then we are anxious to do away with the joint family system which is based on principle of co-operation. Keeping these two things in view there should be some such provision which can meet them both. In my opinion the reason for restlessness prevailing in some sections of the public and the provision that makes this measure controversial is mainly the issue of succession. If somehow we can meet the point of succession we can then proceed with its proper consideration and pass this Code unanimously. Taking no more time of the House, I will submit only that the Members who are likely to be appointed to the Committee should conduct their deliberations keeping this difficulty in view, not because a daughter should get no share in her father's property but to see that it does not disrupt our social system any way.

There is another point of controversy that strikes me. I may be wrong but so far as I have pondered, it seeems to me that taking an individual case of a son and a daughter, whereas a son is entitled to a share in the property of his parents only according to this Bill, a daughter enjoys a share in her father-in-law's property as well. I do not see any reason for this disparity. I fail to understand why such a provision has been made therein. The Hon. the Minister of Law may kindly throw some light on this aspect while replying to the Debate as to what consideration has led for the inclusion of such a thing.

Taking no more time of the House, I will submit only this much.

* **Shri Krishna Chandra Sharma** (U. P. : General): Sir, I have been very attentively listening to the debate. I have very great respect for the views expressed by my elders, particularly Pandit Thakur das Bhargava and Pandit Lakshmi Kanta Maitra. I have been looking for support for their contention that the Hindu Code Bill interferes with our culture and civilisation and if it is placed on the Statute Book the whole fabric of our society will go down and there would be undue and improper interference with our religious institutions and our cultural background. To my misfortune I have not been able to find anything of that sort. There is nothing with regard to this Code which interferes with our religion in any matter whatsoever. Whether the Code is good or bad is another question. But the proposed Bill has nothing whatever to do with Hindu religion and as such if it is passed the Hindu religion remains as good or as bad as it is without it.

*C.A. (Leg.) D., Vol. VI, Part II, 12th December 1949, pp. 498-502.

The second is the question of culture. The question is whether a house belongs to A or B, it may belong to Ramkumar and Krishnakumar, and if you just include Vimalkumari also, that is not going to affect Hindu culture. I want my friends before interrupting me, to understand the basis of culture. No culture is culture unless it has any function with a view to the development and evolution of society. If culture is merely static, then it cannot last, and if Hindu culture had been static, it would never have been stable, and it would not have lasted so long. Culture must have some function connected with evolution, it must have something to do with a society as it is evolving. Let us understand this before crying that culture is in danger. Culture and religion and the present Hindu society or Hindu law and even the Hindu religion are not the same as they were in the Vedic times. Do you want us to believe that the Greeks came here and the Romans came here, their penetrations were there and yet we remained blindly static ? Had we no heart, no mind and no receptivity whatsoever ? Because of the receptivity and ability to evolve, the greatness has been preserved; if we had not this receptivity, we would not have existed so long. That is my reply. So I say, let us take a rational course, take an intelligent view of the thing, a scientific view of the thing. Hindu law as it was in the *Smriti* was only a codification of the customs and usages prevailing before the *Smriti* writers came. There are lots of *Smritis* and they differ on various points and on the same point different writers have different views. And the Privy Council has said that even if they differ from each other, their commentary is to be accepted, not because it is based on the *Smriti,* not because it is based on truth, not because it has come down from the Vedas, but because if it is recorded in the *Smriti,* it must have been the usage or custom of the time before the *Smriti.* According to the view of Hindu law, a custom overrides the written law, the written text of law. Now, taking this view, I ask you seriously whether this is any question of religion, whether it is a question of culture, whether Hindu society will fall down by including Vimala along with Ramkumar and Krishnakumar ? Therefore, do not bring in religion in this question. Do not bring in culture, do not bring in other things and say that Hindu society will fall down. I say Hindu society has never been so weak, Hindu culture has never been so weak, nor Hindu religion, that it will fall down, if this Act or that Act is passed. It is too strong for that.

4 P.M.

And then again, it is not our claim alone that we have come from God. There have been six great civilisations and every great civilisation claims that it has come from God. The Muslims say it, the Christians

say it, the Japanese said "I am the son of God". The Chinese Emperor wrote in 1559 to George III a letter that the Chinese potentate comes from God and his territory shall have nothing to do with English commerce or be tainted by foreigners. But forty-nine years later there was a war by the Englishman upon China and the former accepted the opium dealer. Where had the land of the son of God gone then ? Where was that son of God when there was the cannon mouth of the Englishman ? Even the Englishman claims such things, that it is the whiteman's burden that he has been sent to Africa and India to civilize other human beings; that he has been destined to do so. But such claims are false, as false as it is for us to claim that ours is the only monopoly of truth. I am a Hindu and I am a Brahmin, and I am proud of being a Hindu and Brahmin, but I do not like to claim that the truth is my own monopoly, that the truth came to my ancestors and not to anybody else. If God gave the truth only to my ancestors and to nobody else, then it was unjust, and for the matter of that also foolish to have created other people on this earth. So my only request is—and I make it with all the humility and respect of a Hindu child for the elders—please do not bring in religion, do not count upon culture. Do not say Hindu society will come down. But please accept it on the basis of an intelligent view, a common-sense view, a scientific view, of law as prevailing in the modern world. The law of every country is the outcome and result of the economic and social conditions of the country as well as the expression of its intellectual capacity for dealing with those conditions.

Now I come to the next point. We have been for a long time separated from the world as such. As I said there were six civilisations and the Chinese Potentate, the Japanese Emperor, the English King, the Czar of Russia, Babar of India all of them claimed that they came from God, all because. . . .

