

for any authority to adopt as a condition for the validity of adoption following the main principles of Mayukha Law. On the whole, it may be claimed that there is everything in the chapter on adoption to commend it for the favourable consideration of this House. The need for an express authority from the husband for the validity of adoption, the restriction of the scope and the terms of the authority conferred by the husband, the free consent of the nearest *sapindas* who are most interested in disputing the adoption and being a substitute for the authority of the husband and the relative claims of the senior and junior widow, the limits that ought to be placed upon the exercise of the power to adopt have been fruitful source of litigation in British Indian Courts. The Bill, I have no doubt, has considerably simplified the law as to adoption and the rights of the adopted son. On the whole, I should think there can be marriage between different communities—it has become part of the chapter on adoption, because when once you agree to the principle that there can be marriage between different communities—it has become part of the law—all these restrictions which have been obtaining in regard to the eligibility of the boy to be adopted must necessarily go. When *gotra* has disappeared, how can *sagotra* be a qualification for adoption ? Therefore, in the interests of simplicity and of logic, we have necessarily to see that giving and taking are enough ; we have to reconcile ourselves to this situation. Having taken the first step, you cannot stop at the second step. The Legislature here has already taken the first step. Therefore, there is no use fighting shy of the next step. Under those circumstances, I would commend for the favourable consideration of the House the Chapter on Adoption.

I am just coming to the other parts of the Bill where I differ from the Members of the Select Committee. In dealing with the institution of joint family, the problems of Indian agriculture and its future and the position of many trading facilities belonging to communities which have trade or business as their principal avocation must necessarily form an important factor. Anyone who is in touch with conditions of village life in India knows that particular families have long been in possession of particular lands from generation to generation, that being the main reason assigned for conceding occupancy rights to tenancy families who have been cultivating the land for a long time. Here I must say that I radically differ from my respected friend, Mr. Santhanam, in regard to what he said about village life in India. It is not correct to say that the joint family is breaking up. I also

claim to be in touch with village life in India. I am a villager myself, though I have spent about forty years in the City of Madras. Hardly has there been any year in these forty years in which I did not spend at least a month in a village. I spend a good part of Christmas and the summer vacation in the villages and with the people of the villages. Therefore, I claim to know something of village life in India, at least village life in Madras, though I know very little of village life in other parts of India excepting through the medium of books and village manuals. Therefore, I wholly disagree with the statement that so far at any rate the villages of India are concerned, the joint family life is breaking up. At the same time, I certainly agree with my friend, Mr. Santhanam, in this, viz., that so far as what may be called collateral branches are concerned, after the first generation, there is a tendency for the joint family to break up. In the first generation there is no breaking up, certainly not during the life-time of the father. If there is any breaking up, it generally is after the children of the father pass away and children's children come into their own. Therefore, you must take the existing state of things into consideration instead of proceeding merely on theory. I myself have been a member of a joint family till recently and I still believe in the ideals of a joint family life. I certainly think that in certain aspects of life in regard to education for example, the joint family system has done a good turn. Many a poor brother has starved himself in order to educate his brothers ; many an uncle has starved himself in order to educate his nephews. A sort of qualified Socialism has existed in the joint family life. At the same time, I agree that no institution can last for a long time. No institution must be allowed to come in the way of social progress. But the question is, has the time come for this question to be taken into consideration? I do not subscribe to the view that the joint family system is breaking down so far as the villages are concerned and in any scheme of reform we must remember that India is a land of villages. The rural people are still following the joint family system to a large extent. The recent inroads made into the joint family system by conceding rights to the widows and daughters-in-law have not materially effected the position. Even in regard to non-agricultural property, communities which have trade as their principal avocation are still carrying on trade or business as a family adventure or business. It is so in my part of the country. I have had a good deal to do with the Natukottai Chettiars for the last forty years, and it is only within the last five or ten years that they are starting companies not with

the idea of breaking up joint families but to see that they get out of income-tax regulations. Therefore, it is not correct to say that joint family life is breaking up either among the *Vaishyas* or among the *Natukottai Chettiars* or among the *Marwaris*. Now, sitting in this Legislative Assembly or Parliament, there is no use our thinking that we are in possession of all the facts regarding every nook and corner of India and legislating on that basis. The only thing we have to consider is, is it so out of tune with modern conditions and is it going to stand in the way of further progress ? You have also to note certain changes which have already been made in the joint family law. The rigours of joint family law have been considerably relaxed in recent years. It is now settled law that any member of a joint family may by a unilateral declaration sever himself from the rest of the family without reference to any court of law. The manifestation of will or intention on the part of any member of the joint family is enough for severance, even so many still continue as members of a joint family because still they like the institution of the joint family. Any member of a joint family may alienate his share of the family property. In the case of father and son, the entire property is liable for the debts of the father. The son is responsible for the debt of the father. He cannot escape his responsibility by saying that the debts were incurred by the father for immoral purposes. I am certain that that sort of litigation is fast dying down. There is no question of escape now by saying that the debt was incurred by the father for immoral purposes. Then again, the law as to self-acquisition has been considerably simplified. Decisions of the Privy Council have made it quite clear that if a person acquires property, he can keep it for himself. Therefore, the plea that I would make to my friend, the Hon. Law Minister is that this institution still obtains. It may break up in the course of the next fifteen, thirty or fifty years. With the change in the law of marriage and other things, it may break up. But my whole point is, without reference to the will of the people, without reference to their consent, without taking into account the general consciousness of the people, why undertake this legislation ? You may think that I am a kind of ancient fellow who does not understand these things. I do want that this country should move with the times, but my plea is you should first ascertain the will of the people. It may be argued. "All right, so far as agricultural property is concerned, we will not touch it, but we will make a change in regard to non-agricultural property". It is not easy to make a distinction in matters of this kind between one kind of property and

another land or property. Once you change the law in regard to non-agricultural property, a change in the law in regard to agricultural property must necessarily follow. Though in the matter of distribution of legislative power between the Union and the States for taxation purposes, a distinction is maintained between agricultural and non-agricultural property, it is an accident only that certain power is given to the provinces and certain power is given to the Centre, and it cannot be denied that Hindu law of succession is single and entire. Succession is not a truncated affairs. Succession cannot be split up. Therefore, when you consider the question, you should consider it in all these aspects both in regard to agricultural property and in regard to non-agricultural property and you should address yourself to the question whether in the larger interests of society, the time has come for a revolutionary change in the family system. I request my hon. Friend, the Law Minister to consider the question why certain chapters of the Bill should not be postponed.

