

They speak of having considered the Bill and not the revised draft. But further they say as follows :—

“The Draft Hindu Code, as introduced in the Legislature did not receive any departmental scrutiny prior to its introduction and the Ministry of Law have now produced a revised draft, which, in our opinion, is more satisfactory in several respects. This revised draft does not make any substantial changes in the body of the original Bill, but within the framework of the original Bill, it has recast it so as to be in the form in which Bills are usually presented to the Legislature.”

So it will be clear that the Select Committee had applied their mind to the original Bill and had come to the conclusion that there was revision thereof, not in substance but in respect of the form only.

They also mention the reasons why they considered the revised draft as better than the original one, and then they say:

“Consequently we decided to confine our deliberations to the revised draft of the Bill.”

The word “consequently” is important. Having seen the substantive provisions of the original Bill and the revised draft, it was natural and more appropriate to deliberate on the revised draft, which was nothing else than the substance of the original Bill in an improved form. The Select Committee further say :

“References are given in the margin to each section indicating the corresponding section in the original Bill.”

This is a further cogent proof that, though their deliberations were confined to the revised draft for finalising their conclusions, they had before them the view of each and every clause of the original Bill. This is made further very clear in the notes on clauses in which they deal with various parts and clauses of the Bill and state with reference to each part or clause the corresponding part or clause of the original Bill.

The joint minute of dissent of Dr. Bakshi Tek Chand and Pandit Balkrishna Sharma says, in passing at one place, that what the Select Committee considered was the revised draft and not the original Bill. This has to be interpreted in the light of what has been said above. The place where they make a mention of the revised draft being considered, the point of their contention is that the changes suggested by the revised draft were not merely changes of form, but related to matters of substance. It may be remembered that, in their detailed and able minute, they did not make any point that the original Bill was not considered by the Select Committee. Whether the changes suggested by the revised draft are good or otherwise, is the point they are making in their minute of dissent.

On the facts, therefore, as disclosed by records, I am clear that the Select Committee had given full and due consideration to the substantive provisions of the Bill that was referred to them? and the present motion of the Honourable the Law Minister is, therefore, competent, and in order.

Now, this being the decision on facts, what is the point of order of Mr. Kapoor ?

An Honourable Member : We may adjourn now; it is past five O'clock.

Mr. Speaker : The house may now adjourn.

The Assembly then adjourned till a Quarter to Eleven of the Clock on Friday the 18th February 1949.

(11-45 A.M.)

*** HINDU CODE—contd.**

Mr. Deputy Speaker : We will proceed to the consideration of the Hindu Code.

Sbri Jaspat Roy Kapoor (U. P. : General): May I raise a point of order ?

The Honourable Dr. B. R. Ambedkar: *rose—*

Mr. Deputy Speaker : A point of order has been raised by Mr. Kapoor.

The Honourable Dr. B. R. Ambedkar (Minister of Law) : I was going to refer just to that. Sir, the Order Paper contains sixteen different motions, some of them raise points of order and some of them are substantive motions. I was going to express myself on them before I actually spoke on my motion. However, if my friend has to say something, let him do so.

Mr. Deputy Speaker: Let us hear his point of order.

Shri Jaspat Roy Kapoor : Sir, on the previous occasion when the motion was being taken up I stood up to raise a point of order. I was then directed by the Honourable Speaker to wait until the point of order raised by my friend Mr. Naziruddin Ahmad had been disposed of. That point of order was disposed of that day exactly at 5 p. m. thereafter the House rose for the day. I hope you will be kind enough to allow me to raise that point of order now. But before I do so I want to assure the House that my object . . .

*C.A. (Leg.) D., Vol. II, Part II, 24th February 1949, pp. 821-52.

Mr. Deputy Speaker: The honourable Member will kindly state his point of order. There need be no apology or argument. I should like to hear the point of order.

Shri Jaspal Roy Kapoor : My point of order relates firstly to the rights and privileges of the members of this House and secondly to the competency of this House in the present Session to deal with such an important and controversial measure as the Hindu Code Bill when a large number of members of this House are not attending and cannot attend, not for personal reasons, or party reasons, but for reasons of state and in the interest of the country as a whole, being at present busy in the provincial legislatures with the budget sessions, although they are very anxious and eager to attend this House and participate in the discussion of this motion materially affects the whole Hindu society.

Honourable Members : This is no point of order at all.

Mr. Deputy Speaker : I am here to decide whether it is a point of order or not. You will kindly bear with me. I expect he will conclude his sentence soon.

Shri Jaspal Roy Kapoor : I know many of my friends here are very impatient to proceed with the Bill. It was therefore, Sir, that I at the outset wanted to assure the House that my object is not to sabotage the Bill with many provisions of which I am in agreement. My object is that things should be done constitutionally, the right thing should be done at the right time and in the right manner. As you are aware

Mr. Deputy Speaker: I have heard the point of order. The honourable Member feels that this House is not competent to proceed With this Bill. This is number one. Number two is that certain members, whom he would like to have in this House, are not here. Neither is a point of order against the motion for consideration being taken up. This is a sovereign Legislative Assembly fit to pass any legislation it likes. I have heard the point of order and do not want to hear any more arguments in favour of it. As regards the absence of some members, it is no doubt true that a number of members could not be here both from the Provinces and the States. But it is always open to them to come here and take part.

Babu Ramnarayan Singh (Bihar : General): May I say,....