**Pandit Lakshmi Kanta Maitra :** To what particular clause of the Hindu Code is my Hon. friend referring ?

**Shri Krishna Chandra Sharma :** I am referring to your remarks. Well, as I was saying, they all said they were supreme and they were the most mighty, and that was because they could not understand other people and they had no knowledge of them. Therefore they said, theirs was the best religion. But now with the aeroplanes, through the ships, through literature and the printing press and publication, you have come into contact with all the people of the world. You know other

people and you understand them. You are influenced by them. Look at the desk of your child and there you will find the works of Bernard Shaw and Shakespeare. You do not find *ganga lehri* there. But you don't think the child is not a Hindu because he has only Bernard Shaw and Shakespeare and Pearl Buck on his table. So every thought and action affect and influence all the countries of the world. You cannot have any law whatsoever which is divorced from the influence of others, it has to be dynamic and then it will help the people to a great future. Divorced from that, separated from that, they are weak. So let us have the law on the scientific basis. In times past there might have been prejudices and there might have been different customs, and there might have been any other thing. But today religion is a matter of scientific study. You cannot say that everything you believe is religion. Nobody is going to accept it. Religion is that which takes man from human stage, from the comprehensive human life to the region of Godhood and in raising humanity from humanity to Divinity, there are certain accepted principles from which you cannot escape. So in this twentieth century, neither is everything religion nor is everything culture nor everything the basis of society. There are certain well accepted principles, accepted by the world at large, by the jurists, by the religious teachers and all the great men of the world as the basis of society, as the basis of culture and as the basis religion. Everything that you speak and believe is neither religion, nor culture nor the basis of society.

My friend asked me to what I was referring. In Mulla's Hindu Law the first page deals with castes. It says there are four castes in Hindu Society. The second paragraph deals with whether *Kayasthas* are *Sudras.* The third paragraph deals with the question whether *Marathas* are *Sudras* or *Rajputs.* I put it to you in all humility : Is there anything of culture or religion in it ? Religion takes from the universal love to the Divine bliss and culture means light and sweetness. The division of a people into castes is no culture and much less has it anything to do with religion.

**An Honourable Member :** Only agriculture.

**Shri Krishna Chandra Sharma :** Agriculture will give you food; your view is a thing that will bring you down.

Now, I shall put to you the sources of Hindu Law. I think my hon. friend is a lawyer and he will appreciate it. The sources of Hindu Law are, the *Shrutis,* the *Smritis,* customs having the force of law,

commentaries, and then the judicial decisions of the Privy Council and the High Courts. So far as the *Shrutis* are concerned, nothing is known about them. I have quoted Jayaswal who is the greatest authority on ancient polity and he is of the view that what is stated in the *Smritis* is only a codification of the custom and usage prevailing when the *Smritis* came into existance. The *Smritis,* as I said, differ on the same point. The commentators are accepted; but they are accepted as authority not because they tell you what the law was, but because they tell you something that must have been in existence. According to the principles of Hindu Law, custom and usage override the written text of the law, and they are to be accepted. Then comes the case law of the Privy Council and of the High Courts. How was this case law made ? Up to 1868, the condition was this. The Hindu Law was administered by English judges with the assistance of Hindu Pundits. The institution of Pundits as official referees of the courts was abolished in the year 1868. Your case law is the result of the English man's decision with the help of the Pundits. Now, I tell you, when the country is ruled by an aggressor, when the country is ruled by an invader, no self-respecting man much less a learned man, will sit beside him. Therefore, whatever class of Pundits were called, they were demoralised creatures; they were not representative of Hindus. Do you mean to say that you do not want to change the Hindu Law because Hindu Law is something sacred ? What is that Hindu Law ? Decisions of Englishmen given with the help of or at the suggestion of demoralised creatures. That is your Hindu Law. What is the sacredness behind it ? That is my point. You judge this present law on its own merits; judge the present code according to principles of jurisprudence. In accordance with principles a law is judged as necessary and good.

Coming to this Code, the first thing that it deals with is marriage and divorce. If you go through the different small Acts passed during the last two or three years, you will find that this is a mere codification and nothing new. You can have the sacramental marriage; you can have the civil marriage. You find Hindus marrying in different castes, even beyond the Hindu fold and they remain Hindu all right; you do not say they are outcastes. Therefore, what is prevailing, what is a fact already, you take as the law. I do not think you are changing anything. With regard to judicial separation and dissolution of marriage, look at the grounds : either party to the marriage was impotent, the

husband is keeping a woman or a concubine, the other party has ceased to be a Hindu, either party is incurably of unsound mind, either party is suffering from a virulent and incurable form of leprosy. Now, I put you a simple question. Is there anything in any law, in any text of Hindu *Shrutis or Smritis* which bar these conditions ? I have been looking into the Manu Smriti and I have found nothing repugnant to this. If my hon. friends find anything, they may bring an amendment. I am not against the *Smritis* and I am only proud of them. I have gone through the texts; I have not been able to find anything in them repugnant to this. If these conditions are in accord with notions of social justice as it is prevalent, I see no reason why you should not accept them. Are you an enemy of women? Are you an enemy of your mother and daughter ? Our mother is a respected being and our daughter is part of our life and blood. Is that not so ? Why then do you raise the cry that this is something which will bring down Hindustan and that the Hindu society will be crushed to pieces. There is nothing in religion, there is nothing in culture, there is nothing on the basis of Hindu society that is against these conditions and repugnant to them.

Take the case of adoption. My own feeling is that at this stage of evolution of our society, it is unnecessary and it has no meaning. There is a text in Manu on which this adoption is based : that a son-less father has no region in Heaven. The basis of that text was this. At that time, the Aryans were facing the aboriginal tribes or some people who were non-Aryans. Therefore, they naturally wanted their number to grow. They put it this way. A Hindu has three *"Rinas"*: *Rina* to God, *Rina* to the *Rishis* and *Rina* to the *Pitras,* that is the race. That is, to carry on the thread of the race. To carry on the thread of the Race was necessary at the time Manu wrote the *Smritis.* It is not necessary today. Today the cry is not that we have not got children; on the other hand, the cry is that we have not got food and cloth. The fewer we are, the more of these things we will have. Therefore, at this stage, I do not see any reason for adoption. As to going to Heavens, the meaning behind the oblations and all these things was to keep up a spirit of charity in our society. Human society has grown so well and so organised that there is enough scope for charity and social service and generosity in this world rather than giving something to our ancestors who have gone beyond this world. It is better to work in this wide world. That is an institution which has no meaning. The meaning that it had has no application in the present

day society. So far as secular purposes are concerned, that if a son is adopted he will serve the old man or old woman, I think it is of no use. Today, there are so many sick homes, hospitals and other homes. If you have got no property, it is useless to adopt a child and nobody is going to serve you simply because you have adopted him. If you have got property, there are enough institutions to help you in old age. My contention is that this institution of adoption in the present state of our society has no meaning whatsoever.

