Nagappa** (Madras: General) : Sir, on a point of order. The hon. Member is casting aspersions on the House when he said that this house is not competent to deal with this matter and that we should wait till a new house is elected.

**Mr. Deputy Speaker:** There is no point of order in what Mr. Nagappa has said.

**Pandit Mukut Bihari Lal Bhargava:** Sir, in spite of the interruption of my hon. Friend, I must assert that this house as at present constituted, is thoroughly incompetent to deal with a measure of this vital nature. The question is . . .

**Mr. Tajamul Husain** (Bihar: Muslim): On a point of order, Sir. It has been decided by the Chair that this house is competent to deal with this Bill. After that ruling, can any hon. Member question whether this House is competent or not ?

**Mr. Deputy Speaker :** There is no harm. It is a ruling of the Speaker that this House is competent to deal with this Bill, and according to this, Bill is being pursued. If the hon. Member wants to raise other questions, or raise other reasons, other than legal technicalities, it is open to him to do so. But I would advise the hon. Member that this point has been raised by almost every one of the previous speakers and it has almost become state.

**Pandit Mukut Bihari Lal Bhargava :** Sir, it is only the interruption of my friend here that provoked me to make that remark, I do not question the constitutional power of the Legislature to pass this vital measure. But the question is one of propriety. Can you usurp the functions of a full-fledged legislature, can this House which was specially brought into existence for the particular purpose of drafting the Constitution of India, do that? Therefore, I submit apart from the constitutional aspect of the question, apart from the point of legal power of this Legislature, it is a question of propriety, and propriety is of immense importance. And I feel that I have the right to assert, in spite of the interruption of my learned friend and those with him, that this House must think thrice before dealing with a measure of this vital importance. And my submission is that this measure is not essential and this Government need not have a declaration of a nature to make this question an issue of confidence before the House. The question has to be dealt with a calm mind, and we have to take into consideration the devastating effect that this measure will have upon the entire structure and fabric of Hindu society.

Now, coming to my speech from the stage I left it, I was dealing with the question of innovation that has been introduced in this piece of legislation, namely, the bringing in of a daughter in the rank and file of simultaneous heir with the son. My respectful submission was and is, that this innovation is wholly uncalled for, and that this innovation will demolish the entire structure of Hindu society. Let

me ask, how this is possible. What is the real state of Hindu society ? The difference between man and woman, the difference between the son and daughter, this is inherent in the very situation. The son has to remain all through his life, from his inception to his death, with the family in which he has taken birth. The daughter has to go a stranger's family. What are the consequences resulting from this inherent situation ? The Hindu law givers, the persons who gave us the scriptures, were they so degraded, were they so opposed to the fair sex that they did it only with a view to inflict an inequality or an injustice ? I respectfully submit that this is a wrong reading of the entire scriptures and the Hindu Law. In fact, if the right of inheritance to the patrimony is given to the daughter, I shudder to think of the consequences. The Hon. Dr. Ambedkar, the Law Minister, in his speech remarked, if a Hindu has twelve sons and one daughter, and if on his death his property could be divided into twelve shares, what heaven will fall if instead of twelve it is divided into thirteen shares ? I respectfully ask the Hon. Law Minister to take the opposite case, where a person has got one son and twelve daughters. What will happen in that case ?

**The Honourable Shri Jagjivan Ram** (Minister of Labour):  
Thirteen shares.

**Pandit Mukut Bihari Lal Bhargava** : Is a family house to be divided into thirteen shares ? Sir, think of rural India, do not think of urban India, with people living in palaces, but think of rural India where a family has got a very small house. If on the death of the father, his house is divided into thirteen portions, and the twelve sons-in-law are to be accommodated in that house, what will happen ? And Sir, under the law as it is proposed to be made, it is open to the daughter to marry any person she likes, even if she takes courage to enter into marital contract with a non-Hindu she has no bar, and that is not a disqualification for inheritance. What will be the result ? The result will be that every house, and every family will be reduced to a family of feuds in which there will be quarrels and worse still—murders too. Therefore, Sir, I respectfully submit that when you are making a law you are not to take into consideration only a concrete example of the character to which the attention of the House has been drawn by the Hon. Law Minister, but you have to take into consideration every imaginable case, and it is on that footing that you have to frame the law.

