

Mr. Deputy Speaker : The Chair has no right to make up its mind in advance. It is now 1 o'clock and the House stands adjourned till 2-30 p.m.

The Assembly then adjourned for Lunch till Half Past two of the Clock.

The Assembly re-assembled at Half Past Two of the Clock, Mr. Deputy Speaker (Shri M. Ananthasayanam Ayyangar) in the Chair.

HINDU CODE—Contd.

The Honourable Shri K. Santhanam : Sir, I rise to offer my whole-hearted support to the Hindu Code as it has emerged from the Select Committee. Sir, I have been watching the progress of this lawmaking from its earliest beginnings. I had the privilege of tendering evidence before the Rau Committee and since it has emerged from that Committee it has undergone many changes and, in my view, steady improvement.

Sir, I feel that this Hindu Code is merely a continuation, in the social sphere, of the great Constitution we have completed the other day in our capacity as a constitution-making body. Sir, what are the basic factors of that Constitution ? It is based on the unification, on the integration and on the strengthening of India as one political entity. Similarly this Bill is based on the principles of unification, integration and strengthening of the Hindu community. Sir, unless the Hindu community is unified, integrated and strengthened, I do not see how the great Constitution we have made can be successfully worked.

Pandit Lakshmi Kanta Maitra : Unified by divorce ?

The Honourable Shri K. Santhanam : The idea that politically you can be well-advanced, that in the field of economics you can preach socialism, but yet be a believer in social stagnation is wholly incompatible and unrealistic. India has to move on all fronts, or not at all and I think the change and reform in the social sphere is as indispensable as our progress in the political and economic spheres.

Pandit Lakshmi Kanta Maitra : Democracy in marriage also ?

The Honourable Shri K. Santhanam : My hon. friends may well ask why we should not compile a code for the whole country rather than a unified code for the Hindu community alone. Well, Sir, while

we were making the Constitution there were many who were asking . why we continued to have provinces, why we were building on the Government of India Act and why we were continuing to have Rajpramukhs ? Sir, our argument in reply was that while we wanted change and reform we wanted to build, as far as possible, on the existing foundations, that we wanted a judicious combination of conservation of the existing forces and the forces that make for change and reform. This Bill is based on the same principle. It seeks to conserve as much of the Hindu law as is consistent with modern needs and ideas and it seeks to change wherever such change is necessary. I think that is the only way the whole country as well as the Hindu society can progress without internal disruptions and violent revolutions. Sir, our policy is one of peaceful and voluntary change and this Bill is a notable attempt in that process of peaceful change in the social sphere.

Sir, I don't want to go into the clauses of the Bill. The time is not yet ripe for it and when we take up clause by clause it will be time to scrutinise particular provisions.

Pandit Lakshmi Kanta Maitra : That stage will not come.

The Honourable Shri K. Santhanam : Well, let us see.

Pandit Lakshmi Kanta Maitra : Not unless there are elaborate lathi charges outside.

The Honourable Shri K. Santhanam : There were people who were prophesying that the Constitution would never be passed ; but we have passed it. In the same way, we are going to put this Bill on the Statute Book.

Sir, I am not saying that certain clauses, or even parts are not susceptible of slight changes or adjustments.

Pandit Lakshmi Kanta Maitra : Slight!

The Honourable Shri K. Santhanam : But I shall confine myself to the broad principles contained in the Bill and, leave details to a future occasion.

Sir, this Bill has got four aspects, namely, codification, unification, rationalisation and reform.

Sjt. Rohini Kumar Chaudhuri (Assam: General) - And falsification too.

The Honourable Shri K. Santhanam : Well, I will leave that part to you. So far as the parts dealing with adoption, with minority, with guardianship and with maintenance are concerned, they are simply

codification of existing Hindu law. (*An Honourable Member*: Question). You may question it, but I think Sir B. N. Rau is a far greater legal authority than the hon. Member.

Pandit Lakshmi Kanta Maitra : That is absolutely no argument. He may be or not. I can understand an argument—but this sort of talk I cannot stand.

Mr. Deputy Speaker : Order, order.

Pandit Lakshmi Kanta Maitra : But what is the meaning in arguing that such and such a man is far above anybody else here ? Is that any argument ?

Mr. Deputy Speaker : There is no meaning in all hon. Members talking simultaneously. Each hon. Member will have his turn and I am prepared to sit here as long as the House wants me to.

So far as the hon. Member's reference to Sir B. N. Rau is concerned, he probably meant that he was a Judge of the Calcutta High Court and it is not unparliamentary to say that the opinion of a particular person is highly valuable. Even as an individual the hon. Member perhaps meant that he knows him much better than any other Member of the House.

The Honourable Shri K. Santhanam : Sir, I merely stated that Sir B. N. Rau is a better legal authority than the questioner.

Sjt. Rohini Kumar Chaudhuri : On a point of order, Sir, Hindu Law is absolutely and intimately connected with Hindu religion. Can anyone tolerate the idea of a non-Hindu being an authority on Hindu Law and principles ?

Mr. Deputy Speaker : I can well appreciate differences of opinion among hon. Members. But there is no room for excitement. Let there be patience first and all hon. Members will certainly contribute to the debate in a harmonious atmosphere.

Shri L. Krishnaswami Bharathi : The hon. Member who just now interrupted seems to say that Shri B. N. Rau is not a Hindu ; it is an insinuation which should not be allowed. Shri B. N. Rau is not here and it is your duty, Sir, to protect him.

Mr. Deputy Speaker : I am not in a position to say to what religion any particular person belongs. I do not know it personally. But I expect hon. Members to keep within limits, and because they have got certain privileges, they should not defame others. They should keep within limits, and if an hon. Member makes an aspersion, it will be wrong.