Regarding minors and guardians, I don't think it has made any departure from the Hindu Law as it is. Regarding law of Succession, I am sorry I have not been able to see much about Succession and I cant't say with confidence whether the present system of Succession is right or wrong. One thing I will say *viz.*, there is nothing wrong in principle to make a daughter co-heir with the son because under section 3 of the Women's Property Act, 1937, the mother gets a share along with the son. What objection there is on earth to a daughter inheriting along with the brother ? If mother can inherit along with son, there is no reason why the daughter should not inherit with the brother. Pandit Bhargava raised the objection that the sons-in-law will come and create trouble in the house. If two brothers do not create trouble why should the son-in-law create troubles. Go to Cannaught place and you will find that the fate of the husband is to take the coat of the wife behind and pay the bill; and so how can a husband create trouble when the wife.does not want it.

**An Honourable Member :** That is in Northern India.

**Shri Krishna Chandra Sharma :** That is the evolution of man. The evolution of humanity is like that. Where are your moustaches ? It is an ordinary biological principle that the female cells were developed and separated later and woman was better evolved. She is fairer, more tender and more beautiful. It is the way of progress to go to finer and more beautiful life. If you are otherwise inclined, I think you are less than human.

Then I come to the joint Hindu Family. I have looked into authorities on this point and all great authorities agree that Hindu Custom came into existence when the state of Society was pastural. For that it was necessary to have Joint Hindu Family system. At present there are a number of laws by which we have done away with the Joint Hindu Family property conception. This was made at a time when there was not much trade and commerce. A farmer looks to the cow not as

something worth 100/- but as something—a living thing associated with him in life—something sacred. So he takes the cow as it is and would not like to get the money from the son if the son goes away from the family because the cow is something sacred—that is how we regard the cow as Mother cow.

**Pandit Lakshmi Kanta Maitra :** Is there any father cow ?

**Shri Krishna Chandra Sharma :** Times have now changed and therefore that question of Joint Hindu Family does not hold good and is not to be regarded as so essential and therefore sacred as it was when Aryan society was first established in India and these customs came into existence.

The second point is that this is not applicable to agricultural lands. So far as agricultural lands are concerned, new acts are coming into existence and succession in those would go on the same basis.

With these words, I commend this Bill for the acceptance of this House.

*__Shri B. M. Gupte__ (Bombay : General): Sir, I rise to accord qualified support to the measure before this house. This does not mean that I am opposed to many of the reforms that are proposed here. On the contrary I am prepared to say that they are in the right direction subject to certain modifications and adjustments. Adjustments are necessary. I will give only one example. The abolition of customary divorce is bound to entail much hardship to rural population of Bombay province because among the population there the practice of divorce is widely prevalent. In Bombay we have a Divorce Act but even that Act makes an exception of Customary divorce. I therefore say that certain adjustments are necessary. The provisions with regard to divorce, marriage and maintenance and minority—these may be proceeded with and made into law. I have no objection about them but I can't lend my support to the enactment of the provisions embodied in parts 5, 6 and 7. They make fundamental changes. In fact they unsettle the entire law of inheritance of the Hindu Community. therefore the question arises whether this is the time quite opportune for such general unsettlement. We are in the midst of a political and economic situation which is characterised by unrest, turmoil, misery and disruption and therefore the question is whether we should complicate the situation still further by introducing revolutionary changes which affect the entire social structure of the country. Our Prime Minister often insists, and rightly insists, that in this emergency first things should come first and this is not the time for things which

*C.A. (Leg.) D., Vol. VI, Part II, 12th December 1949, pp. 502-504.

bring disruption. If we apply this test to this measure, what would be the result ? I ask, are these so pressing, that we must face the risk of intensifying the complexity of the situation which is already difficult enough ? The answer is obvious. The Hindu Law has been in existence for years and if there is to be a revision of it or its codification there is no urgency at the present juncture. This is not the opportune time for such a general unsettlement of the existing law.

It is our well known experience that social legislation which is in advance of public opinion defeats itself. In this I include not only the vocal urban section of the population but also the teeming millions in the villages. We have to see whether this legislation is in advance of public opinion. We have the experience of the Sarda Act. In spite of its strict provisions the law became a dead letter in its enforcement. In this case it will not become a mere dead letter. The enactment of the provisions laid down in parts V, VI and VII will bring about far more mischievous results than being a mere dead letter.

In the villages there are the *goondas* who because of their detailed knowledge of the law try to exploit the ignorance of the villagers and dupe them into protracted litigation. This evil is already rampant. The law of succession or survivorship, owing to long usage and familiarity is already known to the villagers. The result will be that we shall be affording one more source for the village *goondas* to exploit the ignorance of the villagers. I therefore want to emphasise that though I am not opposed to reform, this is not the time to introduce a measure like this.

Whatever decision we may take here or in the provincial capitals in the present condition of illiteracy of the masses, it is difficult to carry such legislations to the villager. We have already the experience of the Grow More Food Campaign. In my province the Government is offering numberous concessions and facilities but the villager does not know them at all. What will be the result of this law ? The village *goonda* will be able to exploit the ignorance of the villager in this matter.