Mr. Deputy Speaker: So far as the Chair is concerned and so far as this House is concerned, no such direction has been given and therefore the House is competent to proceed with its business. Honourable Members can come in at any time and take part in the debate. I rule out this point of order.

Babu Ramnarayan Singh : With all respect to you . . .

Honourable Members : Order, order.

Mr. Deputy Speaker : I would not hear anything more.

Babu Ramnarayan Singh : The previous ruling given by your.....

Mr. Deputy Speaker : I have considered all the previous rulings. I have got them here.

Shri V. S. Sarwate (Madhya Bharat): I wish also to raise one point of order.

Mr. Deputy Speaker : Is it any point of order?

Shri V. S. Sarwate : Yes.

Mr. Deputy Speaker : The Honourable Member will kindly briefly state the point of order.

Shri V. S. Sarwate : I shall be very brief. My point of order is this : That for the purposes of this Bill the provisions regarding publication have not been satisfied. It is due to the Chair to see that those provisions are observed. I refer to rule No. 20 which says : "As soon as may be after a Bill has been introduced, the Bill, unless it has already been published, shall be published in the *Gazette*." There is also a provision that a report of a Select Committee has to be published with the amended Bill. My submission in this case is this : that the Bill was published originally sometime in April 1947 before the Independence day. The political set-up of India has since changed and changed for the better. What I wanted to draw your attention to is this : That the Indian States which were not a part of the then British India were not to be affected by this Bill. Subsequently some States have merged and some have acceded to the Union in all subjects in August 1948. This is subsequent to the publication. There has been a Covenant of these States as the Chair may know sometime in August 1948. The result of that Covenant is that the States would now be automatically governed by any legislation which the Centre passes either in its powers of exclusive jurisdiction or concurrent jurisdiction. I therefore submit that it is the duty of the Chair to protect and guard the rights of the people of these States concerned who are affected by any Bill. I submit that the object of this is two-fold. Such provision enjoining publication enables the constituencies or the people affected by any Bill to express their reactions, their opinions and their feelings about it. I believe this is a fundamental principle of democracy that no Bill shall be passed unless the people affected thereby are given

an opportunity to express their opinion thereon. Secondly, the object of this publication is that the members of this Assembly may have an opportunity to ascertain what their constituencies feel about it. I need not say that it is the duty of the members here not to represent their individual views. They have to represent the views of their constituencies when important matters are concerned. As far as details or minor matters are concerned they may have discretion to express their views. But when a measure affects the whole life, the whole structure of society, then in such cases, in such vital matters it is the duty of the members to ascertain the views of their constituencies and represent them here correctly. They should not state what they feel. They should state what their constituencies feel. For this purpose, it is necessary that the Bill should be published. I submit that the Bill was published in the Gazette, but it was not published at the time when the people of the acceding States and merged States were in a position to give that serious consideration to this Bill, which this Bill deserves. Therefore I submit it was not a proper publication, as far as those people are concerned and now, since the Chair is here to guard their interests, I appeal to the Chair to order that the Bill be published before it is taken up for consideration.

The Honourable Dr. B. R. Ambedkar : My reply to the point of order raised by my honourable friend is two-fold. In the first place, there is never any obligation cast upon this House for circulating any Bill for publication before the House can take the matter into consideration. It is only in special cases, when the House by a Resolution or the Government by any executive action desire that the Bill is so important that public opinion might be invited; that public opinion is invited. There is no such right, no obligation at all on the Legislature or on the Government and therefore, from that point of view the point of order is no point of order at all.

My second submission with regard to the point of order is this, that we have deliberately confined the operation of this Bill to the provinces of India, and so far as the Provinces are concerned, the opinion has been canvassed three times, and I do not think any more purpose would be served by canvassing public opinion for the fourth time. When the occasion comes for the extension of the Bill to the Indian States, no doubt, this Legislature when a proper motion is placed before it, or the Government of the day, will take care that the wishes and the intentions of the States which have come into the Indian Union, will be consulted.

Mr. Deputy Speaker : I agree with the Honourable Law Minister that inasmuch as the scope of this Bill is confined in the first instance only to Provinces of India and it is highly problematical whether it will be extended to the acceding States and if so, on what terms and conditions of accession, it will be time for them to consider whether they can come in or not. As regards the other one, it is not obligatory to send the Bill for circulation unless by a motion accepted by the 12 NOON House. The Select Committee has considered this matter and has found this has not been so materially altered as to necessitate a republication in the Official Gazette. For these reasons I rule out the point of order.

The Honourable Dr. B. R. Ambedkar : Sir, before I proceed to speak on my motion, I think it would be desirable if I

Shri B. Das (Orissa: General): There is obstruction everywhere. Everybody rises to a point of order. Mr. Naziruddin Ahmad rose six months ago.

Mr. Naziruddin Ahmad (West Bengal: Muslim): It is a different point of order. My honourable friends should have a little patience.

Mr. Deputy Speaker : I can only state that honourable members will kindly consider well before they raise a point of order. I also expect they will consider that if it should turn out to be a dilatory motion, they will invoke upon themselves the criticism of the House.

Mr. Naziruddin Ahmad : My point of order is not dilatory.

Mr. Deputy Speaker : It is open to any honourable member to raise a point of order. An honourable member can take as many points of order as are reasonable and proper.