The Honourable Shri K. Santhanam : Sir, I do not mind interruptions; but if those who are opposed to this Bill think that they have the monopoly of such tactics, they are mistaken. Sir, I assert with all the emphasis I can that Shri B. N. Rau is as good a Hindu as any in this House. And so far as I am concerned, I may say that my ancestors have come from very orthodox Hindus, and up to this moment we have not eaten even a little bit of fish, and I may claim to be more orthodox than. . . .

Shri H. V. Kamath (C. P. and Berar : General) : Is eating or not eating fish a test of orthodoxy?

The Honourable Shri K. Santhanam : In my part of the country eating fish is considered to be the most heterodox fashion.

Pandit Lakshmi Kanta Maitra : And in my part of the country eating *iddlies* and *rasom* is considered most objectionable.

Mr. Deputy Speaker : Let hon. Members come to more lasting things like marriages and divorce, than *iddlies* and *fish*.

Shri R. K. Sidhva : Let us not reduce the House to a fish market.

The Honourable Shri K. Santhanam : I again say that so far as adoption, guardianship, minority etc. are concerned, they are merely codification of existing law, as can be found in the judgments of British courts. Sir, whatever Manu might have written, whatever Yagnavalkya might have written, the present Hindu law is the law as interpreted in the British Courts for the last one hundred and fifty years, and against this interpretation, even Manu and Yagnavalkya are utterly helpless. So the Hindu law now is the law as interpreted and as laid down by the British judges in this country.

An Honourable Member : British judges ?

The Honourable Shri K. Santhanam : British or Britishized judges. Therefore, Sir, I think we are at least as competent to change that law as the British Judges who have changed the ancient law into the present Hindu law as it is.

Sir, I come now to the next aspect of the Hindu Code—the unification portion of it. I am surprised that any Hindu looking to the future should say that so far as the law is concerned, no unification is necessary, that each part can have a regional law, that in Bengal we can have the Dayabhaga law, that in Malabar they can have the Marumakkattayam law and other parts the Mitakshara law and so on, that everything should be as it was in the ancient days. I cannot

understand people when they say that in politics and in economics we shall be in the year 1950 A.D. but so far as the law is concerned we shall be in 1950 B.C. Sir, to say so is wholly a disintegrating and disastrous proposition. If Hindus have to be one community, if they have to have vitality they must all come under one law, whether it be Dayabhaga or Mitakshra. I can understand some people saying, "Let us have Mitakshara" or "Let Bengal come under Mitakshara". I can understand other people saying, let them all come under the Dayabhaga law. But to say that Hindus should be dissected into various regional groups, each having its own law, so that if a Bengali goes to Malabar, the courts would have to interpret three types of Hindu law, that I think, Sir, is pronouncing the doom of Hindu society. Sir, the enemies of Hindu society cannot ask for anything better than that Hindus should be administered by a dozen regional laws. Sir, by this Bill we are at last bringing Hindu society under one unified Hindu law, let it be any law, but it should be one unified Hindu law for the entire Hindu community, Sir, in this Bill

Sjt. Rohini Kumar Chaudhari : Sir, on a point of order, the hon. Member is speaking communalism in this House. He is talking of unifying all the Hindus, probably against the Muslims and others. He wants one law for the Hindus ; so he is preaching communalism.

Mr. Deputy Speaker : This point of order only enlivens the debate, but it is not really any point of order.

The Honourable Shri K. Santhanam : Sir, the day this Bill is put on the Statute Book, the whole process of assimilation will begin and it will not be long before the rest of the Indians in this country will begin to conform to that law, and if necessary, we shall give them minor changes so that the whole country will come under one civil code. Sir, this process is not a disintegrating process but a cementing process. The process will go on and before long.

Pandit Lakshmi Kanta Maitra : It is going on outside.

Shrimati G. Durgabai (Madras : General) : It is going on inside.

Pandit Lakshmi Kanta Maitra : Inspired by you.

The Honourable Shri K. Santhanam : I have been in this House too long to be worried by these interruptions.

Now, the question is whether we should prefer the Dayabhaga law or the Mitakshara law. My friend Pandit Mukut Bihari Lal said that Mitakshara law is followed by twenty crores of people and Dayabhaga is followed by five crores, and asked why should we choose the law of the five crores rather than the law of the twenty crores. I do feel

that comparatively Mitakshra law was intended to serve the needs of ancient rural communities whose main property was agricultural land. It was on the basis of that conception of society that the right of birth and the right of survivorship were evolved. But we are fast evolving out of that primitive community into a modern community in which property goes from the immovable to the movable property. You have immovable properties diminishing and movable properties increasing. Even immovable property is being converted into movable property, in the form of shares, cash savings deposits and government securities and other things. Therefore, we should adopt that system which is in tune with these changes from the tangible immovable property to intangible and notional property. Where property is largely intangible, this right of birth is really impracticable. You cannot enforce it. It will always be open to the father to dispose of securities or shares or movable property. It is not possible for a son to inherit a right in shares. It is possible for him to inherit a share in agricultural land, but it is not possible for him to inherit a right in cash securities or other movable property. That is why this Bill has given preference to the Dayabhaga system of law rather than the Mitakshra system of law : not because it had any disrespect to the twenty crores who are under the Mitakshara law, nor because it had any special preference to the Dayabhaga system of law. Today, the right of inheritance by birth and right of survivorship have become archaic and impractical institutions.

Pandit Lakshmi Kanta Maitra : Primitive.

The Honourable Shri K. Santhanam : Either we drop them deliberately through legislation or they will be discontinued in an irregular and disorderly fashion.

Pandit Lakshmi Kanta Maitra : Follow Bengal in other respects also.

Some Honourable Members : Order, order.

Sjt. Rohini Kumar Chaudhari : On a point of order, Sir, what right has a Member to call 'order, order'. I find Shrimati Durgabai calling 'order, order'.

Shrimati Renuka Ray (West Bengal : General): Is this a point of order ?

Mr. Deputy Speaker : I am extremely glad to find that hon. Members are sharing the right of the Speaker along with me.