Sir, I just want to deal with another aspect of the question namely the rights of succession of sons and daughters in regard to succession proper. I have got a special claim to speak on that behalf as I am a father of both daughters and sons and I repeat that. In fact the majority is on the woman side, four daughters and three boys. Therefore, I have a special claim to speak on this subject (*Hear, hear*). Apart from what little I know as a lawyer, I have a special claim to speak as a father of daughters and of sons. Now, I want you to look at the general set up of the Hindu family in dealing with this problem. If three sons find it difficult, you say, to live together and to own property in common how can you expect the daughters married to different people, may be people belonging to different castes or communities to carry on joint cultivation in villages ? Under those circumstances, is it in the larger interests of the country, that this property of the father as well as of the son be divided up equally between sons and daughters without any question of difference ? If it is a question of justice, if it is a question of equality, if it is a question of theoretical equality, I have nothing to say against it, but law is not logical—it does not mean that it is always illogical—but it has to take into account the social strata of society, the consciousness of the community, its effect upon the family life and other factors. Therefore, you have not a clean slate to write on. Therefore, let us take what happens in a Hindu family, Mr. Santhanam looks with equanimity from Delhi. If any marriage takes place in a brother's house, the sister and the

daughter occupy the most important part. It is regarded as a father's house, the son looks upon the family house as his house. Every one of us know what an important place the sister and the daughter occupies in the household. (*Hear, hear*). If the mother and father sit together for the *Aarathi*, it is the daughter, it is the sister that brings it and you give the present to the daughters and the sisters on that occasion. After all we are all Hindus; you cannot forget that. The very first person who receives the present will be the sister or the daughter in the household. The second thing is that no marriage can go through in any Hindu household unless provision is made for presents being made to the daughters and to the sisters. Again even though, women who may not care to bear children may not appreciate it—daughters of the family are certainly cared for on every occasion such as *srimanta* or on occasions of first confinement and second confinement. A girl generally goes to the father's house or to the brother's house and it is only after getting two or three children that the girl does not go to the father's or brother's house, and this is Hindu life to-day. It is not the life in Delhi, it is not the life in Calcutta, it is not the life in Madras that is to be the guiding factor in these matters. It is the normal ordinary life in every village, in the whole of India, (*Hear, hear*). Therefore, I would ask you most respectfully the Members of this House, though I am addressing Mr. Deputy Speaker, to take these factors into consideration. The Bible said "I shall set father against father, son against son and brother against brother" or some such thing, but let not legislation result in a feud between the members of the family, an unnecessary feud between the members of the family. A certain amount of bickering, a certain feud is inevitable, so long as property is there.

Sankara said that property is the soul of strife in our country and that is inevitable, but let us not give an impetus to it by stating that I shall set brother against brother, a sister against the brother, the brother against the sister and in that way mould the family life of the India at present. The time may come when each daughter may arrange for her marriage after they attain their maturity. Many of the girls look to their brothers for their marriage. Hardly a week passes when a brother or a father does not come and ask for a little help in regard to a marriage. It may be that I am old-fashioned to consider such requests, but that is Hindu life. I am supposed to be educated in English ways of life but what would you think of other people

who are not so educated as myself? You may be more advanced, I may be less advanced, but I still claim that I am born of the Indian soil and my ideas are rooted in the Indian soil, and therefore, I plead for the retention of these great virtues which have characterized our Indian life (*Hear, hear*). I do not want to go against the modern trends of thought or the modern ideas of progress, but at the same time while it is our duty to keep in touch with the currents of national life, with the social currents at present working, there is no use our imagining that we represent the whole of India. I may tell you, even among educated women, all of them do not think alike and even women who are in the legislatures do not think alike with some other educated ladies who are members of respectable households; they differ in some respects.

Shrimati Renuka Ray (West Bengal : General): Are our households not respectable ?

Shri Alladi Krishnaswami Ayyar : They are very respectable. I am glad that you have interrupted. I am accustomed and I may tell you they are quite as respectable, though they might be a little conservative,—as some of those people who are very respectable and who have advanced ideas in these matters. I have given my views and I certainly refuse to believe I am not a respectable man; I am at least as respectable as others, but my ways of life, my way of thinking, my attitude to these questions is different from those equally respectable because I am cast in a different mould. For example, I have the greatest respect for our Prime Minister and on certain questions I yield to him, but at the same time, I do not look at questions with the same glasses as my hon. friend, my esteemed friend, if I may call the Prime Minister my very esteemed friend. It is merely a mode of approach.

The Honourable Shri K. Santhanam (Minister of State for Transport and Railways) : What is your actual proposal ?

Pandit Lakshmi Kanta Maitra : He is giving his proposals in an excellent way.

Shri Alladi Krishnaswami Ayyar : I do not fight shy of that. The question I have been put is in regard to un-married daughters whether any kind of special provision may be made either for marriage or a special portion may be set apart so far as the marriage of girls is concerned. The law may provide that the daughters will take the heritage of the mothers and the sons will take the heritage of the fathers.