Why this inferiority complex about the status of the daughter in Hindu society ? I protest against its very implication. In fact, the daughter in Hindu society has got a very exalted and elevated position. Her marriage into a stranger's family does not cut of her connections with the natural family of the father. On every occasion, on occasions of births, deaths, marriages and other occasions she has to come and perform certain essential ceremonies, and on those occasions the Hindu family has to make presents to the daughter. The daughter's relations with her natural family continues all along. If she gives birth to a child, her brothers have to give her presents. Sir, I may further venture to assert that on the occasion of every marriage in the sister's family, the marriage of a male or female child, the brothers have to make presents. Presents are so essential on every occasion. That being so how can it be said, Sir, that the daughter does not get anything from the property ? My submission is that the whole mental outlook with which this question is approached is diagonally wrong, if you consider it from the criterion of Hindu civilisation and Hindu ideals and ideas. Of course, if your criterion is not indigenous, if it is not Hindu, not Indian, but anti-Indian and anti-Hindu then of course, you must take the opposite view.

Now let us consider what is the result of giving a share to the daughter in the family patrimony. You can see the Muslim family. The inevitable result of giving this share in the patrimony would be that marriages between cousins will be absolutely common, and sooner or later marriages even within prohibited degrees will come into existence, whether you like it or not. This is what the inevitable consequence would be. If you trace the history of the daughter's share in patrimony, in so many countries, in Egypt, in Greece, in Rome or under Islamic law, you will come to the conclusion, and the only conclusion, that if a share is to be given, then, you must necessarily widen the scope of the right to contract a marriage with first cousins. So far as the Hindu point of view is concerned, that would be a calamity which no Hindu family can tolerate.

I now proceed to the other point. Do you think, that by providing in this piece of legislation that a daughter has an equal share with the son, you will be carrying out what you intend to do, that is to say, you will be conferring any rights to property on the daughter ? I respectfully submit, Sir, that it is not. On the other hand, you will be letting loose and creating scope for so many evils. Under the law

as it is incorporated in the Hindu Code, it will be open for any father to make a gift *inter vivos* in favour of any of his sons, or to dispose of the entire property by a testament. Is there any bar to this, I ask, If there is no bar, then, unless and until the society is prepared to give an equal share to the daughter, the only result of this legislation would be testamentary disposition or gift *inter vivos* of the entire property by the father to the sons. As a lawyer, I have some experience of courts; there are other friends here who have full experience of courts. Is it not a fact that in every ten cases of testament and codicil, nine cases go to the court and give rise to very prolonged litigation? Not only questions regarding the disposing capacity, but questions about the testator being a free agent in executing the will and codicil are raised; complicated questions about the construction and the interpretation of the different clauses of a complicated document like a testament are raised : not in one court, but right up to the highest court, the Privy Council. If that is the situation, may I ask how you will be able to safeguard the interests of the daughter. My respectful submission is that you will not be safeguarding the interests of the daughter by making this disastrous piece of law, but you will be doing her a positive harm which it will be difficult for you to undo. The very psychological approach of a Hindu family will change. As soon as it is provided in the law that a daughter has a share in the patrimony, the brother will think himself absolutely relieved of the duty of maintaining his sister and providing for the marriage expenses. What is the condition of the Hindu families today ? What is the percentage of the families that have got immovable properties ? My submission is, it cannot be more than forty per cent. What will become of the rest of the 60 per cent, of the families, I shudder to think. What will be the result in the case of these 60 per cent, of the families governed by the *Mitakshara* law., who have no property at all ? Because by law the sister is made equivalent to the brother, the brother who feels a burden and responsibility to bring up the sister up to the time of her marriage and conduct the marriage, to give her dowry, to give her everything, that sincere brother will feel relieved of his responsibility. That would be the result, and the only result, of this disastrous provision, without any corresponding benefit to the daughter. Therefore, my respectful submission is, not on the ground that the daughter is not equal to the son, nor because of any prejudice against the fair sex, but in the interests of the daughter herself, that this provision should not be enacted. Of course the daughter has got other means

to safeguard her interests. They can get valuable rights in the property of their husband, in the property of their father-in-law.