Mr. Naziruddin Ahmad : The objection to the point of order is dilatory. My point of order is this : the honourable Minister for Law has already spoken on this motion. He completed the first part of the motion and then the subsequent stages began. He has a right to reply at the end of the debate. Now the motion has been made that the Bill be taken into consideration and a speech has been delivered on the 31st of August, 1948. We have on the agenda a list of amendments. We have to proceed straight to the agenda and then when a motion is made the Honourable Minister certainly has a right of reply, and in the end a general right of reply. At this stage, the Honourable Minister can not make a second speech on the motion.

Mr. Deputy Speaker : I find from the proceedings on the 31st of August, 1948 the following :—

“The Honourable Dr. B. R. Ambedkar (Minister for Law): Sir, I move :
“That the Bill to amend and codify certain branches of the Hindu Law, as reported by the Select Committee, be taken into consideration.”

Mr. Naziruddin Ahmad (West Bengal: Muslim): Sir, on a point of order.

Mr. Speaker : I shall hear the Honourable Minister first and then take the point of order.

The Honourable Dr. B. R. Ambedkar: Sir, in view of the urgency of other Government business which is on the agenda and to which Government feels it must give precedence, I do not propose to make a speech in support of my motion, because it is quite obvious that if I were to make a speech in support of my motion, that is bound to give rise to a debate which will result in the consumption of a great deal of the time of the Government. We have already few days left before the House is due to rise, and I, therefore, request you to allow this motion to stand over for further consideration in the next session of the Assembly.”

In view of this, the Honourable Dr. Ambedkar is entitled to proceed. I am exceedingly sorry that this point of order has been raised. It is only a dilatory motion.

The Honourable Dr. B. R. Ambedkar : As I was going to say, it would facilitate my work a great deal if I were to know from you what procedure you propose to adopt with regard to the 16 motions that have been tabled as against the motion which I have made, and about which I propose to speak during the subsequent period. These 16 motions fall into three different categories. There are certain motions which propose that the Bill be further circulated for eliciting public opinion. There are certain motions which propose that the Bill be referred to a Select Committee, which is different from the Select Committee which already reported on the Bill. And there are motions which propose that the Bill may be re-committed to the same Select Committee which has already reported.

There was one other or rather two other motions, one standing in the name of my honourable friend, Shri Prabhu Dayal Himatsingka and the other standing in the name of my honourable friend, Shri Biswanath Das, which propose that the Bill should be circulated to people residing in the acceding States, before the Bill could be taken into consideration. With regard to these two motions, a point of order was raised recently by my honourable friend, Shri V. S. Sarwate, which you have been good enough to dispose of and I therefore take it that motions Nos. 7 and 8 must be taken to have been deleted from the agenda of today. The other motions remain and I want to know

whether it is your desire that these motions may be put simultaneously along with my motion, so that all of them may be debated together and ultimately each motion may be put to the House separately, or whether you propose to have these motions taken up before my motion, so that they may be disposed of and the ground may be cleared for my speech on the motion, which I have tabled.

I might say one or two points with regard to the motions that have been made. There are certain motions which you are bound to put, I agree, unless the movers of these motions by themselves voluntarily desire not to move these motions. There are certain motions which are within your discretion, and unless you are satisfied that these motions are not dilatory motions but have behind them certain points of substance, it would not be open in accordance with the rulings which have been given by previous speakers, who have dealt with these questions, to put these motions to the House. Because the Chair must be satisfied that they are motions behind which stand substantial grounds and they are not purely dilatory. For instance, the motion that, the Bill should not be taken into consideration now, but should be taken into consideration at some later stage is one of those motions, I submit, which according to the rulings of the Chair heretofore could fall within your discretion, where you are satisfied that the reasons advanced by my honourable friends are substantial reasons, and therefore, you should put the motion to the House. For instance, the motion for recommittal is one such motion, because if you will kindly refer to these two volumes of Rulings,—I am sure you have.....

Mr. Deputy Speaker : What I propose to do is this.

The Honourable Dr. B. R. Ambedkar : I should like to have your guidance in this matter.

Mr. Deputy Speaker : I have considered this matter and the number of motions that have been tabled. So far as motions 1 and 2 are concerned, motion 1 is that the Bill as amended by the Select Committee be withdrawn.

Pandit Thakur Das Bhargava (East Punjab : General): I do not propose to move it at this stage: not that I am not entitled to move it.

Mr. Deputy Speaker : Then it is not necessary to go into the question whether it is in order out of order. The second motion is

Pandit Thakur Das Bhargava : I am not moving it at this stage.

Mr. Deputy Speaker : Then there is the amendment by Master Nand Lal that the consideration of the Bill be postponed to the Budget Session of 1951.

Master Nand Lal (East Punjab : General): I am not moving it.

Mr. Deputy Speaker : These three withdrawals clear the ground. By whatever name they may be called, these three motions, substantially are for adjournment of the debate. I thought that, before the Honourable Law Minister, the mover of the Bill proceeds the movers of these motions must have risen in their seats and pressed for the taking up of these motions, because, before their motions are disposed of, the honourable mover could not be allowed to speak. Inasmuch as they were not moved, I kept quiet. Now it is clear they are withdrawn. The other motions viz, those for re-circulation or for reference to Select Committee, whatever their nature might be, they are motions which under the Rules any person is competent to make. It is a question for the House to deal with them. So far as the Select Committee motions are concerned, I must be satisfied in the first instance, about their need. Apart from that, there is a motion for recirculation with respect to which some such requirements have not been laid down, so far as I can see in any rule or rulings. Therefore, I propose at this stage to allow the mover of the Bill to make his speech and after he concludes his speech, allow the motions for Select Committee and Circulation to be moved without any speech. Then, the discussion will go on on all the motions and I will put them one after another to the House.