So far as daughters are concerned, I am quite willing to and quite anxious that as liberal and as obligatory, a provision be made for the girls who are un-married. I have absolutely no difficulty in that matter. That is my proposal. It may be worth anything, it may not be worth anything, but that is my proposal.

An Honourable Member : What about the money from the mother?

Shri Alladi Krishnaswami Ayyar : There is no use speaking about that. You take a census of the people who pay income-tax in this country? They are not many. This is a poverty stricken country. So there is no use of saying that that the mother has no property. Many are poor. They may have no property, but they cannot get away from social obligations. Those who have property may divide their property, but that may have repercussions upon the people who have no property, or very little property, but at the same time who are quite sensitive to the social and family obligations. Therefore, in any step that you take, you have to see that the social obligations are not retarded. That is the plea I make so far as this is concerned. In regard to the institution of joint family property, I differ from my friend the hon. Dr. Ambedkar. It is seldom I differ from him. And I am often influenced by him, and have occasionally influenced him. Therefore, I have no doubt that he will pay heed to some of the criticisms which those of my persuasion have offered. He may look obstinate, but there is none who yields to reason more than my friend Dr. Ambedkar. I know him very well and it has been a great asset to me, I mean my close acquaintance with him these three years. Well, that is my view, so far the institution of joint family and the rights of equal succession of sons and daughters is concerned.

The next aspect is with regard to *Stridhana* property, and on that, in so far as you remove all restrictions on the power of alienation, I am at one with the House, that is with the other Members of the House. This has merely led to unnecessary litigation, the reversionary filing suits for the declaration that alienations by the widow are invalid, going to this court and that court, and all sorts of evidence being let in. If only in the interest of unnecessary litigation being avoided, I am for the widow being given absolute powers of disposition during her life-time. But from that it does not necessarily follow that the course of devolution must be the same with regard to every kind of *Stridhanam* property. You call it *Stridhanam* and then begin to attach

certain consequences in the matter of succession. Once you make it absolute property, why not it descend to the heirs? That is the question. I am willing to put the question to ninety nine Hindus I meet, "Here is a property devolving upon the widow from her husband. It is absolute property, and after her death it is to go to her father and mother, in preference to the father and mother of the man whose property has devolved upon the widow." I put that question. You may take a referendum in any part of the country and I am quite clear what the result of that referendum will be. And I challenge any Member to say in this House that the referendum will be other than what I feel. Therefore, as a lawyer, if you put me the question, can you have two kinds of absolute properties, one kind descending in one way and another kind descending in another way, and ask me, why not in the interest of uniformity, give the same rule of succession for one kind of property and the other kind of property? Then I say that you need not sacrifice social sentiments at the altar of logicity. Law need not always be logical. Law need not necessarily be Logical. Logic is not the essence of law.

The Honourable Shri K. Santhanam : Should law be generally illogical?

Shri Alladi Krishnaswami Ayyar : My answer to my friend Mr. Santhanam is that law need not necessarily be logical. That is so because law is the product of social evolution and social adjustment, and therefore, how can it always be logical? Society does not move according to a particular standard or plan. Unfortunately, society, except in a communistic society, does not move in that way. Therefore, under these circumstances, you take the average sentiment of the Hindu into consideration. There is no use of saying that it is illogical to draw a distinction between one kind of *stridhana* and another. Why should the *Stridhana* be allowed again to go to the husband's kindred? Why not it go to her heirs? In the very Bill that is the provision that is made. Therefore, so far as woman's property is concerned, I think that is a point which may receive the consideration of the hon. Law Minister, before the Bill becomes law, consistent with the sentiments and the general feeling among the people. Until recently the widow did not have the power of disposition. The question is whether on the theory that each person when he inherits property, he or she must become the stock of descent, inherited property of every description must be treated alike. That is my plea with regard to woman's property. Throughout I have refrained from resting on logic.

And lastly, Sir, I may mention, if I may, a few words with regard to distant heirs. I feel that the present provisions are a great improvement upon the previous Bill. It has drawn upon certain principles of *Dayabhaga* and it has also brought in the other systems. And I think, so far as distant heirs are concerned, the Bill as it stands is a great improvement upon the original Bill, and if there is any defect here and there, they can be removed easily.

The chapter on guardianship, maintenance, and the other chapters are conceived in a very liberal and progressive spirit, and I think they deserve the whole-hearted support of the Assembly, though it may be that here and there, they may require some modification, but that can be easily done at a later stage of these proceedings. Therefore, in the full confidence that the hon. Law Minister as well as the Prime Minister will be responsive to public criticism, while taking into account the progressive tendencies of the age, I move for the second reading of the Bill and I support the motion moved by the hon. Dr. Ambedkar.

***Dr. P. K. Sen** (Bihar : General) : Sir, I am quite conscious that I must be brief, as there is a great pressure upon the time of the House. At the same time there are certain aspects which have been raised, even by my predecessor, my esteemed friend, Shri Alladi Krishnaswami Ayyar, which do call for some comment. He has followed the order of the Bill, as a matter of fact, and taken the law of marriage first of all. I must confess that I could not exactly follow him as to whether he gave his opinion in favour or against it. As a matter of fact he said in one part of his speech, while dealing with that section, that he had no definite opinion on the subject. So far as the law of marriage and divorce is concerned I do feel that one must be definite. There is no part of law which calls for definiteness more than the law of marriage, because, it affects not only the parties who solemnise the marriage between themselves

Shri Alladi Krishnaswami Ayyar : Sir, I do not know if I had made myself clear. What I said was that if we had had a clean state to write on, we might do otherwise but having regard to the previous step taken by this House and the legislation undertaken, there cannot be any serious objection to the portion relating to marriage excepting in regard to one or two matters, which I mentioned in the course of my address.

Dr. P. K. Sen : Except in relation to sacramental marriage. I suppose.