Sjt. Rohini Kumar Chaudhari : (rose).

The Honourable Shri K. Santhanam : I am afraid I shall not be able to give way to my Hon. friend from Assam.

Sjt. Rohini Kumar Chaudhari : All right, I shall keep quiet. If you want to suffer from the tyranny of women, you suffer.

Mr. Deputy Speaker : Order, order.

The Honourable Shri K. Santhanam : Sir, much has been said about the so-called sacred institution of joint family. In the mediaeval and ancient times, this so-called joint family might have served a very useful purpose. It is not my business to deny that. But, today, joint family exists only in controversy. I know the peasants ; I have been in the rural areas probably much longer than many of you. I have worked for ten years continuously in the rural areas. I know, Sir, the first thing, when a peasant's son marries, the peasant does is, to set up a new house, give the son his share in the ancestral land, one acre or half an acre or one-quarter of an acre, and establishes the son as a separate family. Unless this is done, the peasant knows that his family will be disintegrated. In the case of certain very rich people, the so-called joint family may continue with a double system of account keeping for certain purposes, to cheat the Income-tax and for other purposes. Ordinarily, even today, in the middle class families, what happens? One son lives in the village; another son is in Delhi in service in the Government of India; another son is in Madras in some other service; another son does business. What is the meaning of maintaining a joint family and ancestral property ? It is better that they are allowed to partition. Then, if they want voluntarily to come back and live together, let them become a co-operative society, let them become any kind of legal personality suited to modern conditions. To continue the joint family owing to ancestral worship, without regard to the existing circumstances, I think it is sheer conservatism run mad.

Shri Brajeshwar Prasad (Bihar : General) : A Daniel come to judgement.

The Honourable Shri K. Santhanam : My hon. friend from Bihar is a supreme example of Daniel as he has proved in the constitution making, and I am sure he will prove himself so here.

Shri Brajeshwar Prasad : You are also.

The Honourable Shri K. Santhanam : I am not giving way.

Mr. Deputy Speaker : Let there be no talk across the table. I am exceedingly sorry ; I have been a little indulgent. I find an acrimonious controversy is carried on. So long as there is good humour there is

no harm. However, the hon. Member must be allowed to go on. He may lose the trend of his thought. Otherwise also it is inconvenient to go on being harassed.

Sjt. Rohini Kumar Chaudhari : Mr. Santhanam is in a very good mood.

The Honourable Shri K. Santhanam : Because my case is simple and straightforward and I need not get a bad temper or raise all kinds of fantastic bogeys.

Let me now come to the next aspect, that is, rationalisation. One point which has evoked the greatest amount of opposition is the daughter's right to the father's property. If the old property had remained intact and if property consisted only of agricultural lands, then I can sympathise with those who say that to bring in a foreigner, an outsider into the family may mean great deal of inconvenience. I have already stated that property is moving from immovable property to movable.

Dr. P. S. Deshmukh (C. P. and Berar : General): How can it ? All landed property cannot be dissolved. The Hindu Code Bill will not evaporate lands.

The Honourable Shri K. Santhanam : So far as the peasant community is concerned, they automatically divide on marriage. If a son-in-law is willing to come and live in the village, I do not see why he should not be allowed.

Dr. P. S. Deshmukh : Hereafter, the rule will be divide and rule.

The Honourable Shri K. Santhanam : If the sons can divide, the daughter also can divide. In the future property will consist of cash securities and other things. Therefore, there is no reason why the daughter should not have the same right as the son. As a matter of adjustment, I am prepared to throw out one or two ideas. In estimating the share of the married daughters in a family, I think it would not be unfair to set off any amounts which may have been spent for their marriage. In many of the middle class families, the amount spent for the marriages is often equal to if not greater than the share which the daughter may get. I think that would be a fair set off. Similarly, if there is only one dwelling house or if there is only a small extent of agricultural land, I think it will not be unfair to say that so far as the daughter's share is concerned, she must take her share in the form of cash or other movable property rather than insist on a partition of the house or the immovable property.

Ch. Ranbir Singh (East Punjab : General): Wherefrom to bring that cash ?

The Honourable Shri K. Santhanam : If you have a creditor, where will you find the cash ? Is it not possible ? It may be paid in easy annuities or in some such manner. In a harmonious family, adjustment will be easy; in an unharmonious family, courts can find ways and means of adjusting the burden without inequity to any party. Subject to these adjustments, I do not see any rational justification why the daughter should be treated exactly on the same basis as a son. I do not think there will be any kind of hardship. All kinds of bogeys have been raised. After all, the daughter becomes a daughter-in-law. If the daughter gets a share, similarly the daughter in the other house gets a share and therefore in the long run, except for an adjustment of legal rights through the establishment of self respect and social equality between man and woman, the property arrangements will remain much the same; because at present the daughter does not take away from the father's house; she gets more in her father-in-law's house. Hereafter, under the Bill, she will take a little from the father's house, much less from the father-in-law's house. In the long run, there will not be much difference in the distribution of property. Only the process will be more satisfactory, and more self-respecting to all the parties concerned. The daughter will feel that she is as good as a brother; that is all. I think that that is a feeling which we ought to encourage in this country. We have removed all social inequalities in policies; we have given the women the same equal franchise as men. Why in point of inheritance and succession alone should we have any kind of stigma based on sex ? I think the sooner we voluntarily give it up, the greater will be the strength of the country. Otherwise, some day or other, on account of the adult franchise, there will be such a vast volume of feeling among the women all over the country that would compel us to make the change. Then, it would be a disgrace to the men of India. It is better you do it now in advance of adult franchise so that we can go to the probably five or six crores of women who will be voters and say, "look here, we have done the right thing before you wanted it; we have given you the votes; we have given you property rights; you are equal to men; there be no more sex conflicts."