***The Honourable Dr. B. R. Ambedkar :** I am obliged for your guidance, Sir. As usual when presenting a motion for the consideration of a Bill as reported by the Select Committee it is the duty of the Chairman of the Select Committee, in the first instance, to draw the attention of the house to such changes as may have been made by the Select Committee in the original Bill which has been referred to the Select Committee. I propose to follow that procedure in the first instance.

Sir, the first part of the Bill deals with marriage and divorce. So far as this part of the Bill is concerned, the Select Committee has added two clauses which relate to the restitution of conjugal rights and to judicial separation. These provisions specifically absent from the original Bill. The draftsmen of the original Bill felt themselves content by reference to the Indian Divorce Act of 1869 which contains provisions relating to the restitution of conjugal rights and judicial

*C.A. (Leg.) D., Vol. II, Part II, 24th February 1949, pp. 826-43.

separation. The original draftsmen of the Bill felt that a reference in this Bill to the Indian Divorce Act would be quite sufficient to invoke these two provisions which were contained in the Indian Divorce Act and consequently it was not necessary expressly to mention these two matters in the Code. The select Committee felt otherwise. The select Committee felt that as this was going to be a complete Code of Hindu Law, it was wrong to leave the code incomplete, and so to say, legislate by reference. They therefore thought that, instead of leaving this matter to be invoked by reference to the Indian Divorce Act, it would be desirable to embody in the Code itself the provisions contained in the Indian Divorce Act relating to these matters and consequently the part dealing with marriage and divorce has been expanded by the Select Committee by the addition of the clauses relating to these two matters. The House will see that there is no change as a matter of fact between the original Bill and the Bill as drafted by the Select Committee. AH that is done is that what was done by reference to the Indian Divorce Act has been done expressly and positively by the inclusion in the Code of specific sections relating to these matters.

With regard to adoption, the Select Committee has introduced a few new changes. The first change that they have made is that when a father is disqualified by reason of the fact that he had changed his religion and ceased to be a Hindu, the mother has been given the right to give a boy in adoption. In other words, change of religion by the father from Hinduism to some other religion has been introduced as disqualification in the matter of the right to give in adoption. Consequently, a mother in those circumstances has been empowered to give a boy in adoption. Similarly, if a widow was there and there was a boy, that boy certainly could be given in adoption by the mother when the father was not living. There again, a disability has been introduced to the effect that if the widow ceased to be a Hindu, she would lose her right of giving the boy in adoption, which she would otherwise have.

Another change which has been made by the Select Committee is with regard to the different modes of taking a boy in adoption. Hitherto, as the House knows, there are various forms of adoption. The main form of adoption which is recognised by the Smritis is what is known as the Dattaka form of adoption. In addition to the Dattaka form of adoption, there have prevailed in the various parts of India, customary forms of adoption such as Godha Adoption, Kritrima Adoption, Dwyamushyayana Adoption. The Select Committee felt that

as they were codifying the law, it is desirable not to allow any room for customs to grow, because the effect of customs being permitted would be to eat into the Code and make the Code after certain time *null and void*. Therefore, the Select Committee decided that if anybody wants to adopt under this Code, nobody can make any adoption except in accordance with the provisions of this Code, and Dattaka shall be the only form and no other.

Then, Sir, we come to the question of the right of the adopted boy to divest the persons in whom property has been invested before the adoption takes place. As every member of this House, who is aware of the provisions of the Hindu Law, will know, under the existing Hindu law, it is permissible to a boy who has been adopted, no matter at what stage he has been adopted—he may have been adopted forty years after the death of the father—time makes no change at all in his rights—to file a suit to set aside any alienation or transfer of property made by the widow who has adopted him. Any amount of litigation goes on on this particular point. In fact, if anyone were to examine the total amount of litigation among the Hindus on the various points of Hindu law, I am sure they will find that litigation on the question of divesting the property by the adopted boy would be the largest volume. It is therefore desirable that this matter should be settled once and for all. The Rau committee adopted the procedure of dividing adoption into two categories—adoption made three years before the death of the father and the coming into operation of the Code: and adoption made after the Code. They laid down that a boy, if he was adopted three years before the death of the adoptive father would be entitled to the original rights which an adopted son had under the Hindu Code. But if he were adopted three years after he would not be entitled to set aside alienation.

The second thing that happened as a result of adoption under the Hindu Law was that he completely divested the widowed mother who made the adoption, with the result that the entire corpus of the property passed into the hands of the adopted boy, who, in a certain sense was a stranger, and notwithstanding the notional change that he entered into the family of the adopted father, he practically continued his affiliations with the members of the natural family. The result was that after the adoption had taken place, instead of the adopting mother getting any kind of security for herself as a result of adoption which a natural mother would get from a natural son, she found that this new adopted boy ran away with the property and left the mother with

noting but the right of maintenance. We thought that that was not a desirable state of affairs from the point of view of giving security to women, and consequently certain changes were made. The original distinction that was adopted in the Rau Committee was deleted and a provision was made that the rights of the adopted son shall accrue to him not from the date of the death of his adopting father but shall accrue to him from the date of his adoption, so that any alienation that may have been made prior to his adoption were beyond his reach, were unchallengeable by him.