**Shri L. Krishnaswami Bharathi** (Madras: General) : We have already given that.

**Pandit Mukut Bihari Lal Bhargava** : If that is already given than, there is absolutely no necessity to give her a share in the patrimony. Even as I understand the law, a right of a limited character has been given; you can certainly widen that and give the daughter a right equal to that of her husband in her father-in-law's property. That is a very good suggestion which we can consider.

Now, Sir, I come to the other important change in this revolutionary piece of legislation : I mean the disruption of the joint family status. A very important feature is that under section 86 of this Bill, no court of law will hereafter be entitled to take cognisance of the right by birth. I shudder to think of the evil consequences flowing from this provision. It is said that Bengal, and Assam are already governed by the *Dayabhaga* system of law which does not recognise the joint family status, under which every family member occupies a position of equality. Does it mean that this system should be extended to the whole of India ? If five crores of people are governed by this system, and twenty crores by the other system, is there any justification of law for extending the law of the five crores to the other twenty crores ? I say this is absolutely wrong. My submission is that the right of acquisition by birth is a valuable right of a Hindu son. It is a right which provides against the prodigality and spendthrift character of the father. It is this valuable right that has saved the properties of so many thousands of Hindu families. It is this right that is being done away with by this disastrous piece of legislation, in section 86. Not only this; section 87 provides that every joint family will have a compulsory disruption on the coming into effect of this unique piece of legislation. Why should there be a compulsory partition ? My submission is that these provisions are not of a simple character; they are of a revolutionary and radical character and there is absolutely no reason why changes of this enormous character should come into existence.

Then I come to the very important provision, incorporated in the Bill about what is known as dissolution of marriage. The clause that deals with this is clause 30. It lays down the grounds upon which dissolution can take place. The other clause relevant is clause 33 which

lays down the grounds upon which judicial separation can be claimed by a party to a marriage. Then, there are provisions for the declaration of a marriage as void or voidable. These are absolutely novel provisions so far the Hindu Law and Hindu society is concerned. In fact these provisions of law and the other provisions of law incorporated in this Bill have created a paradise for lawyers. For declaring a marriage void the matter can be taken to a court of law. For getting a marriage dissolved the parties can go to a court of law. For seeking a judicial separation they can go to a court of law. What are the lessons learnt from the cases of dissolution of marriage in so many European countries. It is indeed surprising and astounding that the experience of western countries and the experience of America and England where in every six marriages there is a case of one marriage dissolution, has not given any lesson to us. We have not had this position in our society at any stage of our society and why should we introduce compulsorily the resort to a court of law. Clause 34 provides that every dissolution of marriage can only be through the medium of District Courts and it also provides that every case of dissolution must automatically go to High Court for confirmation under clause 44. I ask whether it is not opening a door for lawyers to prosper. Should any piece of legislation set the ball rolling for more litigation in the society ? My submission, therefore, is that the provisions for judicial separation and for dissolution of marriage as incorporated in clauses 30 and 33 are not only opposed to accepted ideals of Hindu Society, they are diagonally opposed to our civilization and culture. They are directly contradictory to the sacramental marriage because it is not a contractual relationship that can be brought to an end by the whim and caprice of any of the parties but it is sacred bond of union which has its root in the past and which will have its effect in the future. That is the conception of Hindu marriage. These provisions of judicial separation or dissolution of marriage are diagonally opposed to what is our conception of marriage and still when the western countries which have been habituated to this sort of marriage relations—divorce and everything—when they are feeling tired of it, when the sanest of their thinkers are thinking of this system as ruinous to society, it is indeed a wonder that we are trying to imitate it. My submission therefore is that you should be very careful., What are the grounds of judicial separation ? A case of adultery. The law says that the marital relations can be brought to an end by judicial separation or by dissolution of marriage. The germs are there before the couple and I would respectfully draw the attention of the House whether it is not