The last point I have to deal with is the question of reform. It
 3 P.M. is in the field of marriage there is any real attempt at reform.
 It is partly permissive and partly compulsory. The one

compulsion is monogamy. I want all my friends and Members of this House to stand up and say whether they approve this reform or not. They have been very prudently silent on this subject and in spite of speaking for three hours, I don't see why people avoid this subject. Do they want to establish monogamy or not ?

Pandit Lakshmi Kanta Maitra : Monogamy is already established.

The Honourable Shri K. Santhanam : Some people actually enjoy the luxury of two or more wives, others enjoy mentally the possibility of more wives!

Shri H. V. Kamath : What about polyandry ?

The Honourable Shri K. Santhanam : Therefore I say this that this is one thing in which the old Aryan tradition had made a profound mistake. It is time that we who consider ourselves to be the glorious descendants of the great Aryans now confess that it was a mistake and correct it rather voluntarily and unanimously. This polygamy must go. But complete and absolute monogamy will also become a legal fiction unless you provide reasonable facilities for divorce in very hard cases. Unless we provide such an outlet, it will bring evil.

Smt. Rohini Kumar Chaudhari : Do you agree for the women being prosecuted for adultery ?

The Honourable Shri K. Santhanam : I agree to women being subjected to same penalties for the same crimes but probably my hon. friend from Assam has a soft corner for that subject. Monogamy and divorce provisions go together. They must be taken as one co-ordinated law and in this respect this Bill does propose a reform which is not sanctioned by the Shastras but this is a reform. . . .

Pandit Govind Malaviya (U. P. : General): Do I understand that the hon. member will oppose monogamy also if divorce is not sanctioned ?

The Honourable Shri K. Santhanam : I will support monogamy in any case but I will support it in a rational form rather than in an irrational form. If my friend wants monogamy and at the same time that wherever a husband is impotent or a criminal, there should be no divorce or *vice versa*, then I think he wants monogamy in an irrational form. I want it in a rational form. That is the difference between us.

I will just touch one other aspect. One other great merit of this Bill it takes away all legal sanction from the caste system. We

abolished untouchability in the Constitution. Now we take the social reform further and take away all legal sanction for caste. Here in this Bill whether it is for marriage or for any other purpose, all Hindus from the so called Untouchables upto the so called Acharya Brahmins—all of them are one.

Some Honourable Members : Without a caste, who is a Hindu ?

The Honourable Shri K. Santhanam : My friend asks “Without a caste, who is a Hindu ?” With the caste, I think, Hindu is a monster according to me. (Hear, hear). In this country we want to establish a Hindu Community without caste. Either we cease to be Hindus altogether or we establish Hinduism without caste. There is no alternative left for us.

Shri Lakshminarayan Sahu : Mohammadans also can be called Hindus.

The Honourable Shri K. Santhanam : On the day the Muslims accept the Gita and Vedanta, I am prepared to embrace them as Hindus.

Shri M. Tirumala Rao : Even Gita refers to caste.

Mr. Deputy Speaker : Let there be less of this cross talk. The hon. Member may go on. Each one is trying to persuade the other.

The Honourable Shri K. Santhanam : In spite of interruptions I am going to convince some of my friends. My friend Mr. Tirumala Rao says that I am swearing by the Gita. What I am saying is they form the minimum article of faith for all the Hindus. Therefore, if after this Bill, there are no distinctions between Hindus, Muslims and Christians, then it is better for the whole country. We are not proud of keeping alive distinctions which have no meaning or which are irrational. If Muslims also remove all such distinctions which are irrational; if Christians remove all distinctions which are irrational, we shall before long meet on a plane in which we are all one—whatever we may call ourselves. Meanwhile our object both in the Constitution and in this Bill is to see that the majority community in this country are strong, united and have shed all prejudices and practices which have divided it into sects and will become an invincible foundation on which the glory and strength of future India can be built. I am sure that without this Bill and without the changes the Bill advocates, the Hindu community will be a weak, torn and unprogressive community and if the majority of the people continue in that condition we cannot make much of the political and other economic opportunities which the Constitution and God have given us. Therefore I have said

this is really complementary to the Constitution which we have enacted and it is in the supreme fitness of things that the same body which enacted the Constitution will also be enacting this Hindu Code into Law. I hope it will be put on the Statute Book and our descendants will say that these people not only enacted the Constitution but also reformed the Hindu law.

Pandit Lakshmi Kanta Maitra : Destroyed the Constitution !

The Honourable Shri K. Santhanam : I believe our ancestors are watching and are blessing us for this.

Shri Loknath Misra : On a point of information. My friend has just now sworn by the Vedanta and the Bhagvad Gita. Is he prepared to reject any provision that will go against the tenets of these ?

The Honourable Shri K. Santhanam : If they are based on wrong premises, I am bound to reject them.

Mr. Deputy Speaker : It is unnecessary to carry on this argument.

The Honourable Shri K. Santhanam : Sir, I do not want to tire the House. I have dealt with the main points which came to my mind. I wish to appeal to those who by ancient prejudice have come to feel that it is their duty to oppose the Bill to reconsider their attitude, to have another vision—the vision of a Hindu community without caste, without distinctions, all pulling as one man. If we could convert the present disintegrated, weak and for a thousand years servile Hindu community into a very strong, healthy and great community, we would have done a work which our sons and grandsons will be proud of.

Shri H. V. Pataskar (Bombay : General): Sir, we are considering a Bill which is going to revolutionise the structure of the Hindu society. That society comprises more than about 25 crores of people at the present time. It is therefore not unnatural that even the common man has begun to take interest in what is happening and it is best in the interests of all sides, to take into account the fact that when we are revolutionising by this Bill the whole structure of Hindu society, it is not desirable that we should ignore the feelings that have been roused in the common man with respect to the provisions contained in the Bill.