The second provision that we have made was that the adopted son shall not as a result of adoption deprive the adopting mother completely of her right of property. What the Bill says in its altered form is that only one half of the property of the widow will go to the adopted son. The other half, notwithstanding the fact that the widow has adopted will continue to be in the possession and enjoyment of the adopting mother. The result is that the Committee has permitted adoption which the Hindu community feels is a necessary thing for the purpose of perpetuating the family. But at the same time we have taken care to see that the adoption does not beggar the mother altogether.

Mr. Deputy Speaker : Is not that the result under the Deshmukh Act?

The Honourable Dr. B. R. Ambedkar: No. As I say, she gets only the maintenance.

Mr. Deputy Speaker: She gets half the share of the property.

The Honourable Dr. B. R. Ambedkar : As soon as the adoption takes place all that passes to the son.

Shri Prabhu Dayal Himatsingka (West Bengal : General): According to the 1937 Act she is a co-heir with the son.

Shri L. Krishnaswami Bharathi (Madras : General): The son comes later on.

The Honourable Dr. B. R. Ambedkar : That may be so. Now I am coming to minority and guardianship. Here there are only two changes made by the Select Committee in this part of the Bill. The first change is that the power of the Hindu father as a natural guardian of his minor son has been taken away if he renounces the world or ceases to be a Hindu. The original law was that the father was the natural guardian and no matter what change took place in his condition either by his religion or in any other way, he still continued to be the guardian of his minor son. The Committee felt that as this was

a Code intended to consolidate the Hindu society and their laws, it was desirable to impose this condition, namely, that the father shall continue to be the natural guardian so long as he continues to be a Hindu. The Code in its altered form also has introduced another change, namely, that a Hindu widow has been given power to appoint a testamentary guardian if her husband has not appointed anyone. She had not any such power and this power has been given to her by the Select Committee.

Now, Sir, I come to the part of the Bill which deals with succession and I will first refer to changes made in the succession to males. Now so far as what are called the compact series of heirs under the Hindu Law, which are placed in category I by the Rau Committee is concerned, the Select Committee has made no alteration at all. The compact series remains as it is, both in the line of heirs as well as in the order of heirs. That matter has not been altered at all. But with regard to persons which are included in clauses 1 to 4 of the Rau Committee, certain changes have been made both in the matter of the line of succession and also in the matter of priority of succession. The Committee has followed both the principles, namely, propinquity as well as natural love and affection, and it is on that basis that the Select Committee has made certain alterations in the heirs set out in clauses 1 to 4 of the original Bill. The select Committee has also done one thing more : it has curtailed the number of degrees of agnates and cognates who can become heirs to the deceased, and also it has removed the other heirs, such as for instance, heirs which are not related, such as Sam Brahmchari Guru and so on. The reason why the Select Committee has curtailed the number of heirs as provided for in the original Bill is this. We are under this code giving the right to make a will to every Hindu. A line of criticism has been levelled in a very important journal, namely, the journal of Comparative Legislation, in which a very eminent lawyer has made the point that when you give the right to make a will, it is unnecessary to provide such a long list of heirs which extend to the fourteenth degree from the deceased. If the deceased is interested in a man which is related to him in the fourteenth degree and is alive at the time of his death, it is open to him to make a will and to give a part of his property to the particular person in whom he is interested.

If the deceased himself during his lifetime has not chosen to remember a relation who is related to him by the 14th degree there is no particular reason why because of mere intestacy he should be

permitted to come in for a share. That is one of the reasons why the Select Committee adopted this provision.

I might also draw the attention of the House to the fact that with regard to widows a disqualification has been introduced by the Select Committee which says that a widow on remarriage shall lose her right of inheritance.

Then with regard to the daughter's share, which of course existed in the original Bill itself, the Select Committee has made a somewhat important alteration. The original Bill said that the daughter shall get a share equal to half the share of the son and in order to make equity equitable in devising the line of succession to the Stridhan property of the woman they had also provided that in that case the son will take one half of what the daughter takes, so that the daughter will take one half in the father's and the son will take one half in the mother's property. I cannot say that that was an inequitable proposition but somehow the Select Committee and I believe I can say against the best part of their judgement increased in their enthusiasm the share of the daughter in father's property from one half to one full share, equal to that of the son. (*An honourable Member*: "The son is also given.") I am aware of that. With regard to succession to females there are only two changes which the Select Committee has made. Under the existing rule the husband of a woman in the case of succession to females comes much later under the Hindu law and that provision was included by the old Rau Committee. The Select Committee felt that that was rather unjust, because it may be (it is often possible) that much of the property which is called Stridhan property or property which comes into the hands of a woman may, and perhaps does, to a very large extent come from the husband and if the husband is the principal source of the property, that comes into the hands of the woman, it is not proper that it should be postponed to other heirs. Consequently the Select Committee altered the provision and brought the husband in line with the other Stridhan heirs, so that the husband now shares simultaneously with the heirs of a woman, who share in the Stridhan property. As I said that because that increased the share of the daughter in the father's, they also *pari passu* made the share of the son in the mother's Stridhan property equal to that of the daughter.

Mr. Deputy Speaker : They balanced the son and daughter.

The Honourable Dr. B. R. Ambedkar : No change has been made in the law relating to maintenance which is worthy of requiring any mention to this House.