* C. A. (Leg.) D., Vol. VI, Part II, 13th December 1949, pp. 519-27.

As I was observing we have to see that in every respect the law of marriage should be perfectly definite and explicit and there should be no ambiguity at all about it and it is for that reason I take it that the Bill contemplates that even when the marriage has taken place according to the sacramental form there may be objections raised with regard to it. It may be urged that there had been some irregularity, some omission, some particular form of ceremony not having been observed. Take, for instance, *saptapadi*. Everybody knows that *Saptapadi* is an essential factor. Not until the seven steps have been taken can the marriage be said to be valid. In fact, all manner of irregularities may be urged as objections with regard to the marriage. It is for that reason that it has been provided in the Bill that even when a marriage has been solemnised according to certain sacramental form, it is open to a party (it is only permissive) to go and have the marriage registered, so that there may be no objection raised later on with regard to its validity. This is, I submit, absolutely essential, because it is not only the two parties who solemnised the marriage between themselves who are affected but it is the next generation and the next generation, indeed, generations unborn, that are affected by it. The whole question of legitimacy depends upon it. Therefore, I submit that whatever may be the irregularity, there must be some method by means of which the legitimacy of children and their rights of inheritance may be protected and may not be left in uncertainty. There can be no difficulty whatsoever : there is some way of ascertaining what the necessary forms are which have to be observed in order to make a sacramental marriage valid. That too has been provided for in the Bill in the form, *viz.*, that in any particular area it may be found that a particular set of ceremonies is regarded as essential to the validity of the marriage : in that event those ceremonies will be regarded as validating the marriage. Nevertheless, it may so come to pass that some of these ceremonies have been performed or it may be that the performance of those ceremonies were not exactly in the manner prescribed. In that event what is to happen? Is the married couple then to remain in the position which would make their children illegitimate in the eye of law? It is for this reason only that it has been made optional for the parties to have their marriage registered in order to get it validated.

I come to the next question about public opinion and about their being a large body of the public not having been sufficiently apprised

of the contents of the Bill. The question has been raised often and often here, why hurry why not wait for a year or two or three years? We have already waited long enough. Why should we not wait for another period? It is not a question of eleven years which the Hindu code has taken, nor is it a question of two years which have elapsed since. This has been mooted from the last century.

The House will be pleased to recall Act III of 1872. The Special Marriage Act which was first placed before the legislature was in 1868 by Sir Henry Maine at the instance and on the initiative of Keshub Chunder Sen, Bengal's great social reformer. As a matter of fact, to go further back, in the fifties of the last century, the Widow Re-marriage Bill was on the legislative anvil. The great Ishwar Chunder Vidyasagar was exerting a great influence on the public mind to get their support for Hindu widow remarriage. It was at that time that a remarkable petition signed by four hundred men was put up before the legislature, in which they said that although they were orthodox Hindus, they did not believe in restricting themselves to a particular caste, they believed in inter-caste marriage, they believed in monogamy, they believed in certain ceremonies being essential for the purpose of observing pure Hinduism but that they wanted to eschew other ceremonies and that, therefore, they wanted the help of the legislature to pass a comprehensive Bill, not only the Hindu Widow Remarriage Bill but a Hindu Marriage Bill, in which provision would be made for inter-caste marriage, for adult marriage and for marriage solemnised with certain ceremonies only to which they did not take exception, and not every ceremony which at that time was considered to be obligatory. This was somewhere about 1856 and it was a most representative body that put forward this petition. Among those notable public men who signed the petition were people like Peary Chand Mitter, Radha Nath Sikdar, Abhoy Charan Mullik, and Rasik Krishna Mullik. They had nothing whatever to do with the Brahmo Samaj : they were orthodox Hindus. Side by side with this organisation there were all the activities of the Brahmo Samaj going on. The Brahmos had already solemnised inter-caste marriages, because they believed that "Right was right: to follow right were wisdom in scorn of consequence." They did not care what the law was. They said that they would break down caste notwithstanding the fact that there might be difficulties regarding legal validity. Later on they thought that this state of affairs should be removed for the sake of posterity, for the

sake of the children and it was therefore, that Sir Henry Maine introduced a Bill which ultimately emerged as the Special Marriage Act of 1872. That this Act has catered not only for the Brahmo community but for a much larger body is testified to by the fact that after the passing of the Act several amendments have been sought in order to make it applicable to other sections and in order also to obviate certain objections to particular sections of the Act. In doing so, these people at different times acted as the representatives of the conscience of the society—the minority conscience, let us say. But the minority has a conscience; and the social conscience of the minority also must be respected. In every country we find that it is the minority conscience which has always come to the help of law for the purpose of vindicating its own view. Well, Sir, today we do not know which section is in the minority and which section in the majority. But it goes without saying that in a democratic form of government all sections of people must necessarily have their consciences vindicated, and their ways of life and thought, at least so far as fundamental points are concerned, respected. In that view the question that really has to be solved by us is this : Is this Bill in any particular respect imposing itself upon the conscience of any particular section? (*Babu Ramnarayan Singh* : Yes) And by that will its excellence or otherwise be tested.

Now, if we come to the first part of the Bill, so far as the question relating to marriage, divorce, judicial separation, guardianship, alimony, custody of children and so on, is concerned, so far as I can understand, it cannot possibly be contended that it is being thrust upon anyone. After all, it is only in those cases where you find that divorce has become absolutely unavoidable that the provision will be utilised. And there are such cases, there can be no question whatsoever about that. There are cases where continuance of the marriage bond will really lead to misery from the point of view of both parties, will lead to disintegration of the family. It is only there that divorce can possibly come on.

Sjt. Rohini Kumar Chaudhuri (Assam : General) : May I ask if the subsequent marriages become happy? They become worse.