In one respect the situation in the villages will be worse than that in the urban area. According to the present constitutional position this law will not affect agricultural land. It will mean that there will be two sets of heirs for the property of the deceased argriculturist. His agricultural land will go to one set of heirs, while the rest of his property will go to another set of heirs. This is bound to make confusion worse confounded. We are enacting this legislation with a view to secure

uniformity but instead of uniformity and simplicity there will be complexity and confusion. To avoid such confusion it would be better that we wait till the new constitution is ushered in. Let us not be in a hurry. Personally I feel that this measure can be introduced and pursued after one or two general elections have taken place. Those general elections are bound to quicken the political consciousness of the villager and bring him into more effective contract with the working of the legislature. He will then be in a better position to influence legislation which vitally affects his interests. Therefore I submit that till such time comes, till there is some quickening of political consciousness among people, let us not thrust the legislation upon them.

I finally appeal to our enthusiastic friends who are the ardent champions of this legislation that by our over-enthusiasm let us not defeat our own object.

* **Shri A. Karunakara Menon** (Madras: General) : Sir, I rise to support this Bill, so far as it goes, with all my heart. It will no doubt go a great way to consolidate the Hindu society. The Hindu law as it exists today is only a conglomeration of several systems of law. We have declared in our Constitution that it shall be our aim to frame a uniform civil code applying to the whole territory of India. This Hindu Code will go a great way to assist in the evolution of this uniform code of law. I wish some Muslim friends introduce a law to codify the Mohammendan law also. The Christians have already a codified law. After these three codified laws are brought into existence it will be easy to pick out the uniform provisions of these three codes and try to accomplish the object that we have aimed at under the Constitution. This Bill is also welcome inasmuch as it will extend the rights of women.

But I have some complaints to make. This law is not as progressive as it ought to be as the people wish it to be. It is far behind in several respects the *Marumakhattayam* law that exists in my part of the country. We should not be dragged down from the position we are in at present. If amendments could be introduced in the Bill and if it could be made possible for us also to make use of the Bill, none would be more happy than us.

The provisions of the Bill as they stand at present have been conceived at from a patriarchal point of view. The provisions of the matriarchal system of law, wherever they are progressive, could be

* C.A. (Leg.) D., Vol. VI, Part II, 12th December 1949, pp. 504-506.

introduced into this Bill and that point of view has not been taken into consideration at all. It might be pointed out that the original Bill as drafted in 1947 excluded the *Marumakkattayam* and the *Alia Santhanam* law from the operation of all the important branches of law covered by it. I will point out why this Bill is not sufficiently progressive and why it should be made more progressive.

Marriage under *Marumakkattayam* law is a purely mundane affair. There is no religion in it. There is no sapindaship or sacrament in it. This Hindu Code Bill recognises only two kinds of marriage— sacramental marriage and civil marriage. Civil marriage is common and we have no objection to it. We are prepared to abide by provisions relating to it.

That the authors of the Code were under a misapprehension that even the Marumakkattayam marriages were sacramental marriages is clear from a reading of clause 51 of the Bill where they say that even the Malbar marriages are sacramental. That is the basis on which they have framed that clause. In Malbar marriage has nothing to do with religion. Clause 51 says:

> "Nothing contained in this Part shall be deemed to affect any right conferred by the Madras Marumakkattayam Act, 1932 (Madras Act XXII of 1932) to obtain the dissolution of a sacramental marriage, whether solemnized before or after the commencement of this Code."

There is another direction in which we would like to get an amendment of this Bill in so far as we are concerned. Our law allows us to marry our father's niece or our maternal uncle's daughter. In fact many of us consider it a privilege to marry our uncle's daughter or our father's niece. But this is interdicted by the provisions relating to sapindaship and prohibited relationship. This encroachment on our right is not likely to be viewed with favour by the people of my part of the country.

In regard to judicial separation or restitution of conjugal rights, there are no provisions at all in our law. Either a marriage exists or it is got rid of by means of a divorce. There is no middle course. The provision for divorce is very simple. Either of the aggrieved parties goes to the nearest court of civil jurisdiction and puts in a petition with twelve annas stamp on it praying that "for such and such reasons we are not able to pull on together and therefore a divorce may be granted". For a period of six months that petition is kept pending. Perhaps the authors of the law wished to see whether a reconciliation was possible within this period of six months. After this period of

six months, if nothing took place divorce is automatically granted. This provision is simple and from clause 51 of the Bill it is clear that it has attracted the attention of the framers of the Bill because this provision for divorce is found retained in the Bill. But I do not know why the benefit of this provision is not extended to all other Hindus.

The provision for dissolution of marriage has infuriated some of the members of this House. Even though the provision for divorce has been in existence in Malabar since 1932, I believe, not even a dozen divorces would have actually taken place. This proves the truth of the statement made by a learned author—I mean Bertrand Rusel—that "the easiest divorce laws by no means produce the greatest number of divorces ; wherever there is divorce, adultery is scarce and morality is higher".

Coming to adoption, the provisions contained in this Bill are very unsatisfactory when compared to what prevail in our part of the country.

According to this Bill, adoption is a religious matter, but among the *Marumakkattayam* people it is a purely secular matter. Under the Hindu Code only a male or his widow could adopt a person, but according to our law any person, whether male or female, could adopt a person. Whereas only a male could be adopted under Hindu Law, males or females could be adopted under our law. Whereas only one person could be adopted under Hindu Law, we can adopt one person, two persons or even one whole family, at the time of extinction of our family or as heirs to our property. So there is a lot of difference between the Hindu Law and the *Marumakkattayam* Law in this respect. The reason why these things have not been taken into consideration in framing the Bill is, according to me, that the whole perspective has been entirely patriarchal and not matriarchal also. If that point of view also had been taken into consideration then many of these differences could have been resolved or reduced.

In regard to joint family property, the substitution of tenancy-in-common for joint tenancy is one of the most important features in the Bill. I welcome this provision. But this part of the law again has been framed from the patriarchal point of view only. Read any clause under Part V—I am not going to trouble the House but I only wish to bring it to the notice of the Hon. the Law Minister—read any clause in part V and you will find that it is inapplicable to the *Marumakkattayam* people, though the Hindu Code Bill is intended to apply to them also.