Then I come to the question of the joint family. It has been said that the provisions contained in the Bill as it has emerged from the Select Committee contained provisions relating to joint family which are absolutely new. I would like to take this occasion to repudiate that suggestion. No change has been done by the Select Committee. The provisions of the Mitakshara joint family were originally contained in the Bill as drafted by the Rau Committee and it was placed before this House on the 9th August, which the House accepted and sent to the Select Committee. (*Honourable Members*: 9th April) Therefore my first submission is that no new change has been made by this Select Committee. All that the Select Committee has done is to add two new clauses—clause No. 88 and clause No. 89. Clause 88 deals with the doctrine of what is called pious obligations. Clause 89 deals with the liability of the joint family to pay joint family debts. It was unnecessary to include these clauses, because once you break up coparcenary property it is not necessary to make any express provision with regard to the doctrine of pious obligation, because the doctrine of pious obligation is necessary where there is survivorship property : because by survivorship where A takes the property of B and the property of B is encumbered with debts, no special doctrine is necessary to impose an obligation upon B; because in hereditament which a person gets, he takes both the profit and the burden of it. But in view of the theory of the Mitakshara that every coparcener gets the property by survivorship, which does not belong to the deceased, the Patna high Court, if I may say so, as well as the Bombay High Court Bar pressed upon us very strongly that it was very desirable that these two things which were implicit, so to say, in the Mitakshara doctrine of joint family, shall be stated expressly in the Code, so that when the question of judicial interpretation arises there may be no occasion for any kind of dispute, doubt or controversy. As one of the objects of the code was to make the law clear not merely to the lawyers but to the ordinary citizens and as it is a suggestion which came from such a weighty authority as the Patna High Court and the Bombay High Court Bar, we thought it desirable to introduce these two things, namely no obligation to pay debts on the original ground of pious obligation and the liability to pay primary debts which belong to the family. Besides that there has been no change at all. If my friends have some doubt still on the subject that we have made fundamental changes in regard to the joint family of the mitakshara,

I would like to draw their attention to section 86 (Part v : Joint Family Property). Section 86 of the new Bill as it has emerged from the Select Committee is the same word for word, except for ordinary verbal changes, as part III-A section 2, on page 12 of the original Bill as drafted by the Rau Committee. Similarly section 87 which also deals with joint property is word for word the same as part III-A, section 2, page 12. Anybody who compares the two I am sure will accept the proposition which I have enunciated in this House that this is not an innovation by the Select Committee at all but they form part and parcel of the original Bill as drafted by the Rau Committee.

I should like to dispel any further doubt that may exist on this point by referring to the Rau Committee's Report (page 13). This is what the Rau Committee says (paragraph 51):

“Turning now to the contents of the Draft Code the main proposals on which differences of opinion have manifested themselves in varying degree are the following :

- (1) the abolition of the right by birth and the principle of survivorship and the substitution of the *Dayabhaga* for *Mitakshra* in the *Mitakshra* Provinces;
- (2) giving of half a share to the daughter;
- (3) the conversion of the Hindu woman's limited estate into an absolute estate;
- (4) the introduction of monogamy as a rule of law;
- (5) the introduction of certain provisions for divorce.”

I think Hon. Members will see that the Rau Committee in setting about its work made it perfectly known to everybody in this country that the Code that they had framed and which subsequently was embodied by them did contain the specific provision. I have no doubt about it that anybody who has read the volumes of evidence which have been collected by them previously by the joint Select Committee appointed by this House, by the Rau Committee and by this Government by an executive order—would find that there is no person either in this House or outside, who has paid any attention to this part of the Code, who will be under any wrong impression that the Rau Committee had decided or proposed that this co-parcenary should not be abolished. It is therefore not a new innovation of the Select Committee at all.

The Select Committee has made some changes with regard to the application of the Hindu Code. The Rau Committee's Bill contained a provision that the Bill should not extend to areas to which the Marumakkattayam and Aliyasanthanam laws apply. Somehow the Select Committee in its enthusiasm transgressed, if I may say so without any disrespect, the bounds of reasonableness and came to the

conclusion that there ought to be no area which ought to be exempt from the operation of this Code. Consequently they deleted the provision.

Mr. Deputy Speaker : In the interests of uniformity.

The Honourable Dr. B. R. Ambedkar : I do not know whether it was done rightly or wrongly; that is a matter which the house will consider at a later stage.

Pandit Mukut Bihari Lal Bhargava (Ajmer-Merwara): May I ask whether the honourable speaker was dissenting from that view ?

The Honourable Dr. B. R. Ambedkar : I will dissent at a later stage perhaps. I have no empty mind but I have still an open mind.

Shri H. V. Kamath (C. P. and Berar: General): Not a vacant mind !

Pandit Thakur Das Bhargava : On every question I hope.

The Honourable Dr. B. R. Ambedkar : Sir, in the ordinary course a speech of the sort which I have made is generally regarded not only appropriate but sufficient for the occasion. But it would be futile on my part to disguise the fact that there is a section—if not a large section, a section in the house—which feels a certain amount of compunction over certain parts of the Bill. Neither can I disguise from myself the fact that outside the House there are many people who are not only interested in the Bill but, if I may say so, very deeply concerned about it. I therefore think that it is only right, if you will permit me, to add a few general observations with regard to the points of controversy which I have noticed in several newspapers which I have been pursuing ever since the Bill has been on the anvil. I will take this matter also part by part and section by section. I will deal only with what I regard have been considered as points of controversy. Let me take marriage and divorce. Here I find that there are three points of controversy.—The first point of controversy is abolition of castes as a necessary requirement for a valid marriage; the second point of controversy is the prescription of monogamy; and the third point of controversy is permission for divorce.