Shri L. Krishnaswami Bharathi (Madras : General) : It depends upon the lady you marry!

Dr. P. K. Sen : I am not going into that question because in that case it would be a matter of statistics as to how many cases have really become happy or how many cases have really become happy

or how many cases have turned out unhappy. That is not the test. The test is unavailability. Is there anyone who can possibly say that in no circumstances should there be a separation at all? There may be circumstances imaginable where there should not be separation. It is for us to sit down with good will and mutual understanding, and discuss all these points and find out whether it is going to be compulsory upon any particular party or not. There is no compulsion at all here. It is perfectly optional. If you find that it has become impossible to carry on you can go to a court of law. The court of law will go into the matter, find out whether all the requisites of a divorce or a dissolution of marriage are present and then issue a *decree nisi*, or whatever it may be. But that does not necessarily mean that divorce will go on multiplying from day to day. That depends entirely on the temperament of the people. And I feel bound to say that because it has taken a particular course in America or England or in other foreign countries, in India also it should take the same course—that is an impossible conclusion. (*Pandit Lakshmi Kanta Maitra*: It is the same institution). I do not believe at all that in India the same result will follow.

Pandit Lakshmi Kanta Maitra : Worse.

An Honourable Member : Is it not time to rise for Lunch?

Mr. Deputy Speaker : I think the hon. Member is likely to conclude soon.

Dr. P. K. Sen : I am trying my best to conclude soon, but I have just begun.

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

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

Dr. P. K. Sen : Sir, when this House rose for mid-day recess, I was on the point of the permissive nature of the provisions regarding divorce and allied matters. The question that was put to me in the course of the debate was why there had been so many divorces in other countries.

Shri Mahavir Tyagi (U. P. : General) : On a point of order. I find only the hon. Minister of State for Transport and Railways sitting

on the Government Benches. The Bill under discussion neither deals with Railways nor with Transport. Will you be kind enough to call the Hon. Law Minister, Sir ?

Mr. Deputy Speaker : I am sure the Law Minister will be here soon. Till then, the other Minister who is here will take notes.

Shri Ajit Prasad Jain (U. P. : General) : This is almost a contempt of the House.

Mr. Deputy Speaker : I have got chits sent to me by no less than 36 members so far.

Shri M. Tirumala Rao (Madras : General) : Some have not sent our names. Our chits are lying here.

Shri Mahavir Tyagi : And many have been waiting to catch your eye. They have not sent chits.

Mr. Deputy Speaker : So the position is that, besides these 36 there are others also trying to catch my eye. As the position stands at present, Government had fixed only yesterday and today for this Bill. I do not know the state of government work. I do not want to stifle discussion, but at this rate I do not think we can go on. Therefore, I suggest to hon. Members to limit their speeches, as far as possible, to fifteen minutes.

An Honourable Member : Impossible. You suggest to Government to extend the time.

Shri R. K. Sidhva (C. P. and Berar: General) : Such members as are hopeful of finishing their speeches within five or ten minutes should be given preference. There are many such members, I know.

Shri L. Krishnaswami Bharathi : But will they keep to their assurance? That is the point.

Shri R. K. Sidhva : I give a definite assurance.

Shri Biswanath Das (Orissa : General) : May I just bring to your notice, Mr. Deputy Speaker, that the hon. Speaker had given an assurance to this House that he would give full scope for discussion of this motion and it will be unfortunate if you allow only ten or fifteen minutes for a speaker. It is something absolutely different from an ordinary Bill. It concerns the life and the economic and social existence of crores of people. Under these circumstances, I would beg of you to stick to the assurance given by the hon. Speaker.

Shri L. Krishnaswami Bharathi : He is the Speaker. He can now decide.

Mr. Deputy Speaker : It is unfortunate that the Speaker is not here in his seat. I do not want to stifle the discussion, but I am only suggesting a time-limit so that all Members who want to take part in the discussion may have an opportunity. I leave it to the good sense of the hon. Members themselves. Fifteen minutes is not an inviolable limit. One minute above or one minute below may not be very bad. But beyond that I am afraid even if the government were willing— I do not know whether they are willing or not—to extend the discussion by a day, it would be impossible, having regard to the number of speakers who want to speak, that everyone will have a chance.

Pandit Balkrishna Sharma (U. P. : General) : Then keep it to the next session.

Mr. Deputy Speaker : It is not in my hands.

Shri S. Nagappa (Madras : General): Why not sit for one or two hours longer?

Mr. Deputy Speaker : At present the Members who can finish their speeches within fifteen minutes can do so, but in cases where individual Members consider that they must have more time, they can have more time.

Shri M. Tirumala Rao : You can consider the merits of a speech, and if many arguments are repeated, you can ask the speaker not to repeat the arguments.

Mr. Deputy Speaker : Very well, then, Dr. Sen.

Shri H. J. Khandekar (C. P. and Berar : General): There are only 2½ hours more. Only ten speakers will be able to speak even if each speaks for fifteen minutes. What about the others who want to speak on the bill? I request you to request government to extend the debate by a day or two. This is such an important measure that the eyes of the whole nation are focussed upon it. We must have full discussion over it and then only pass it, in whatever form it is agreed to.

Mr. Deputy Speaker : I am sure the proceeding of this House and the suggestions made by hon. Members will be communicated to and taken notice of by Government. Dr. Sen may continue his speech.

Dr. P. K. Sen : Sir, I quite realize that brevity is the soul of wit, but there are occasions when brevity is the soul of unwisdom, because I shall not be able to make things clear at all and therefore, it will not benefit anybody at all if the House were to hear a discourse which is inconclusive and obscure. I shall therefore, try to touch only on the fundamental points and not enter into details at all.