a fact that if there is a quarrel—naturally there is bound to be quarrel in families so many times—if these provisions exist in the bill, they will give an incentive to the couple at any time of quarrel or even family scuffle to seek the remedy of the court and Sir, it is very cheap because the charge of adultery can be brought by a woman against her husband or a husband against a woman very easily and there are interested persons everywhere to disrupt the families. Result would be for very flimsy reasons there will be cases of divorce. It therefore will be ruinous to Hindu society. Our society has survived the onslaught of so many centuries and has successfully stood in the world as the ideal form of institution notwithstanding the onslaughts because of the inherent system of *pativratabhakti*. These provisions do not even help those communities which are by custom taking resort to divorce. They create a great obstacle and compel them to go to court. It is opposed to our culture and civilization and our accepted ideals of ideal marriage life. One argument has been repeated often viz., there is nothing radical or revolutionary about this measure, and the provisions regarding marriage and divorce are of a permissive and enabling character. If that is so, why not scrap all these provisions from clause 5 to 51 and make one clause in the Bill that every Hindu shall be competent to marry any person he likes because that will be only an enabling provision. He can very well, at his own risk, marry his own sister. Therefore it is no use providing such a comprehensive bill with so many sections. Why not scrap them and provide one general section and it will be a model of simplicity as also a model of the civilization and the stage through which we are passing. My submission therefore is these provisions from a Hindu oriental point of view are simply repulsive and could not be incorporated and cannot be tolerated in a bill of this nature.

I come to the next point. Under the provisions of this bill, clause 91 is the relevant clause—every property that comes to a female either by inheritance from father or from father-in-law or from any other source will be her absolute property and the rules of devolution of female property are provided in clauses 106 to 109. These provisions are also not conducive to the attainment of peace in family life, and are of a disastrous character. Here again every provision is opposed to the accepted conception of Hindu ideal and you will find that the property which a female inherits and which according to clause 91 will be the absolute property of the female will descend in the order also prescribed under clauses 106 to 109. That is, the first persons

to inherit will be the husband and children equally. If there is no husband or children, then who are the persons under the Bill who will be entitled to inherit the property. There are mother, father and husband's relations. May I ask humbly and respectfully every honourable Member of this house whether there is any father or mother in this land of Hindus who will relish property from his or her daughter?

**Shri L. Krishnaswami Bharathi:** Why not ? What is the harm ?

**Pandit Mukut Bihari Lal Bhargava :** Perhaps my honourable friend comes not from India but from an outside country.

**Shri L. Krishnaswami Bharathi:** I come from South of India.

**Pandit Mukut Bihari Lal Bhargava :** In India no father or mother will ever think of receiving anything from the daughter.

**Shri L. Krishnaswami Bharathi:** That may be so in the Punjab.

**Pandit Mukut Bihari Lal Bhargava :** It is so in the whole of Northern India. I cannot speak with authority about South India. But so far as Northern India is concerned the very idea is repulsive. Of course there is an exception to this rule among those who count money and property over every thing else. To them *dharma* is no matter of their concern. But I am not talking of those exceptions : I am talking of the ordinary father or mother in Northern India. Their souls will revolt at the thought of accepting anything from their daughter. In *kanya dan* when a father and mother sitting together give their daughter to the bridegroom as also dowry and ornaments, after that in our part of the country, the mother or father will not even take water in the house of the daughter.

**Shri L. Krishnaswami Bharathi:** It is not so bad in our part of the country.

**Pandit Mukut Bihari Lal Bhargava:** That might be a custom or usage prevalent in your part of the country but in my part of the country, an overwhelming majority will be opposed to the idea. They cannot even imagine receiving any inheritance from the daughter. Therefore the entire fabric of the rules of devolution is based on anti-Hindu ideals. If Mr. Bharathi takes the trouble to go into the rural parts in my part of the country he will be surprised to find, let alone the father or mother, even the inhabitants of a village will not drink water in another village into which the daughter of their village is married.

**Shri L. Krishnaswami Bharathi:** I am told that they do not even pass through such a village.

**Pandit Mukut Bihari Lal Bhargava:** Under the rules of devolution after the father and mother who are the persons entitled to inherit the property of the female ? If it provides that that will go to the husband's relations, it is repulsive and it will create family feuds. Why should property go to the husband's relations, if it has come to the daughter from the father ? That is why our law-givers have made several categories of *stridhana* which will accrue to different categories of people. You are not competent to understand the higher motives of our law-givers who made those salient provisions and you want to sacrifice their ideals at the altar of simplicity. According to our accepted notions of *stridhan*, if the property has come from the side of the father it is the father's relations that are entitled to it. Why should not a provision of this character be incorporated in sections 106 to 109. That would be more acceptable to Hindu ideology .