Clauses 86, 87 and 88 will show that none of them could be made applicable for the tenancy-in-common being introduced into the joint families that exist in Malabar.

With respect to inheritance, I do not know why mother should not be made an heir along with son and daughter. Suppose a man dies—suppose I die. My natural love and affection induce me to see my mother who has brought me up and who has taken interest in me all through my life, an heir to my property. Here what I find is that the mother has been omitted in Clause I.

My second complaint is why the son of a predeceased son or the son of a predeceased son's son ought to be introduced in Class I. He ought to come in Class II. It is revolting to us to make them preferential heirs in Class I. If you ask anyone in Malabar as to whether he would like his property to go to his son's predeceased son's son, or his son's son even, or to his sister or sister's children, he will certainly say that even in preference to his brother it should go to his sister and sister's children. So I say that the rank given to sister and her children in Class II of the Seventh Schedule ought to be raised than what has been given there. Sister and sister's children come very low; in Schedule VII, they come only after son's daughter's son, son's son's daughter, son's daughter's daughter. It is after all these persons that we find even brother and sister appearing as heirs. I do not know why promotion ought not to be given to brother and sister who were born of the same womb. Natural love and affection should certainly induce us to give brother and sister a higher rank than what has been given to them under the provisions relating to inheriance.

*[At this stage Mr. Deputy Speaker vacated the Chair, which was then occupied by Shrimati G. Durgabai (one of the Panel of Chairmen)].*

Looking at the question from all these points of view, it will be seen that the whole Bill has been locked at only from the law that is prevailing in the other parts of the country than Malabar—which no doubt is certainly followed by the largest number of people—but the matriarchal system of law has not at all been taken into consideration in framing this Bill. Therefore I feel that this Bill is not sufficiently progressive either with respect to the rights of women, which we all desire so much to be given to them, or from the general point of view.

We are very anxious to be brought within the scope of this Bill. We do want uniformity. I am one of those who wish, and the people

of my part of the country also want to see, that there is one uniform law existing for all the Hindus in the country. But at the same time it should not be made so revolting or made impossible for my people to follow the law, or even if they do so to do it with a certain amount of reluctance. It ought to be made attractive. My submission is that in framing the law the matriarchal system of law has also to be taken into consideration. I submit that proper amendments might be introduced to attract us also to come within the scope of the Bill. If for any reason the two systems are so divergent that it is impossible to introduce amendments in the Bill so as to attract us also within the scope of the Bill, my appeal to the House is that we may be left alone, that we may be allowed to follow our own law which stands on a higher footing of love and affection than the Hindu Code Bill that has now been introduced in this House. According to me this Hindu Code Bill is not a secular measure, it is not a rational measure ; religion still pervades throughout the Bill. The Bill ought to be entirely a rational one. I would have had no objection if the whole Bill had been framed from a natural outlook, an outlook entirely divorced from religion. If a Bill like that is introduced, our people would be too glad to follow it. What we notice is that the Bill as it is framed now is religious still to a high degree; though it has been watered down, it is not yet sufficiently secular. I don't know why in marriage, adoption and inheritance, religion ought to interevene, why the provisions relating to them ought not to be made more secular as they prevail today in our part of the country. There is no reason why we who follow a system which has nothing to do in all these mundane matters with religion, should be roped into this Bill in which religion plays a prominent part.

*__Mr. Chairman :__ There are only ten minutes left. I want to know if any of the Members will finish his speech in ten minutes.

__Some Honourable Members__ *rose*—

__Shri Sita Ram S. Jajoo__ (Madhya Bharat): Madam, I will finish my speech within ten minutes.

At the outset I want to make it clear that I am wholeheartedly in support of the present Hindu Code Bill. It is with a hesitant heart that I am standing here because I feel that almost all the Members belonging to the older generation were speaking against the Hindu Code Bill. I don't challange their hearts, but so far as the Hindu Code Bill is concerned their hearts seem to be older or staler.

* C.A. (Leg.) D., Vol. VI, Part II, 12th December 1949, pp. 506-508.

**Shri M. Tirumala Rao :** May I say that ladies of the older generation also are supporting you ?

**Shri Sita Ram S. Jajoo :** Yes, because they are progressive, because they want to progress. In the words of my friend Mr. Krishna Chandra Sharma, they are more progressive and going forward whereas the men are going backward. Any way, I am concerned with the Hindu Code Bill as it stands today.

Madam, I would not have spoken but for the fact that I can represent the views of the younger generation here, and I can confidently say that the younger generation in the country stands by the Hindu Code. Much ado has been made about the fact that this Bill has not been circulated for public opinion in the Indian States. I want to say that there have been many Bills which we have passed in this House, but at that time nobody raised his little finger and said that those Bills were not circulated for eliciting public opinion in the Indian States.

**Some Honourable Members :** But this is such a controversial Bill.

**Shri Sita Ram S. Jajoo :** There have been so many controversial Bills. The question of Sirohi was most controversial but the States people were not consulted on it.

**Shri Gokulbhai Daulatram Bhatt** (Bombay States): Madam, there was no Bill connected with Sirohi.

**Mr. Chairman :** May I request hon. Members to allow the speaker to go on uniterrupted ?

**Sardar Hukam Singh :** Is it not for the elders to correct if the younger generation goes astray ?

**Shri Sita Ram S. Jajoo :** They are definitely in their rigits to control and guide the younger generation, but that must be towards progress, it should not be a retrogade step.

**An Honourable Member :** Our experience extends upto 80 years.

**Shri Sita Ram S. Jajoo :** The experience of 80 years may be there ; but the experience of the Father of the Nation, Mahatma Gandhi, is also there. There are volumes of books containing the articles by him from time to time in favour of the elevation of the Hindu women. And so far as the Hindu Code is concerned, I have heard from many of the staunch opponents that they won't mind if the whole Code is passed excepting the provision regarding inheritance and the sharing with daughters and sisters. It has been opposed mostly by the community, to which I also belong, the Marwari community. But I

say that the Marwari youths are for the Hindu Code Bill. If we say that the older people are there and their experience is there, Mahatma Gandhi in his autobiography has written that it is a most pitiable sight to see the Hindu wife ....