The question that I was last addressing this House on was, whether or not by giving permission for divorce this country will not be plunging itself into a large number of divorce cases like other countries. My answer to that question was—and is—that the cases for divorce will depend entirely upon the quality of the moral values that a country has. A society may be so constructed that only in absolutely unavoidable and necessary cases would the parties seek a divorce and that there would be inherently a dislike, a distaste, a contempt for divorce where there is no occasion for it and where evidence is really fabricated for the purpose of establishing that there are reasons for divorce. In this country the experiment has been tried in Baroda and in some parts of South India, where there is and there has been divorce for a long time past, but I am told there have been only three cases so far in Baroda and these three cases during twenty years. I submit, again, that it is the social atmosphere and the moral values prevalent in the particular society that determine the number of divorce cases. Therefore, it is not the law that makes the society. The law only gives sanction to certain cases where it is necessary to give sanction for divorce. In this part of the Bill which deals with marriage law there are four characteristics. The first is : inter-marriage has been allowed. The second is that there is prescription for divorce. There is, thirdly, prescription for monogamy. Now all these are present in Act III of 1872 and, therefore, it is not the Hindu code which has raised these points for the first time. It was in the fifties of the last century, as I have said, that the agitation arose and ever since then the agitation has been going on. The crusade against caste was no doubt first led by the Brahmo Samaj under Keshub Chunder Sen. The Brahmos at that time suffered persecution, ex-communication and ignominy of every description. Today we recognise that caste shall go and therefore, all these provisions that are laid down here in this Bill relating to intercaste marriage need not raise any opposition at all. There is no doubt whatsoever that there is a very large body—if not an overwhelming body—of public opinion in favour of abolition of caste. Otherwise, what are all these provisions that we have laid down in the Constitution? Caste shall go. If we take that position then there is nothing objectionable so far as those provisions are concerned which relate to intercaste marriage.

The same consideration applies to monogamy. I do not know whether there is any public opinion now in favour of bigamy or

polygamy. There may be individual cases; but that is quite different. The whole body of public opinion now, I submit confidently, is in favour of monogamy. Therefore, there is nothing objectionable, so far as that is concerned in the present Bill, and, as I have said, permission for divorce cannot possibly raise any difficulty because, after all a permissive provision must necessarily be there for those unfortunate cases where divorce is called for.

Proceeding, Sir, to the next point as to why there should be any change at all (that was the point on which I was) it has been said that there must be a strict adherence to *Shastric* law and that there should be no departure whatsoever from it. For hours this discussion has been carried on the floor of this House. It has been contended that *shastric* law is absolutely final, inviolate and inviolable. You cannot change it. I should like to know what *Shastric* law means. As a matter of fact, in our *shastras* there is always provision for change and there has always been change. Otherwise what is the meaning of these numerous *Smritis*. We have it in Manu the well known injunction that there are four sources, four norms, of conduct laid down:

श्रुतिः स्मृतिः सदाचारः स्वस्य च प्रियमात्मन ।
एतश्चतुर्विधः प्राहः सक्षाद्धर्मस्य लक्षणं ॥

Which being translated means *Shruti*, *Smriti*, the usages established by righteous men and the satisfaction of one's own inner self—these furnish the four standards or norms of conduct. These four norms of conduct include within them the inner satisfaction of the soul, the conscience by which, I take it is meant not individual conscience only, but social conscience also. The social conscience of the age in which we live has got to be respected and that is one of the standards by which our conduct, our *Dharma* is to be ascertained. That is one of the standards by which law must be laid down and it is on this principle that all along, the law, the so-called *Shastric* law, has changed and changed and changed. My hon. friend, the Minister of Law said in his opening speech that if you go to *Parasara Smriti* or *Narada Smriti* you find there provision for widow re-marriage, and provision for very many other things which may be called revolutionary. How did they ever come to it? How did they get beyond the barriers, as it was, and break through them and start upon something which was revolutionary? It was because according to the highest injunctions laid down, there are not only *Shruti* and *Smriti* but other

sources also. You have to take the conduct of the righteous and the pious,—those who know the way of life that leads unto self-realization—and it is those people who laid down the norms of conduct. You have to follow those. They are not *Shastric*. They are not necessarily to be ascribed to any particular *Shruti* or *Smriti*, but those are the ways of right living that have been laid down definitely for the purpose of regulating our conduct—individual as well as social. If that be so, if that is the way in which the law must evolve itself, then necessarily where we find that there is a strong public opinion, where the conscience of society or a particular section of society, the minority section, let us say, dictates that a particular way of life should be sanctioned by law, law comes forward to the rescue and lays down that it shall be so. If that be our standard, then can we possibly at this moment say that there shall be no change at all ? Can we possibly assert that our law, our *Shastric* law, has been stationary ? If it is inviolable and inviolate, if it is unalterable and inexorable, then there will be no progress and it will be a poor compliment to pay to our Indian law-givers to say that law has been stationary. On the contrary, it is time today to muster up courage and to say that the views of no particular section, whether minority or majority should be trampled upon, that if there are strong opinion held in regard to a particular point then the law must come forward to give permission for that.

I pass next, Sir, to the other fundamental points. What is the other main objection raised with regard to this Bill. It is on the question of property—the Mitakashara and the Dayabhaga. Is it possible at this moment, let us ask ourselves seriously, to raise this question? The joint family system had its virtues; it had its glories in the past. Nobody can deny that. But I have been under the impression that of late it is the tyranny of the joint family system which has appeared most obnoxious to a very large number of people. They feel that the earning people in the family are sucked dry by the indolent ones. There are people who do not want to go forth and earn at all because there is a family behind them, and they think, “What is the use of our taking any trouble for earning when there is the family to support us?” And those members of the family who by the sweat of their brow earn something, it is their income that is sucked dry by others who are indolent and who are also in every way extravagant.

Dr. P. S. Deshmukh (C. P. and Berar : General): Have they ever complained, Sir?