I now come to the other provisions of the Bill. On the day the Code comes into force, the joint tenancy will be deemed to have been converted into tenancy-in-common. The Bill makes a provision in clause 115 that it is open to every heir to go to a court of law and claim partition of the family property. Is this provision conducive to the preservation and maintenance of peace in the family ? After the death of the father, the daughter, the son, the widow of a pre-deceased son, etc., will rush to a court of law and claim partition as required by section 115. This will be like the Islamic law, entirely repugnant to Hindu ideology and cannot be tolerated in a Bill of this kind.

It is claimed that this Code will resolve conflicts of opinion, that it is an exhaustive piece of legislation providing remedy for every malady in Hindu *dharma*. Are there not any omissions in the Bill and until they are filled in, will it not shatter the Hindu society ?

Under clauses 88 and 89, you abrogate the doctrine of Pious Obligation. Under clause 89 you provide that the family members will be entitled to pay the duties existing on the joint family. What provision have you made when the father dies ? Who is to bear the funeral expenses or make provision for *shradhas*, or the other charitable objects connected with such occasions. Once this Code is brought on the Statute Book will there not be fight and feud between the different heirs ? On the death of a father every son and daughter will be so absorbed in assimilating the wealth of the father that they will forget their duty to

perform the *shradhas*, which are essential for any self-respecting family. There is absolutely no provision in this regard in this Bill.

Does the Code provide for the Hindu joint family ? In Hindu Law there is a distinction between co-parcenary property and joint family property. What is the number of families in India carrying on business? Is there any provision within the four corners of the Bill for that ? How will succession take place in joint family business ?

You claim exhaustiveness for this Code. Have you made any provision for an adopted son? Under clauses 52 to 54 every Hindu male on attaining the age of 18 is entitled to adopt a son with the consent of his wife. After adoption if the father gets his own son what will be the son's rights in the patrimony ? Does your Code present any solution of this problem? Our Hindu law-givers or *smritikaras* make ample provision for different parts of the country. What is the position of a son born after adoption of a son by the father ?

In *Dayabhaga* he gets one-half; under *Mitakshara* he gets one-third; in the Bombay Presidency he gets one-fourth. Have you made any provision here ? If not, will it not create confusion and confusion of a worse character ? Have you made provision for partition of the joint family property and so many other things which are an essential, and complicated, branch of Hindu Law ? My respectful submission therefore is that this will create problems and questions which it will be very difficult to answer.

Then the question arises what will be the rights and duties of a son who has no share in the joint family property. Under the present circumstances, a son by birth has got rights in the property and that is a shield behind which he can stand for his maintenance, education and other things. You may point out to me the provisions of clauses 126 and 128 of your Bill which lay down that it will be the duty of every husband to maintain his wife, and the wife may claim separate maintenance from him on certain grounds as those of illness like leprosy etc. There again is the door for litigation and a paradise for lawyers. And in clause 128, you will say, you have provided for the maintenance of children and aged parents. But by providing for maintenance under clauses 126 and 128, are you effectively safeguarding their rights ? My submission is you are not. You are placing them in a worse position than what they occupy under the present Hindu Law. Under the present Hindu Law a son has an inherent right to maintenance out of the family property, and if the father or manager or *karta* of

the family is so undutiful as not to look to his interests he has his remedy in a court of law. He can even claim partition. Every student of Hindu Law knows that while a minor has very restricted rights to claim partition in Hindu Law, if the father or the manager or *karta* of the family abuses his power to the detriment and prejudice of the minor, he has the legal remedy open to him and he can proceed in a court of law to enforce his right to partition. That is a valuable right and you are taking away that valuable right.

Similarly you say that in clause 126 you have provided for the maintenance of the wife and in clause 128 you have provided for the maintenance of children and aged parents. If a husband happens to be penniless, if he cannot earn, if he has got nothing to support himself, how can he support his wife ? Therefore I submit that this pseudo right conceded to the wife is only a sham and a paper right. In the present Hindu Law every wife, every female has a valuable right of residence and of maintenance and she can enforce the right through a court of law if the manager or the *karta* abuses the right.

**Shri L. Krishnaswami Bharathi:** Even if her husband is penniless ?

**Pandit Mukut Bihari Lal Bhargava :** I am talking of joint family property. The matter will be different if you decide by a piece of legislation that every piece of property is to disappear and there should be socialisation and nationalisation of every property. But, keeping intact the institution of joint family you are depriving the minors, the widows and the females of their valuable rights which exist under the present Hindu law. In the name of equality which is sham and paper equality you are perpetrating a wrong which it will be very difficult to remedy. My submission therefore is that judging from every point of view this piece of legislation is not only opposed to the accepted principles of Hindu Law but is liable to create such confusion in Hindu Society which it will be very difficult to overcome or remedy.