The common man is at the present moment ill-equipped with education. He is worried with the problem of feeding himself and his dependents. He is faced with scarcity of clothing, for want of funds if for nothing else, and he generally finds life so difficult. Even then he has begun to take interest in this legislation because he thinks that

this Bill is going to affect the structure of his Hindu society, which is the growth and product of several centuries past. Therefore it is that we must first educate him before we undertake the serious task of changing the whole structure of the society to which he belongs. I will make it first clear that I am not opposed to many of the provisions of the Bill but the time selected for the purpose, to my mind, is most inopportune. I propose to take only 20 minutes and if I am allowed to make my remarks without interruptions I will be able to finish it within that time, because I am aware that there are many members of this house who are interested either on one side or the other and who want to take part in the debate.,

The common man, so far as I have been able to understand his reactions to the Bill, thinks that at present the attention of the Government should be concentrated on the problems which affect him in the matter of his food, clothing, inflation and several other things. When he is worried about his day to day needs and what he requires for his sustenance he naturally asks why are the Government interested in what form his marriage should be, whether he should have one wife or more, when he cannot even sustain one. All these things may be necessary and I am not opposed to reform. It has been admitted and our leaders are also saying it that we are passing through very critical times. We know the difficulties of the people, There is scarcity of food, clothing and the other necessities of life. Compared to the common man we are living here a comfortable life. He naturally thinks that what the leaders should concentrate upon is more the solution of his day to day problems than the problems relating to marriage, inheritance, etc. These things have been there for centuries past and it would not matter if they go on in the same way for some more months or even years.

If our sisters who are enthusiastic about the Bill or our other friends who are clamouring for the immediate codification and amendment of the Hindu Law, if they approach the common man in the rural areas, they will find that he is so much worried about so many other things that he is surprised why at this moment you should rush a measure of this sort through in this house. He naturally thinks that this should be stayed for the time being. There is quite a lot of discontent in the country. On account of the partition there is the problem of the refugees who have to be settled and sheltered. At this moment is it necessary to interest ourselves so intently on this question, as

to what form our marriages should be ? The time chosen for rushing the Bill through is not very opportune and it is likely to add to the difficulties of the situation rather than do otherwise.

What are the subjects dealt with under this Code ? Marriage, Inheritance and Adoption. So far as marriage is concerned there is even now the Civil Marriage Act, under which those that do not want to marry in the orthodox way can marry. Many people are as a matter of fact doing it. Therefore this measure does not look so urgent as made out.

An Honourable Member : Under that Act you have to say that you do not belong to any religion.

Shri H. V. Pataskar : That is gone my dear friend : It is dead and gone, long past. Under the Civil Marriage Act, any two Hindus belonging to any caste or community, without making a declaration that they do not belong to any religion, can get married and there is nothing to prevent them from doing so.

There is much agitation with respect to the question of inheritance. We have laid down the equality of the sexes as a principle in our Constitution and in these days it is not possible for anyone to go back upon it. The objection raised is not with regard to the equality of the sexes. A father who has a son and a daughter loves them both equally and there cannot be any difference. But so far as inheritance is concerned it has to be looked at from a different point of view. For that you have to look at the development of the present structure of our society. This structure has been evolved through a process of evolution during the last many centuries. Hinduism is not a religion in the sense in which Christianity is a religion, Zoroastrianism is a religion or Islam is a religion . . .

An Honourable Member : What is religion then ?

Shri H. V. Pataskar : Christianity is the religion of those who believe in Christ and follow his teachings in the Bible. The Zoroastrians are the followers of Zoroaster and Islam is the religion of those who believe in Mohammad the Prophet and the Koran as their sacred book. But what is Hinduism ? Hinduism includes not only the followers of the Vedas or the followers of Rama and Krishna or Shiva or of the innumerable gods in various shapes and forms but it also includes those who worship nature and those who do not believe in any God whatsoever and those who do not believe in the oneness of God also. Their places of worship, methods of worship and objects of worship

are all varied. Hinduism is a growth which has absorbed all the different currents and streams of social and religious beliefs and practices prevailing over several centuries. It is an all embracing faith consistent with the ideal of कृण्वन्तोविश्वमार्यम्. Hinduism at present is a growth which has contrived to combine in it all these various streams of life. At present Hinduism may be a cast-iron system, but it has not always been so. Our religion is based not on the tenets of one particular man or of one particular book, but it is based on what is *dharma*, and धर्म : means धारयते अनेन इति धर्म : or धारणात् धर्मम् इत्यादुह : *Dharma* is that which sustains society. That is the ideal on which our Hindu society is built, namely that which is necessary for the sustenance and advancement of society. Of course I do admit that the present state of Hindu society is not a very happy one. But it has not been all along so. Therefore I take you to this point because it will give you an idea as to why there is objection to this Bill. That which sustains society is religion and sustenance of the society is our ideal. Our society may appear stagnant at present, but it is not, has not been really so. Hinduism has undergone vast changes in the course of its evolution. I am not afraid of changes. It has undergone several changes in the past. At one time Buddhism was flourishing in this land and engulfed not only Bharat Varsha but it spread to far off countries beyond Bharat Varsha. But today there are very few Buddhists to be found here. What has happened to them ? They have been absorbed in Hinduism, they have undergone a metamorphosis, and we of the present generation are their descendants. That shows that we are not a stagnant race and that we have adapted ourselves to the changing needs of society. I for one be changed. That is not the real nature of Hinduism. And I am not one of those who say that what we now call Hindu Law should not be changed. Our Law has in fact undergone changes even during the period of the British domination.