**Pandit Mukut Bihari Lal Bhargava :** You can't exploit Mahatma Gandhi's name.

**Shri Sita Ram S. Jajoo :** Perhaps you might have exploited his name much more than what I have done. I have just started my life and I had no opportunity of swearing by the Mahatma's name whereas among people who are old and who have got grey hair there might be some who might have exploited his name hundreds of times.

Madam, Mahatma Gandhi writes that so far as the position of Hindu wives is concerned, it is most pitiable. He says that if the master is annoyed with a servant, the servant may leave his master, if one is annoyed with one's father he can't demand partition, if a father is annoyed with his son he can ask him to get out, but so far as the Hindu wives are concerned they cannot go anywhere. If that was the case with Kasturba at the hands of the Mahatma, what would be the position of women at the hands of ordinary human beings like us ?

So far as the Constitution is concerned, we have agreed that there is equality of sex, but here we are afraid of granting that equality to our women folk, to our sisters and daughters. You can adopt a boy from a family simply because he also happens to have the same *Gotra* or the same surname, but you are not prepared to tolerate your own daughter or your blood sister simply because she happens to be a female. That is the position.

Much ado has been made about the Bill by saying that it is an insult on the Hindu religion. I want to ask this of my friends. The Hindu religion is very adjusting and accommodating. It has adopted itself to changing circumstances from times immemorial. The very fact that there are 137 or 138 *Smritis* is evident to this statement. If there was a fixed law and no change suggested or expected in the Hindu law, then why are there 138 *Smritis ?* And why we cannot have one more *Smriti,* codify and have a new Hindu law ? We can have in it all the good things of those *Smritis* together with all the good things which the modern times and the scientific developments and the social progress demand. What is the harm if we codify all these into one law ? The very word *Smriti* indicates whatever is written from memory, the word *Shruti* indicates whatever is heard and written.

It is nowhere stated that they were written by a particular *Rishi* or a particualr *Muni*. So, I don't think there should be any hesitation in having this Code nor should anybody feel that his conscience will be killed if this Hindu Code is enacted. We have always been speaking from the political platform about freedom. Political freedom has been achieved. We have achieved independence but we have also to see . that the social evolution of the country also takes place. If we want the social order to change, I say this is the time for it. We have to prove it by our actions, not by words. We must see that the whole social order is changed. As regards reform, I may say that even the late Raja Ram Mohan Roy had to face opposition, many other reformers had to meet with opposition, some of them died an unnatural death at the hands of their opponents whom they wanted to help, whom they wanted to elevate and to whom they wanted to bring salvation. Here we have got our leaders who are certainly with us. After the Prime minister's speech on the opening day of the session, I don't think there is anything for arguing here or for fighting over this issue when he said that he was for the greatest common measure of agreement if it could be arrived at. If we are prepared to have a compromise with others then I feel this will not become a progressive measure, it will lose its charm. But still I have more faith in the wisdom of our Prime Minister. I feel he is much more wise than I can be or my young friends can be. I have faith in him. If he wants compromise, or if the Government wants compromise, let there be compromise, but so far as young people are concerned, we do not like the compromise. But we certainly have faith in our leaders and we shall obey their commands.

**Pandit Lakshmi Kanta Maitra :** But none of them are here.

**Shri Sita Ram S. Jajoo :** If they are not here, the Hon. Dr. Ambedkar is here. He is the sponsor of the Bill and he is doing it on behalf of the Government. It is no use cursing this Government. After all, if we go into the history of this Bill, we will see that it was brought by our predecessor Government .... *(Interruption).*

Madam, I would like to speak for about ten minutes more, because there have been interruptions. If you so desire, I may continue tomorrow. I will not take more than ten minutes.

**Mr. Chairman :** The hon. Member is requested to close his speech, because he has assured me that he will take only ten minutes.

**Shri Sita Ram S. Jajoo :** But you will appreciate my difficulty, Madam. I have been interrupted so much. I would like to speak for ten minutes more tomorrow, if you do not mind.

**Mr. Chairman :** May I know whether the hon. Member can finish his speech within three minutes more. I will give him minutes three now.

**Shri Sita Ram S. Jajoo : I** know, Madam, I have given an assurance. If you wish, I may sit down just now. But I thank you for giving me three minutes more.

Now, I was saying that Dr. Ambedkar is here. He will certainly convey our views. He is in charge of the Bill. It is no use cursing and blaming the present Government. After all, if we see the history of this Bill, this Bill was brought by our predecessor Government—a foreign government. At that time, we did not have the guts to fight it. Whenever social measures were brought forward by the foreign government ....

**An Honourable Member :** Don't worry about history.

**Shri Sita Ram S. Jajoo :** I have to look into the history certainly, but let me proceed with my speech just now. When the British Government brought certain measures which affected the Hindu law, we accepted them at that time, because they did not touch the purses of the moneyed people—the capitalists. Here we feel the pinch, because it touches our pockets. We male members of this House are in a huge majority. I do not wish that the tyranny of the majority may be imposed on the minority, the female members of this House. The ladies in the country in general are illiterate; so we should not exploit them. A big tirade of propaganda is being carried on that this Bill aims only at one thing and that thing is divorce. All ladies are persuaded or dissuaded or influenced or canvassed by telling them that their husbands are going to divorce them after the Hindu Code is passed. This kind of misinterpretation of the provisions of the Hindu Code is going on. I want to tell all these people that there will hardly be a single man who would like to divorce unnecessarily ; similarly, there would hardly be a single Hindu wife who would like to divorce unnecessarily. There is enough good reason and sense in the courts, and the judiciary will definitely look into the whole case and see that justice is meted out. This is all I have to say.