I will take the first point of controversy, namely—abolition of caste restrictions. So far as this Bill is concerned, what it does is to arrive at a sort of compromise between the new and the old. The Bill says that if member of a Hindu community wants to follow the orthodox system which requires that a marriage shall not be valid unless the

bride and bridegroom belong to the same *varna*, the same caste or the same sub-caste, there is nothing in this Code which can prevent him from giving effect to his wishes or giving effect to what he regards as his *dharma*. In the same way if one Hindu who is a reformist and who does not believe in *varna*, caste or sub-caste, chooses to marry a girl outside his *varna*, outside his caste, outside his sub-caste, the law regards his marriage also as valid. So far as the marriage law is concerned there is therefore no kind of imposition at all. The *vydhikas*, the orthodox, are left free to do what they think is right according to their *dharma*. The reformers who do not follow *dharma* but who follow reason, who follow conscience, have also been left to follow their reason and their conscience.

Shri Mahavir Tyagi (U. P. : General): Are they permitted to marry outside their religion also if their conscience directs them in that manner?

The Honourable Dr. B. R. Ambedkar : Well, we will have another Bill for that. I do not know whether my honourable friend Mr. Tyagi is unmarried. If he is I will hurry it up.

Shri Mahavir Tyagi : I want to make way for others.

The Honourable Dr. B. R. Ambedkar : Consequently, what will happen in Hindu society so far as marriage law is concerned if there will be a competition between the old and the new. And we hope that those who are following the new path will win subsequently. But, as I say, if they do not, we are quite content to allow two parallel systems of marriage to be operative in this country and anyone may make his choice. There is no violation of a *shastra*, no violation of a *smriti* at all.

With regard to monogamy it may be that it is a new innovation. But I must point out that I do think that any Member in this house will be able to point out having regard to customary law or having regard to our *shastras* that a Hindu husband had at all times an unfettered, unqualified right to polygamy. That was never the case. Even today, in certain parts of South India there are people who follow this, a section of the Nattukottai Chettiars—the case has been reported in the Reports of the Privy Council itself, I am not depending on mere heresay evidence—but among the Nattukottai Chettiars there is a custom that a husband cannot marry a second wife unless he obtains the consent of his wife. Secondly, when a consent is obtained, he must allot to her certain property which I think in the Tamil language

is called *moppu*. That property becomes her absolute property so that if after her consent the husband marries and ill-treats her, she has a certain amount of economic competence in her own hands to lead an independent life. I cite that as an illustration to show that there has not been an unqualified right for polygamy.

A second illustration which I would like to give would be from the Arthashastra of Kautilya. I do not know how many Members of the House have perused that book, I suppose many of them have. If they have, they will realise that the right to marry a second wife has been considerably limited by Kautilya. In the first place, no man can marry for the first ten or twelve years because he must be satisfied that the woman is not capable of producing children. That was one limitation. The second limitation imposed by Kautilya on the right of second marriage was that the husband was to return to the woman all the *stridhan* that she had acquired at the time of marriage. It is only under these two conditions that Kautilya's Arthashastra permitted a Hindu husband to marry a second time.

Thirdly, in our own country, in the legislation that has been passed in various Provinces, monogamy has been prescribed. For instance in the *marumakkathayam* and the *aliyasanthanam* law both of them prescribe monogamy as a rule of marital life. Similarly, with regard to the recent legislation that has been passed in Bombay or in Madras, similarly in Baroda, the law is the law of monogamy.

I hope the House will see from the instances I have given that we are not making any very radical or revolutionary change. We have precedent for what we are doing, both in the laws that have been passed by various States in India, also in the ancient *shastras* such as Kautilya's Arthashastra. If I may go further, we have got the precedent of the whole world which recognises monogamy as the most salutary principle so far as marital relations are concerned.

Shri Deshbandhu Gupta (Delhi) : What about the Mohammadan Law?

The Honourable Dr. B. R. Ambedkar : We shall come to Mohammadan law when we discuss the Mohammadan law.

Coming to the question of divorce, there again I should like to submit to the House that this is in no way an innovation. Everybody in this House knows that communities which are called *shudra* have customary divorce and what is the total of what we call *shudra* ? Nobody has ever probably made any calculation as to the total number of *shudras* who go to compose the Hindu society, but I have not the

slightest doubt in my mind that the *shudras* form practically 90 per cent of the total population of the Hindus. What are called the Regenerated classes probably do not fill more than ten per cent of the total population of this country, and the question that I want to ask of honourable Members is this : are you going to have the law of the 90 per cent of the people as the general law of this country, or are you going to have the law of the 10 per cent of the people being imposed upon the 90 per cent ? That is a simple question which every Member must answer and can answer.

So far as the 'regenerated' classes are concerned there was a time, if one refers for instance to the time when the *Narada smriti* or the *Parashara smriti* were written, when the *smritis* recognised that a woman can divorce her husband when he has abandoned her, when he died, when he has taken *parivrija*, and she was entitled to have a second husband. Consequently, it may be that at a later stage I shall read to you some extracts from your *shastras* to show. (*An honourable member*: "Your *shastras*"). Yes, because I belong to the other caste.