The previous speaker, the Hon. Mr. Santhanam, rightly referred to the fact that judicial interpretations by courts which were not conversant with the original tenets of various laws regarding inheritance, adoption and marriage have not only changed the course of our social and economic life but have created many anomalies also. It has certainly become desirable to remove those anomalies and bring our Law in conformity with the changing needs of society. The world is changing fast and we cannot but be affected by what is happening elsewhere. We do not wish to say that we will keep ourselves away from the

rest of the world. That is not the idea. But the codification of the Law is one thing and amendment of it is another. This Bill seeks to do two things. We want to codify the law and amend its provisions. So far as codification is concerned, I understand it means that we want to remove the anomalies. At the present moment we have got so many systems of law prevalent. There is Dayabhaga in certain parts, there is Mitakshara in certain other parts, and the Bombay school has its own distinctive features. And there is what is called Marumakkattayam in certain parts of South India. But the areas where they are prevalent have also become well-defined, and there is a certain amount of stability. Therefore, if we proceed first with the task of codifying the law as it stands at present in these well-defined areas, that itself will not only bring about uniformity but it will also lead to a process of amendment, at a later stage. Mere codification of the law as it stands will also not evoke much controversy, because that is the existing law. Irrespective of the question that it has been modified by the courts consisting of British judges, there is a certain stability about it. Therefore, if we only confine ourselves to codification I think, much of the opposition that we see at the present moment will not be there. Not only that. If we do the codification only, we will secure the good will of the people and I believe that it will facilitate the amendment of the Hindu Code for certain other matters and by gradual stages subsequently. But the amendment of the existing law in the way it is tried to be done is another matter. Codification and amendment of the law have been hanging fire for the last so many years. In my view if we had proceeded with the codification only as a first step, the law would have been codified long ago. Ever since the Rau Committee was appointed, evidence was taken and so many Reports and so many Bills were formulated. But they tried to do two things simultaneously, namely, codification as well as amendment. Naturally, both have remained unfulfilled. If they had confined themselves to codification only, it would have been done long back and the stage would now have been reached for amendment. That is my view of the matter.

The present Bill deals, as I said, with three distinct matters, namely, marriage, inheritance and succession. Let us see what the basic idea of our society is. With the impact of modern ideas, modern education and modern methods of life the question of equality of sexes has naturally been agitating the minds of people, particularly of the

educated women of the country. We have also accepted that equality in our Constitution. So, superficially looked at, it strikes one as to why there should be any difference between a son and a daughter in the matter of inheritance. But the question is not such a simple one. A father's desire for the well-being of a son or daughter cannot be different. Naturally his love and affection is bound to be equal. No sensible man can think that the son should get everything and the daughter nothing. In fact that has not happened. Reference was made that even in the middle-class families,—leave aside the rich, they are very few in number—the father spends much more on the marriage of the daughter than what his son could ever hope of getting, in many cases even at the cost of the education of his sons. I say 'in many cases'. That is my reading of the matter. Why then is there opposition in regard to inheritance ? Even the Sanatanist loves his daughter as much as his son. We cannot say that Sanatanists make a difference in this respect. The opposition is due to an important factor for considering which we must look to the whole structure of our Hindu society.

A reference was made by my hon. friend Pandit Mukut Bihari Lal Bhargava in this respect. I would like to elaborate that point a little in as short a time as I can. The whole structure of our Hindu society is evolved through centuries and centuries of time. In the structure of our society the basic unit is the family. And on the continuity of that family as a unit rested naturally the stability of our society. It is not based on an individual as unit, but more or less the basis of the whole structure is the family as a unit. And the continuity of the family was naturally the main object with which all our laws and customs have been evolved from time to time. The pivot therefore was the continuity of the family which was the unit of the structure. Daughters naturally by marriage pass into a different family while the sons remain in the family to continue it. To foster the continuity and to prevent its being broken up, the joint family system was evolved. Why was the joint family system a peculiar feature of Hindu society ? Because Hindu society is based on the continuity of the family. That is why the joint family system is a peculiar institution of Hindu Law not known to other systems of law which are more or less based on individuals. Till only a generation or two back the joint family system worked well. It has maintained the continuity and stability of our social structure for centuries past. That is why there is objection to the

throwing open of inheritance to the daughter. That objection is not for political or social reasons but because if you open the inheritance to a daughter the result is that the whole social structure based on the joint family system will be broken.

The trend in the modern world is towards individualism. The joint family system is cracking in many places. I would go to the length of saying that the joint family system would not continue for all time under modern conditions. But as it is there, the question is whether we shall gradually replace it by the individual as the basis of our society or whether we shall break it up by law as is proposed to be done by this measure. If we want to break up the Hindu society suddenly, then I am afraid we shall be rocking and shaking the foundations of that society which may result in consequences unforeseen and unpredictable. The danger involved is not the mere opening of inheritance to daughters but the fact that by that opening up of inheritance the whole basis of society is involved. Hence the opposition. If only we try by an evolutionary process to help in the process of disintegration of the family which has already started owing to various economic and social causes, the same results as are aimed at will be achieved but not suddenly and abruptly. There is a clause in the Bill which says clearly that from the date of the commencement of the Code the whole joint family system as such will disappear. You are trying to do it suddenly and to my mind that is sure to rock the very foundations of the society which has been based for centuries past on the joint family as a unit of society. I would appeal to my enthusiastic reformer friends that while I am one with them, that this system no doubt has to be changed, and that as the world stands today no one will be able to resist it for too long, while that is so the question is whether we shall do it gradually, whether we shall carry the people with us and go as far as they come with us, or as far as we can drag them with us, or on the other hand whether we shall suddenly, by a stroke of the pen and by legislation, say that all this joint family system is destroyed. Even in these days when owing to abnormal circumstances people are worried by so many problems, this question is attracting their attention and therefore any abrupt action is likely to result in a state of affairs which is desirable neither to the reformers nor to the others. I agree we can't remain stagnant. The Hindu society has undergone so many changes in the past but by a different process altogether. If we try to force the events which must happen gradually, I am sure the result is not going to be very happy.