*The Assembly then adjourned till a Quarter to Eleven of the Clock on Tuesday, the 13th December, 1949.*

## HINDU CODE—*contd.*

*__Mr. Deputy Speaker :__ The House will now proceed with the further consideration of the Bill to amend and codify certain branches of Hindu law.

**Shri Alladi Krishnaswami Ayyar** (Madras : General): Sir, before dealing with the different aspects of the Bill as it emerged from the Select Committee, I should like with your leave to make a few general observations. I may at once say that I do not belong to the school which is against any legislative interference or change in matters of Hindu Law. Law by its very nature cannot be static; it must keep pace with the progresive tendencies of the age, if it is to be an instrument and measure of social progress. Our ancients were quite alive to this function of law in society. The *Smritis* as well as the great commentaries on the *Smritis,* bear eloquent testimony to this function of law in society and the need for changes from time to time. The commentaries which are treated as authoritative interpretations of law in different parts of the country merely give concrete expression to the social tendencies at work at a given time, but in the modern age with duly constituted Legislatures functioning, no jurist counsel can effect a change in the law by a mere process of interpretation. This function to some extent but within a limited sphere has been discharged by the Courts, the highest tribunals in India and the Judicial Committee of the Privy Council, during the last one hundred years or so. It is not, however, the normal function of Courts to effect a change in the law but only to interpret the law though in the process of interpretation it may effect imperceptible changes by distinguishing or extracting principles from previous decisions or from Hindu law texts.

But by its very nature, judicial function is restricted in its operation. It cannot be gainsaid that there is also a danger in the Judge consciously or unconsciously assuming the role of a legislator. A particular Judge or a Bench might approach the consideration of a question from a conservative or orthodox point of view, another Judge might utilise his judicial function for any pet theme of social reform. The judgments of the highest tribunals in this country as well as those of the Judicial Committee of the Privy Council during its long association with India, bear witness to the above statement. At the same time, there is no gainsaying the fact that the decisions of Courts to a large extent have prepared the ground for legislative intervention. While this need for

* C.A. (Leg.) D., Vol. VI, Part II, 13th December 1949, pp. 510-19.

legislative intervention is apparent, this Assembly in undertaking any legislation of this kind cannot altogether ignore certain rooted conceptions in regard to marriage, family law and rights of succession. Change is inevitable and is part of the organic law of society, but change does not mean striking at the roots or foundations of society.

Bearing all these aspects of law reform in mind, I should like this House to approach the consideration of this Bill. There is no subject in which every man and woman in this country is interested more than the Bill now under consideration by the House. That makes it all the more incumbent upon each one of us, however highly circumstanced or lowly circumstanced, to tolerate difference of views and to bring to bear a cool and dispassionate judgment in the larger interests of the wellbeing of the people of this country. In that sense and to that extent this cannot be treated purely as a Party measure or as a matter of confidence.

First, with your leave, Sir, I shall take the Chapter relating to marriage and divorce. While dealing with this Chapter, it is well to remember that already great inroads have been made into the marriage law by the various Acts of the Indian Legislature. The latest of such Acts was the Hindu Marriage (Disabilities Removal) Act of 1946 (Act XXVIII of 1946) by which it has been enacted that a marriage shall not be invalid by reason only of the fact that the parties thereto belong to the same *Gotra* or *Pravara* or belong to different castes or subdivisions of castes. The Madras Legislature has recently made monogamy compulsory and some of the Provincial Legislatures have already made provisions for divorce. A change has also been made in regard to the law relating to the age of consent to marriage. If we approach the consideration of the Bill from this point of view, the changes effected in the Bill are by no means so revolutionary as they may seem as first sight. The substantial changes in the provisions of the original Bill as pointed out by some Members of the Select Committee relate to the incorporation of certain provisions relating to restitution of conjugal rights, judicial separation, alimony, custody of children, jurisdiction and procedure of Courts.

While on the provisions of the Bill, I should like to mention one important point. The distinction sought to be made between sacramental marriage and civil marriage is more apparent than real. It is difficult to follow the provisions of the Bill in this respect, because I find that in regard to divorce, in regard to restitution of conjugal rights,

in regard to right of maintenance and obligations of the marriage the provisions are exactly the same both in regard to what is termed "Civil Marriage" under the provisions of the Bill and what is termed "Sacramental Marriage". The Bill introduces a distinction between what is called "prohibited degrees" and other kinds of disqualifications in regard to sacramental marriage. In regard to sacramental marriage, provision is made that *sapinda* relationship as defined in the Bill will be a ground for disqualification, whereas in the case of what is called a "Civil Marriage" it is only prohibited degrees that are made a ground for the marriage not being effective. At the same time, I am unable to follow the metamorphosis provided for in the Bill that even if the parties go through a sacramental marriage, it is open to either of the spouses to convert it into what is called a "civil marriage" under the provisions of the Bill. If really this distinction serves any purpose at all is a point which may be considered by the Hon. the Law Minister before the final passing of the Bill.

There is no distinction in regard to the rights of offspring, rights of inheritance, the obligations between the spouses and in every other matter. The position is exactly the same in regard to a civil marriage as in regard to a sacramental. Possibly, the idea is to satisfy the sentiments of some parties by making some provision for what is called "sacramental marriage" ". If that is the real object, then you ought not to make a provision for an easy change of sacramental marriage into a civil marriage at a later stage. Either have the one or the other. If, for example, you want to draw a distinction between sacramental marriage and civil marriage, have it; let it be quite clear and definite : Normally, certain ceremonies are indispensable for sacramental marriage. Certain formalities need not be gone through in the case of what is called " civil marriage ". From the point of view of a pure lawyer, I fail to see any real distinction between a civil marriage and a sacramental marriage under the provisions of this Bill. I do not go to any root ideas of the Bill, but I merely place it for the consideration of the Hon. the Law Minister.