Shri L. Krishnaswami Bharathi : Yes, they do. Complaints are inherent in the situation.

Dr. P. K. Sen : If their complaint could be heard, then of course it will be a different matter, but if they were people in the family, then there would be no opportunity whatsoever, to make a complaint. The only way in which they can possibly complain is now laid down namely, by expression of intention to separate. Now, what is the actual position? Howsoever strong the family integrity may be, any individual member can come forward and say, I intend to separate, and that expression of intention will instantaneously effect separation in the eye of the law. Where is the integrity of the family then? What then has the *mitakshara* family to do? According to judicial decisions now, it has come down to this that the slightest intention to effect separation and the expression of that intention will effect that separation. In that case I do submit that it is too late in the day to say that the joint family is a huge institution which remains intact. It is tumbling down and there can be no doubt whatsoever that with the effort of man it cannot possibly be protected any longer. People want individual liberty now. Everybody who earns wants to earn and also go his own way. He does not want to be fettered by other members of the family. It is individual freedom which is now their aim and object. This cry has been raised from the earliest times. "The individual withers and the State is more and more." That is a complaint which has been heard for some time past. Today also we feel that in our society the rule of the majority, the rule of society, is predominant, but nobody wants this predominance any longer. The individual now wants to go off at a tangent. He says, I do not want to be governed by the family. I want to earn my freedom and I want to go my own way. I appeal to every individual Member of this House to ask himself if that is not the spirit of the modern times, and if that is the spirit, then where are we? Where is the advantage in trying to bolster up an edifice that could not possibly exist any more. Therefore, this great difference which is being drawn between *Mitakshara* and *Dayabhaga* is practically gone. It may be that when we sit round a table in perfect amity and goodwill, in perfect understanding of each other, we may be able to iron out all these differences and we may be able to arrive at a very satisfactory solution without hurting the instincts of any particular section, and I do hope that that will be so. I do not want to go into details, but I just want to point out that this is the line upon which our discussions may proceed in future.

Then, Sir, take the other details. Practically in the matter of inheritance or in the matter of succession, there is nothing upon which controversy rages except on the daughter's share. All the other things are more or less now things of the past. Legislation has taken place, numerous judicial decisions have been passed whereby rights have been given to all other members of the family, those that claimed them. The only thing upon which controversy centres now is about the daughter's share. It may be half the share that the son gets, it may be an equal share with the son, it may be any other share that may be decided upon by everybody sitting round a table. I am perfectly confident that with goodwill and mutual understanding, something satisfactory may be evolved in this line. It is not that every individual member of the Select Committee is bound down by its decisions. We are all free to exercise our own views. I frankly admit that there are certain things which I do not like. There may be other members who say that there are certain aspects of the Bill which do not commend themselves to them. Therefore, all these differences have to a certain extent to be ironed out by mutual discussion, but apart from that, the fundamental question is whether the daughter has to get any share at all. Now when it is said that the daughter cannot get a share at all, then I do think—and I have no hesitation whatsoever in expressing my views freely and frankly,—I do think that it is the the same old prejudice against the female members of the family that dictates this objection.

Shri L. Krishnaswami Bharathi : Quite right. That is the real point.

Dr. P. K. Sen : We may hold our women members in high esteem. No doubt it is often said that the ladies of every family are angels of grace, that they are ministering angels. That is perfectly true, but do we do all that is needed, all that is called for, towards them? Do we do all that is wanted from the men-folk to the women folk in our families ? Let us be perfectly sincere and frank about these things. There is a great deal that has to be done for our women-folk. Women today want their place in society. Continuing to do their duty by the family and continuing to be ministering angels of the family, they have also some other work to do. They have to take an interest in public affairs. They have to take an interest in social organisations. Their presence is indispensably necessary in many organisations which are being set up today. Therefore, we cannot possibly have a framework

of society in which such women could not possibly exist. They must always be the ministering angles of the men-folk, that is to say, looking after their physical comforts and welfare, and do nothing so far as their higher aims and aspirations are concerned. But they have a function to fulfill in society. In the society of independent India, women have a very large place to fill in every organisation, in every movement. That being so, we must set them free and there is nothing that is wanted more than economic freedom. (*Hear, hear*). There are many cases in which lives are blasted because they have got to be dependent upon some male member of the family for their very existence. Therefore, the question of their economic freedom has a place in the affairs of today.

Let us not be absolutely oblivious of that fact. If we want to give economic freedom, then there is no reason whatsoever why we should turn away and say : “Oh a daughter, she cannot have a share, she will remain a ministering angel of the family” by which it is meant that she will always be a dependent there ; and if she is a widow, she will be only looking after the comforts of other people and will not be able to do any other service to the family or to the society or to the nation at large. Well, Sir, I do not propose to go further, because it will take a very long time and I know that I shall then be trespassing upon the time of others. But a good deal has been said, a great deal of discussion has taken place upon the fundamentals. When I contemplate all these discussions that have taken place, I am firmly convinced that if after this debate, we can sit around a table and we can bring ourselves to consider all these details in a spirit of perfect goodwill and understanding, we shall be able to attain a solution. The minor points that trouble us are many, it may be, but their solution is not so difficult. It is the fundamentals upon which we have to concentrate our attention and when we do so, I think our path is clear.

***Shrimati Kamala Chaudhari** (U. P. General): (*English translation of the Hindi speech*) Sir, before I say a few words in connection with the Hindu Code Bill, I should like to congratulate the hon. Dr. Ambedkar for bringing forth this Bill. My own feeling is that this Bill has been brought up before this House in conformity with the spirit of time. This is absolutely in accord with the march of the time

*C.A. (Leg.) D., Vol. VI, Part II, 13th December 1949, pp. 535-40.

and present-day demand. Although it is being opposed on religious, cultural and many other grounds and various kinds of things are heard against it in the course of hostile propaganda, yet my personal feeling is that this Bill will prove a sort of panacea for our women community and the progress of our Indian Society, and this will go a long way to benefit our women-folk who are even today being degraded to the lowest ebb. Moreover, our future women-folk shall also remain indebted to the hon. Minister and this House if this Bill is passed in this Assembly.