Sir, I am surprised at one thing. Here we are trying to preserve adoption. I don't know for what purpose. Adoption is a thing which is peculiar to Hindu law. In other societies also children are adopted but not for the purpose of continuing the family, only to satisfy the natural craving in any human being to have children and to rear them. I am told that in America and England also people do adopt children but there the object of adoption is different. The adoption as envisaged in the present system of Hindu law is peculiar and it is so because the Hindu structure of the joint family is based on the continuity of that joint family. But after the break up of the joint family in the way you are trying to do by this legislation, what is the necessity for making a provision for adoption? Look at it from a different view. Why was adoption a peculiar feature of Hindu society ? Because the main feature of the Hindu society was the basis of the joint family and its continuity required adoption. With the breaking up of the joint family and the coming of individualism, I don't see why we should waste our time on trying to preserve adoption. I am certainly against adoption. Even in the case of adoptions that now take place, 99 cases out of 100 result in litigation in courts because the whole idea has undergone a change. The widow adopts a child thinking that the boy adopted might be useful to her in managing her property and affairs free of charge. The boy thinks that by adoption he will get something from the person who adopts him for nothing. So, at present adoption takes place purely from a motive of self-interest; adoption as conceived in the olden days is disappearing. As a lawyer of some standing and experience, I have found that in 99 out of 100 cases of adoption the result has been litigation because the original idea underlying adoption has undergone a change. But now with the coming into force of the provisions of this Bill the whole joint family system will disappear, the individualistic society as in other parts of the world will come and it is therefore not necessary to make any provision regarding adoption. It would be confusing to do so. If we are consistent and logical in what we are doing, we should do away with adoption altogether.

I have now to refer to marriage and divorce. A point was raised by the Hon. member Mr. Santhanam who asked everyone whether they were against or in favour of monogamy. I would say that monogamy is absolutely necessary in these days. I don't think there is any member in this house who is opposed to it. But is the Hindu

Code Bill necessary for that purpose ? We have got a measure in the Bombay Province by which, so far as that Province is concerned, there is monogamy and as a natural corollary to it divorce in certain cases is allowed. We have not gone further than that measure in these matters. If the only object is to ordain monogamy then I say there can be no objection to it, for, apart from ideological reasons there are practical reasons also in its favour. Nobody now wants to have more than one wife. There are very few excepting a few millionaires and multimillionaires who can afford to have that luxury; others can't have it. It is not even a mental luxury as suggested by the hon. Mr. Santhanam for the simple reason that one cannot manage without anxiety even with one wife and her children. What mental luxury can a man derive by the idea of being able to marry another wife under these circumstances ? As a matter of fact, it is quite simple proposition and I think both sides would agree that monogamy must be the rule. But let us not try to confuse the real issue regarding divorce. As soon as you have monogamy the result is that supposing one of the mates is a leper you have to make arrangements to see that the other is relieved from that liability or else you will be denying him the conjugal right. In some respects divorce is a corollary of monogamy. Even Manu, the great law giver, has provided for such cases.

नष्टे मृते प्रव्रजिते क्लीबे च पतिते पतौ पंचत्सु आपत्सु सुनारीणा पतिरन्यो विधीयते।

But the main point so far I am concerned is that whether you lay down monogamy by law or not it is going to be the rule with at least 9,999 out of 10,000 people. So that question need not agitate our minds at all. Sir, apart from all these considerations, there is one last point. A uniform Civil Code must be our endeavour according to article 44 of the Constitution which we have already passed. We have incorporated a Directive Principle in our Constitution that the State shall endeavour to secure a uniform Civil Code throughout the territory of India. I would like you seriously to consider whether by enacting a measure like this only for the Hindus we are advancing the cause of our progress towards that ideal. I should think that we are going backward rather than forward. My hon. friend Mr. Santhanam seemed to think that after the passing of that article 44, we are trying to progress towards that ideal by this measure intended to weld Hindus into one. It may or it may not be so. What is to be welded in the interests of the security of our nation is not the welding of Hindus alone but all the citizens of this country. All the inhabitants of India

should be welded into one. Marriage, inheritance etc. form part of civil codes of all the countries world over. They must do so in India also. That Code should apply to all citizens whether they be Hindus, Christians or Parsis or Muslims. From that point of view, we are going exactly in the opposite direction. I tell you why. The shibboleth of no interference in religious or semi-religious matters was the creation of a foreign government. It was imposed upon us in their interests and not in our interests. What is there today to prevent us from including all these things in a uniform Civil Code? The present Hindu Code was conceived under different circumstances, and at a time when there was no ideal of having a uniform Civil Code. But since then, things have changed enormously and especially after Pakistan, it should be our endeavour to bring closer all the different elements in the country, be they Hindus, Christians, Muslims or Parsis. I do not want that anything should be done for Hindus alone in such matters. We have already decided upon joint elections for welding all the people of our country into one. One uniform Civil Code will further bring all the people together. That is the process which we must follow and which demands the attention and interest of all of us. We must give up this idea that we cannot interfere in the laws of inheritance and other social matters of persons belonging to other religions. That idea must go. At the present moment, instead of building one well-knit society, we want to stick to the old thing which was conceived at a time when the aim was to keep us apart. Now the idea is different. The security and well-being of our people demands the enactment of a uniform Civil Code. I do not care whether I offend the susceptibilities of some orthodox friends when I say this, but I am quite frank and open. If things are to be done, they must be done in the right way. We cannot partly stick to the old things and partly bring in new things. In this connection, I can mention that a uniform Civil Code is in operation in Goa. The Law minister himself probably knows that. The laws of inheritance etc. are applicable to Christians, Hindus, Muslims and everybody alike in that part of India under the Portuguese. If that is so, why should we be afraid? Our fear is the result of what we have inherited from the past—this shibboleth, I said, of noninterference in religious or semi-religious matters. But that was done by the British for their own purposes, because they wanted to keep us apart. Now our ideal is to unite all our people in the nation. What we ought to do is instead of proceeding with a Bill of this nature,