Sir, before I conclude I have to sum up what I stated on the 2nd of April and now. I said that there is absolutely no necessity and no desirability of the codification of Hindu Law. It is neither necessary nor desirable. It is not wanted by judicial opinion in the country. There is no conflict of authority of such a series character as to warrant the interference of a Legislature. There is no public demand for a measure of this character. The *quantum* of evidence upon which the Rau Committee relied was analysed by me in my speech on the 2nd

of April and I pointed out that the overwhelming weight of opinion in the evidence recorded by the Rao Committee was opposed to every innovation and change that is incorporated in the Rao Committee Bill which has been further aggravated in the present Hindu Code Bill as it has emerged out of the Select Committee. On every point, on the question of divorce, on the question of sacramental *cum* civil marriage, making sacramental marriage liable to be converted into civil marriage at one's sweet will under clause 21, there was opposition, and opposition from every quarter. From every quarter the overwhelming weight of opinion was against the ending of the joint family status. Therefore, on every crucial point, the overwhelming opinion was against the Rao Committee Bill. Even now in the opinions that are pouring in from the various quarters in the country, from judicial quarters, from bar associations, from other citizens, there is a unanimity of opinion that a measure of this subversive type is not at all required under the present circumstances. Therefore I had submitted, and I repeat it today, that codification of the Hindu Law is neither desirable nor necessary.

I have pointed out that the marriage provisions contained in the Bill are a misnomer for marriage. It is in fact introducing the principles of Islamic and Christian marriages into the Hindu Code under the garb of sacramental marriage. It will be a sham. It will be shameful for any Hindu to go into a marriage of this character which is liable to be changed at one's sweet will into a civil marriage. This cannot be tolerated.

**Shri S. Nagappa :** This Bill does not prevent sacramental marriages.

**Pandit Mukut Bihari Lal Bhargava :** I have already met your argument, an argument that is often repeated on the floor of this House and outside, that this is an enabling measure, a permissive measure. If that is so, scrap off everything and have one omnibus clause in the Bill that everybody is competent to marry anybody. That will meet the requirements. Why do you make a fetish of the sacramental marriage ? The sacramental marriage of the character you have provided in the Bill is nothing but a mockery, an insult to the time-honoured institution of sacramental marriage. It is only a misnomer to deceive the people, to convince them that there is no departure from the established practice. It is a hoax that is sought to be perpetrated on the Hindu society. No self-respecting Hindu can possibly tolerate this state of affairs.

Better do away with these provisions commencing from clause 5 to 52. They are wholly opposed to Hindu ideology, to Hindu culture and to Hindu civilization. That is my submission in respect of the marriage provisions. As regards the divorce clauses I had already made my submission. About adoption, I had said and I repeat it today that the very conception of adoption is a creation of Hindu law, and if you cannot in this modern age, on account of what you call your advanced views, subscribe to that ideal of adoption, then do away with adoption altogether but don't provide for a hotch-potch adoption of the nature you have done. According to the provisions of the Bill, every person, every Hindu, can be adopted as a son. There is no restriction of *Gotra*, there is no restriction of caste, there is no restriction of the status, and it is left to the person concerned to adopt any person. Those, who are well conversant with the codes of Hindu law, very well know how the adoption of a stranger in the family has been the source of litigation. There are well-established, customs and usages having behind them the sanctity and authority of judicial pronouncements whereby only a member of a family of the same *Gotra* can be adopted. All those usages, all those well-established customs are very easily given the go-by; without even thinking of the disastrous consequences this step is being taken. I shudder to think of the very terrible consequences that are bound to follow from a provision of this character. Better do away with the institution of adoption altogether rather than provide for adoption of this kind. In fact, I may be permitted to remark—and I do so with full responsibility—that the sponsors of this Bill had an inherent abhorrence, an inherent hatred against everything related to Hindu culture, and that is why we find provisions of this character being included without appreciating or finding out what were the motives of the Hindu law-givers in providing for adoption. The sole purpose of adoption under the Hindu Law is that a person may have a son to administer to his spiritual needs, to offer oblations on his death. That is the sole purpose of the conception of adoption but by making a provision that any Tom, Dick and Harry can be adopted you are cutting at the very root of that conception. Do not therefore, make such a provision. Better do away with adoption. It doesn't exist in so many societies. Where is the necessity to perpetuate it if you are so averse to it ? But then do not make a mockery of the conception of adoption.