Those who oppose this Bill have expressed the opinion that this will prove harmful to our religion as well as culture. This thing does not appeal to me at all. This is another thing that the brain and heart of our countrymen have been framed in such a way that anything said in the name of religion highly appeals to the sentiments of the people. On the altar of this very religion—in what manner did we accentuate our communal feelings ? In the name of this very religion, we have seen the murder of Mahatma Gandhi—the father of the Nation.

So, in this way, I see that this Bill is also opposed by raising a hue and cry in the name of religion and Indian culture, and those of the persons and our sisters, who cannot even as yet understand what is law, how this Assembly has been constituted, who cannot even understand the right of franchise which has been granted to them in our Constitution, are being told like this, and it is acclaimed that a great majority of women in the country are opposed to this Bill. But so far as my humble intellect can conceive, this Bill does not appear to contain any such thing which might be against our religion and culture.

In one of the parts of this Bill, a provision has been made prohibiting the right of polygamy which is at present exercised by the religious minded Hindus. This is not permitted and a ban has thus been imposed upon it. With all the humility, I would submit that I apprehend that this Bill might be opposed by a majority of our brethren for the reason that some such ban is being imposed upon them that in the life time of their wives, they shall not be permitted to contract many marriages. But I do not find in it anything against the religion, because it so looks to me after going through our scriptures and ancient literature that never during any time, even in the olden days, the institution of polygamy was looked upon favourably. After scanning through the ancient literature, we do come across such instances where the ruling

prince was allowed to marry more than one wife. We find the rulers disregarding the customs, traditions, usages and the lofty ideals—ideals regarded as sublime—on which stood the structure of our society, but I would like to cite before you an example set forth by one who is considered as an incarnation of God and who has placed an ideal before us. After looking through the great epic written by Valmiki—the epic which has safeguarded our Indian culture and which has sustained our culture for the last so many centuries—it appears that when King Ramchandra sat for the performance of *Ashvamedha Yagna* and when the priests and elderly persons told him that the *Yagna* (oblation) cannot be perfected in the absence of a wife, even at that moment he performed the ceremony by installing a gold idol of Sita and did not have recourse to a second marriage. This ideal lies before us and if we scan through our classical epic, we shall have glimpses of this at every place. During the times when Lord Rama lived in the forests and when Shurpnakha implored him for marriage, Lakshman had told her that Ramchandra was a prince of Ayodhya and was likely to become the ruler of that kingdom and that he was even in a position to marry; but the latter was already a married man and could not thus re-marry. Even at that time the utterances which our Poet Laureate had attributed to Lord Rama establishes the same very ideal that the institution of polygamy was not looked upon favourably during those days. I do not understand how the restriction placed thereon in this Bill is opposed to religious doctrines. On the contrary I think that if such actions were to be encouraged then they would surely cause the destruction of the high ideals of our Indian culture and society. I believe this to be an ideal for every Hindu who professes himself to be a follower of Hindu religion and a supporter of Indian culture. It is a great injustice done to woman that the husband is allowed to enter into matrimony once, twice, thrice or even four times in the very life time of the legally wedded wife. For a woman this custom is horribly painful and demands utmost sympathy. It is another thing that since centuries restrictions have been imposed on our women folk and the women of this country have more or less been confined within the four walls of the house. Restrictions have been imposed on their social, mental and economic rights. Their tears dry up in their eyes only and are not even allowed to trickle down. But our poets, writers and authors have given a very vivid description of this colossal suffering and tribulations that the women have to endure. For a woman

no other suffering is more tormenting than the distress of having a co-wife.

Now when the age of renaissance began and the eminent persons of our country began to realize their abject misery then, as a result of their kind efforts, the condition of the women folk was carefully considered over and hence from time to time such revolutionary Bills were passed in this House. At that time our country was in turmoil and then Mahatma Gandhi forced an entry into the social structure of our society. He elevated the women folk to such an extent that they could stand on their own legs. Today a keen desire for securing her due rights has awakened in her heart. The woman of the future will not tolerate this sort of oppression and tyranny lying down as she has been doing till today. She will never tolerate this sort of neglect and disrespect. Therefore, I think this time to be most favourable. The Bill that is before us should be passed in this House with great applause.

This Bill is being opposed on many grounds. I have had opportunities to hear such thing here. Obscene and dirty things are said against the women community, they are being stigmatised. Thus a propaganda is made here by giving publicity to such scandalous slurs against the women folk. The people here have come to believe that the right to divorce provided in the Bill would result in the destruction of the structure of our society and our culture would go to dogs. I do not understand how people give rise to such apprehensions and how they resort to such talks. But as far as I have studied this Bill I have not come across anything concerning the dissolution of marriages that can be called an innovation, or anything that has not been allowed and permitted by our sacred texts and holy scriptures. All the conditions that have been laid down for the dissolution of marriages, or in what manner the marriages can be dissolved, or for what seasons divorce can be granted. I think all these conditions do exist in our *Shastras*. I myself believe in Hindu religion and culture. I am a Hindu woman. Wherein lies the glory and importance of the woman I know that also. For centuries our sages and preceptors, poets and writers have sung songs about the greatness of the Indian woman and have mentioned her in the most glorious terms. I know that all this greatness has not been attributed to female form only, they have sung songs about her noble spirit of renunciation instead. I think that this high ideal is very good for us. Not from today but from ages the Indian woman has been maintaining these ideals and the glorious history of