Then again with regard to prohibited degress of relationship, modern eugenics is against the idea of people related to one another marrying. At any rate, there is a large body of opinion in favour of this doctrine. Under those circumstances, are we advancing or are we retarding progress so far as this provision is concerned ? At least so far as this part is concerned, I think our ancients anticipated modern ideas in

prohibiting certain people from marrying. I ask you : why take retrograde step in the name of progress and in the name of advanced ideas and civilisation ? I certainly realise that there need not be any prohibition in regard to distant *sapinda* or people who have the same *pravara* or the same *gotra*. But that stands on a different footing altogether. Where there is near relationship, why relax the rule ? I have been recently reading in newspapers and periodicals a good deal of discussion as to the advisability of near relations marrying one another. This is one aspect which I know the Hon. the Law Minister, as a student of science and of history, will certainly consider. This is opposed to the religious sentiments of the people. If scientific ideas, if religious considerations, if sentiments of the people have all to be taken into consideration, then there is no point in relaxing that rule. It is not, of course, consistent with the well being of the society. If in the interests of the future generation, if in the interests of the well being of our people, if in the interests of the progress of the race, you must promote marriages between near relations, by all means do so. Let us take a bold stand ; let us take a clear stand ; let us take a determined stand in regard that matter. I do not want any shilly-shallying in regard to what may be regarded as a question of fundamental principle. Either adopt the ancient principle or adopt a more rational or modern principle according to your ideas. But personally, I would very much prefer the old rule being retained. Let me be quite clear. In regard to particular communities where, for example, certain customs have been prevalent in some parts of India, you have already provided for it in another clause. But the general rule should be to prohibit marriage between *sapindas*. In this respect, the move is not in the right direction.

12 NOON

With regard to the law of divorce, in trying to bring about a uniformity of law there is no point, as Sir Tek Chand has pointed out in his memo, in imposing special restrictions upon communities and classes of people among whom restrictions do not obtain at present. I know that in parts of South India divorce by mutual consent in the presence of the village headman or the Panchayat is still prevalent as in other parts of North India. After all, it looks as if divorce is to be the essence of the law of marriage according to a certain school. But must you think of divorce before you think of the marriage ? If that is the running idea and if you want to give encouragement or at any rate provide an easy divorce, why provide for law courts,

divorce courts, an appeal court with three judges sitting, etc. when the communities affected have got hardly enough to eat ? I should think that is not a move in the right direction. In so far as any divorce is permitted according to the custom of the community in particular castes, it should continue ; but in the interests of uniformity you need not make the divorce more expensive. It would certainly benefit my profession and I am not at all against it. But I know my hon. friend Dr. Ambedkar very well and I have no doubt he will consider all the aspects of the question before coming to a conclusion on this particular question.

In regard to judicial separation, I recall to mind a very interesting debate in the House of Lords some years ago in which Lord Birkenhead took part. Very eminent lawyers and some of the greatest jurists of the day took part in the debate. There was a certain section of the people who took a strong view to the effect that judicial separation is another name for legalising concubinage. I would rather prefer a clean case of divorce to this judicial separation continuing. If it is a question of providing maintenance, if it is a question of seeing that the obligations are discharged that the wife is not starved or that you do not discharge your marital obligation, while continuing to be man and wife, provision is made in the Bill in regard to that.

Why all these complicated provisions of the English law in regard to alimony, in regard to judicial separation, in regard to divorce and restitution of conjugal rights ? Is it necessary to have so many detailed and complicated provisions is a point which is worth consideration.

**Pandit Lakshmi Kanta Maitra** (West Bengal : General): They are necessary in the interests of the progress of the country.

**Shri Alladi Krishnaswami Ayyar :** I am not giving one view or the other in regard to that. You may have your decided views on that matter. But I have no decided views on the subject.

Therefore, I think we have to take the modern trends of thought into consideration and not merely go upon antiquated ideas prevailing in England. Even in England within the recent years there has been a great change of opinion in regard to marriage law, although every aspect of it has not found a place in the Statute Book of England. Therefore, instead of merely copying the English precedent let us see if it is possible to make any changes.

So far as the general principle of it is concerned, I do not think that the Bill is drastic at all in regard to divorce or other matter.

Whatever difficulties and complexities have arisen are due to a genuine attempt to harmonise the two opposing views—on the one hand the ancient idea that marriage cannot be easily severed and on the other the modern ideas which demand separation under certain circumstances. The problem now is how to bring about a synthesis between the two opposing views. Let us approach the consideration of this problem with a certain amount of coolness and with an attempt to understand one another. We cannot stop the current, whatever might be our views. I belong to a very conservative and very orthodox family. I am one of those who believe still in *Shradhas.* I attach considerable importance to my family home and I believe, to some extent, in the ancient view of life. But I cannot at the same time ignore the present day tendency. My sons may not be just like myself and my grandsons much less like myself. Under those circumstances, though my life is rooted in the past, to a very great extent I am in a position to appreciate modern tendency. Therefore, taking all these factors into consideration let us approach the consideration of this measure. If really you believe in sacramental marriage, this method of converting sacramental marriage easily into a civil marriage, somehow does not appeal to me. That is my view. Either have sacramental marriage or do not have it at all. Have particular grounds of divorce for sacramental marriage and particular grounds of divorce for civil marriage. Somehow I cannot reconcile myself to the idea of mixing up the two.

Now, I shall take up the chapter on adoption. The chapter on adoption does not call for any detailed consideration. While the main principle in regard to the law of adoption laid down by the judicial decisions bearing upon the subject have been kept in view, necessary changes have been effected as a consequence of changes in the law as to marriage between persons belonging to different castes. There is no point in conceding the rights of inheritance to the offspring of such marriages and retaining ancient rules as to the eligibility of a boy for adoption based upon the law of marriage as a condition precedent for the validity of adoption in particular castes and particular circumstances. The simple rule as to giving and receiving has accordingly been adopted for a valid adoption in the Bill. The property rights have been regulated with a view to avoid litigation between adoptive mother and the boy to be adopted. A provision has been inserted for preventing the divesting of estates which will have the effect of putting an end to interminable litigation which has been the special feature of law relating to adoption beginning from Bhuban Moyee's case. The law has also been simplified in regard to the need