Sir, I shall submit that every provision in this Bill has got a stigma which is anti-Hindu and therefore cannot be acceptable to any Hindu. To me this Bill is an insidious effort on the part of its sponsors to

take the Hindus out of their Indian moorings and to launch them on foreign waters of Arabia and Jerusalem. Where is the necessity for this Hindu Code? Why don't you extend the provisions of the Indian Succession Act of 1925 by a stroke of the pen to the entire Hindu community? By this very convenient and simplified method—and we are very much enamoured of simple legislation—it will be very easy to provide for the entire Hindu society.

Before I conclude, I think it is my duty, and an honest duty, to sound a note of warning. You very well know that the Hindu law is a law not piloted from outside. It is not an imposition from above, it is not the creation of a sovereign power, it is not the result of a ukase of any king or of any legislature. That is the greatest merit about it. It is a spontaneous development from centuries past. The texts of the *Smritis* and The *Nibhandhaka* have not created the laws; they have only explained and elucidated the accepted principles of Hindu Law, but those principles as readable from the texts have never been the governing force of the Hindu society. The governing force of the Hindu society has been a consistently developing usage and custom governing the different sections of the society. That development was spontaneous. In fact, looking at it from a realistic point of view, the Hindu society is a working legislature in continuous session not of the few selected persons as this House is but a legislature of the entire community, that modifies and moulds its law according to its requirements. That is the supreme beauty of Hindu Law. And that you are distorting, that you are deforming by this piece of legislation by taking from it vitality, elasticity, mobility, spontaneity and adaptability to the everchanging circumstances of the society. Sir, I, as an humble Member of this House, have a duty to say that you must be very careful before you tamper with it. It is a law that has come into existence as a result of centuries of development and before you tamper with its time-honoured institutions, customs and usages, you should keep one thing in mind. The India of ours does not reside in urban towns like Allahabad and Delhi. The real India lives in the five lakhs of villages. The life of the villagers is so intimately interwoven with the texture of their society that whatever modifications you might make by this piece of legislation, they will resist to the limit of their might before you take away from them the time-honoured usage and customs to which they have been submitting as a matter of course for centuries. Without doing any benefit to the Hindu Society,

you will be opening the door for a few disgruntled persons who want to take advantage of this innovated piece of legislation.

**Dr. Mono Mohan Das** (West Bengal); Is he not casting aspersions on some of the members of this House ? He has repeated the same thing so many times.

**Pandit Mukut Bihari Lal Bhargava** : I have not referred to any Members of this House. My hon. friend should have the patience and the tolerance to hear the opposite views. My submission is that you cannot put a brake to this spontaneous growth and development of Hindu law by this piece of legislation and if you pass it, you will be spoiling the beauty of Hindu law rather than adding to it. This piece of legislation is so disastrous in its character and so destructive in its nature that it is difficult to imagine the bringing of a constructive approach to bear upon it. The Hon. Prime Minister and Leader of the House suggested the other day that we should meet in a formal or informal committee to devise a compromise upon which the orthodox and unorthodox sections can agree. I join issue with him. But I feel that the Bill has been conceived with a mental outlook and psychology which is wholly repugnant and unacceptable to Hindu ideology. Consequently, in spite of our sincere efforts to arrive at a constructive approach of this measure, it will be very difficult to do so. The safest course for the Government to adopt is to withhold this measure and wait for a more opportune time for a legislature elected on adult franchise with a mandate from the electorate to change the entire structure of the Hindu society. Until and unless there is such a mandate, I submit, and I question and question with vehemence the propriety of this legislature to deal with a measure of this vital importance to the Hindu society.

With these words, Sir, I resume my seat.