our Law Minister should, immediately after the 26th of January 1950, bring forward a uniform Civil Code applicable to all people throughout India. I know my enthusiastic sister Members thought when I rose to speak that I was an opponent of this Bill. Let me hasten to add that I am entirely for equality and all those things. But this is not the way in which we should do it, by destroying one thing and creating difficulties in another. For the sake of a uniform Civil Code, we can go and tell our Hindu friends that the joint Hindu family must go, that it is necessary in the interests of the nation. But what we are doing is in the opposite direction. I am afraid it will lead to very undesirable and unforeseen consequences. I will just cite an example. In Ahemadnagar City in Bombay province, a young Hindu widow wanted to marry a Muslim. I do not know whether it was a love affair or what it was. But she wanted to marry a Muslim. As you know, those days we were passing through critical times. There was a lot of trouble. There were riots and some lives were lost. So this Muslim gentleman got afraid not only for the sake of his own safety but the safety of his community. He said I do not want to marry or do anything of the kind. She could not marry without conversion to Islam as the Muslim gentleman had already wife and children. She could marry only if she converted herself into a Muslim. In the Province of Bombay we have also enacted a measure which prevents a Hindu from marrying more than one wife at a time but does not prevent Muslims from doing so. By the present Bill also you are giving the exclusive right to a Muslim to have as many wives as he likes or at any rate up to four. Now what happens is, if a man,—a very wealthy man—wants to marry another wife, he can get himself converted into a Muslim and he can have as many wives as he likes. Considered from all points of view, the interests of our country demand that hereafter at any rate we should strive to achieve a uniform Civil Code for all people. That is what is happening all over the world. As I pointed out before, such a code exists even in a Portuguese territory in India viz. Goa. The present Hindu Code is an artificially engineered device of the former rulers, when they tried to keep us apart. We must try to get out of that rut. We must endeavour to form a well-knit, uniform society. We want to form a single State, not based on religious tenets, whether they be Hindu or Muslim or any other, but a truly secular State. For this a uniform Civil Code is absolutely necessary. I therefore suggest that this Bill should not be proceeded with. It will serve no purpose. Therefore, I appeal to my hon. friend

the Law Minister to withdraw this Bill, bring forward a uniform Civil Code regarding the matters covered by this Bill applicable to all citizens alike whether they are Hindus, Christians, Muslims, Parsis, Jews or others.

* **Shri Ram Sahai** (Madhya Bharat): (*English translation of the Hindi speech.*) Sir, while welcoming this Bill at the time it was being referred to the Select Committee, I had submitted that the Members of the Select Committee should consider some of its features which are at variance with the modern culture and civilization which we profess these days. But I note they have paid no particular attention to that. Only yesterday we have come to know that once more, a Committee is going to be set up in this connection. For this reason alone, I stand here to take a little time of the House. I am not opposed to this Bill. I seek only to bring in certain amendments which may accommodate to some extent the views of those who are opposed to it and that is the only consideration which has guided me to stand here to take a few minutes of the House.

The hon. Mr. Santhanam, I have to submit, had observed that through this Bill we were going to discard all caste distinctions and thus marching towards integration. I agree that such an idea and a Bill of this type is worthy of our welcome and, as such, must be welcomed. In my opinion nobody need object if it becomes possible to have inter-caste marriages, adoption and develop other family relations with one another. But, in this regard, I feel a little difficulty which I intend to place before the House. This is over the succession issue. The custom of inheritance, no doubt, prevails and is practised at many places while in some a similar custom is being introduced in the Hindu Society. But considering its general set-up, it seems to me and I am of the opinion that ultimately this won't prove to be a good thing. My opinion is not based on any desire to withhold daughters' rights or deny equal rights to women and for the matter of that to treat them on a different footing. I emphatically disclaim any such motive. I doubt only if the idea can be made a workable one in a suitable way in the general set-up of our society in which we are living at present and which has been followed by us for so long. For instance, I want to say one word in connection with the right of inheritance. Herein share on equal basis has been conceded to daughters. I have no objection even if

* C.A. (Leg.) D., Vol. VI, Part II, 12th December 1949, pp. 496-98.

they are given a greater share. I want only to place before the house a few things in connection with some possible difficulties which may arise in future whenever such a problem comes up. At present girls enjoy a status in the Hindu Society which none else enjoys. Consciously or unconsciously we have tampered with the social regulations for the worse and now have to bring up this Bill as a repenting and a compensating measure. This is certainly our misfortune. Despite this I will assert that there is much scope left for reformation. To me no Hindu father can ever desire to mete out a prejudiced treatment to his daughter, rather he wishes to give away more and more to her.

Babu Ramnarayan Singh (Bihar : General): It is correct to a large extent.

Shri Ram Sahai: He wishes to marry her in the house of a man placed better than himself. Not to speak of the father only, I am in a position to assert that even no Hindu brother can desire not to marry his sister in a more fortunate family. There may be found an exception in thousands or lacs of cases. But I think that such an instance is almost non-existent. I fail to understand why then the issue of parity between sons and daughters in the matter of inheritance is made to confront us. I say so as we have before us the quarrels among the brothers over the division of property in the middle-class of our people. The daughter is given her share in the other family. But should she think of having a share in his father's property also; in my opinion it is certain to lead to disruption in our social structure. Out of this consideration I have come before the House to make these observations. In my opinion such a course is bound to impair the affection between a brother and sister to some extent. When disruption is possible among the brothers with a common family-link over the division of property, surely more serious quarrels will arise with daughter living in a different family. When such quarrels can arise among brothers who have a common bond of love in between themselves, there shall be none in the house where the daughter goes who can maintain that affectionate regard. There shall be, on the contrary, persons who will incite and thus pave way for litigation. I don't at all follow why we should take recourse to a thing having full consciousness of its being pregnant with possibilities of disruption of our social structure.

Likewise I would like to say something as regards the the Hindu joint family. We have recognised to set up co-operative societies and invite people's co-operation to spread this idea in the country. Why