**Shri Loknath Misra** (Orissa : General) : On a point of order. Although I do not desire to oppose the consideration of this Bill, I think its consideration is totally barred and bolted by the very Constitution which we have recently passed. Of course, it may be argued that it has not yet come into force. But we are quite sure that we are not going to pass this Bill this time and by the time the Bill is passed the Constitution must have come into force. If you will permit me, I will detail my reasons for saying that this Bill is against the Constitution.

**Mr. Deputy Speaker :** I have heard the point of order sufficiently. The new Constitution has not yet been implemented. It has not come into force. I do not propose to give any ruling on the question as to whether it will stand in the way of this Bill being passed into law if it comes into force. Under the present Constitution, this House is thoroughly competent to get on with this Bill.

**Shri T. T. Krishnamachari** (Madras : General) : In view of the importance of this measure and the fact that the number of people who want to speak is large, would the Chair consider the desirability of using its discretion and imposing a time-limit ?

**Some Honourable Members :** No, no.

**Some Honourable Members :** Yes, yes.

**Mr. Deputy Speaker :** Order, order.

**Shri M. Tirumala Rao** (Madras : General): This point was raised by Mr. Sidhva and disposed of by you.

**Mr. Deputy Speaker :** Mr. Sidhva raised another point. He wanted to know if this House would continue the discussion tomorrow and what length of time has been allotted. It is an official Bill and it is, for Government to allot the number of days, I replied. The position is that the Speaker can only say whether debate on a particular Bill has been sufficient or not. So far as this Bill is concerned, hon. Members are fully aware that no time-limit can be imposed. (*Hear, hear*).

Hon. Member will kindly wait and see. The general discussion on this Bill was begun so early as 24th February 1949. It continued on the 25th, 26th, 28th, 1st March, 1st April and 2nd April. One hon. Member took six hours and eight minutes. We spent in all 6 days, 9 hours and 20 minutes. All the same, only 14 hon. Members have spoken so far. The last speaker who has just concluded, Pandit Mukut Bihari Lal Bhargava, started at 3-15 p.m. on 2-4-49 and went on till 5 that day—one and a three-quarter hours. Today he went on from 11-50 to 12-57. At this rate, we will have to sit nearly a year if all hon. Members are to have a chance to speak. Many of the points which have been made in the speeches are all very enlightening. I say nothing against the speeches. But, I have received a large number of requests from hon. Members for opportunities to speak.

**Pandit Lakshmi Kanta Maitra** (West Bengal: General): We are all in so much darkness. We want light from every side.

**Mr. Deputy Speaker :** Light from every side is coming, but if we proceed at this rate, light from many sides would not come.

Therefore, I would request hon. Members to limit their speeches, as far as possible, to half an hour. On all Resolutions fifteen minutes are placed at the disposal of hon. Members and they are able to put their cases perfectly well within that time. I have given twice as much time. But I do not insist upon it. It is simply my suggestion to the House. Otherwise, if a closure is applied tomorrow, possibly by that time a number of Members may have spoken and sometimes wittingly or unwittingly if the House is in favour of closure, it has to be accepted. I am giving a warning in advance.

**The Honourable Shri K. Santhanam** (Minister of State for Transport and Railways) : I only want to say that I hope to finish before the time-limit fixed by you. I hope you will permit me to proceed in the afternoon.

**Mr. Deputy Speaker** : It ought not to be said ahead. I am leaving it to hon. Members to decide, so that all Members may have equal opportunities. Normally, half an hour is the time-limit I suggest. If the House agrees.

**Some Honourable Members** : Agreed.

**Some Honourable Members** : No, no.

**Mr. Deputy Speaker** : Order, order, Mr. Sahu wants to say something.

**Shri Lakshminarayan Sahu** (Orissa : General) : Sir, I would like to know if priority for speaking will be given to those Members who are willing to restrict their speeches to only five, seven or ten minutes.

**Mr. Deputy Speaker** : Therefore, if I have to accept that suggestion, I hope hon. Members will also indicate in their letters to me how many minutes they are likely to take and I will ring the bell as soon as that minute is over.

**Pandit Lakshmi Kanta Maitra** : Before you adjourn, I want to say just one thing. You said just now that it will be perfectly open to Members to move closure. But according to all parliamentary procedure, it is open to the Speaker to say whether there has been sufficient debate or not and whether the closure is justified or not. That is a well established practice and you also reiterated that you follow that. In view of that statement, do you say beforehand, even today, that you will have to accept closure tomorrow?