I shall read the extracts to show that what has happened in this country is that somehow, unfortunately, unnoticed, unconsciously, custom has been Allowed to trample upon the text of the *shastras* which were all in favour of the right sort of marital relations. My submission, therefore, to the house is that so far as any new principles have been introduced in the law of marriage or divorce, whatever has been done is both just and reasonable and supported by precedent not only of our *shastras* but the experience of the world as a whole.

With regard to adoption, there are again three points of controversy. One point of controversy with regard to adoption is this, that like the old Hindu law we do not make similarity or identity of caste a requisite for a valid adoption. We follow the same rule that we have followed with regard to marriage. Here again, I may say that if a *Brahmin* wants to adopt a *Brahmin* boy, he is free to do so. If a *Kayasth* wants to adopt a *Kayasth* boy, he is free to do so. If a *Shudra* wants to adopt a boy of his own community he is free to do so. If a Brahmin is so enlightened as not to adopt a boy belonging to his own community but adopts a *Shudra*, he is also permitted to do so. There is therefore no kind of imposition.

Seth Govind Das (C. P. and Berar: General): Why do you consider such a Brahmin enlightened ?

The Honourable Dr. B. R. Ambedkar : Well, I do not know. From my point of view certainly he is enlightened; from your point of view he may be a very dark man, but that is a difference of opinion.

With regard to the question of the limitation on the right of an adopted son to challenge all alienations made by the widow before adoption, I do not think that there can be any controversy at all. There is no reason why we should continue the notion that a boy when adopted becomes the son of the adopted father right from the time when the adopted father died. This is a pure fiction. It has no value at all. It is not merely a fiction; it is a fiction which gives rise to tremendous litigation and tremendous difficulties. It is therefore right that the adoption should be simultaneous with the vesting of the property. I do not think any member of the House will think that this is a proposition which we ought not to accept at this stage. (*Shri B. Das* : “We all accept”.)

Similarly, as I have stated, the limitation upon the right of a boy who is adopted to divest the mother completely and to make her nothing more than a dependant waiting for such maintenance as the adopted boy may give, I do not think that there is any member of the House who will think that such a situation can be justified on any ground whatsoever. I think it is right that we preserve the right of adoption which the orthodox community cherishes so much, but, Sir, I do not understand why there should be adoption. Most of us who make adoptions have no name to be recorded in history. Personally, I myself certainly would not like my name to go down in history, because my record is probably very poor. I am an unusual member of the Hindu community. But there are many who have no records to go down and I do not understand why they should indulge in adopting a son—a stupid boy, uneducated, without any character—not knowing his possibilities and fastening him and fathering him upon a poor woman, whom he can deprive of every property that she possessed. Therefore, my submission is this, that if you do want to cherish your old notions with regard to adoption at any rate make this provision that the adopted boy does not altogether deprive the mother of the property which is her mainstay. I do not think that that limitation can be at all a point of controversy.

With regard to the question of the abolition of customary adoption, I would like to say two things. There is a general argument which the House will be able to appreciate. It is this. A Code is inconsistent with customary law. That is a fundamental proposition. If you allow a Code to remain and at the same time permit custom to grow and custom to plead against the Code, there is no purpose in having a

Code at all, because a custom can always eat into the Code and make the Code *null and void*. With regard to this particular matter of customary adoption such as *Krithrim* adoption, *Godha* adoption and *Dwaimushayan* adoption, my submission is this, that these are really not adoption at all. As the Privy Council in one of its rulings has definitely stated, adoption is purely a religious affair. The getting of property by the adopted son is a secondary matter. He may get property, he may not get property, and even though he may not get property his adoption from a religious point of view may be valid. Therefore, my submission is this, that all these customary adoptions are nothing else but devices to keep property within the two families which enter into this bargain, and in my judgement, since we have passed the Constitution and included in the Directive Principles one article saying that the State should take steps not to allow property being concentrated in the hands of one or a few, such devices like the *Dwaimushayan* where two parties merely agree to share the property and keep it with them ought not to be tolerated. Besides, there is no reason why parties who want to make a genuine adoption should not conform to the rules and regulations regarding the *Dattaka* adoption which is permitted by the law.

Mr. Deputy Speaker: It is now one o'clock. The honourable Minister may continue after Lunch.

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.

The Honourable Dr. B. R. Ambedkar : I want not to take up the points of controversy relating to the topic of co-parcenary law. The question is raised: Why does the Bill wish to seek to abolish the co-parcenary which is prescribed by what is called the Mitakshara law? Now, Sir, having applied my mind in the best way I can for the proper exposition of this subjects, I think this is a question which required to be considered from three different points of view. One is how large a volume of property is included within the ambit of what is called co-parcenary property. If the volume that is comprised

within what is called co-parcenary property is a very large part of the property which a man in these days holds, then no doubt some serious attention will have to be paid to this question. Therefore, that is the first aspect of the question that one has to examine.

The second aspect that we have to consider with regard to the retention of what is called co-parcenary property is whether any coparcener had individually the right to alienate property. Thirdly, whether any coparcener has a right in himself to break up the coparcenary. Obviously, if the property included within the class of property called co-parcenary property is a small part of the property, different questions will arise. Similarly, if any co-parcener, under the present existing Hindu law, has already got the right to alienate his share in the property, then obviously, the question whether this law or this Bill is abrogating co-parcenary property would stand on a different footing. Similarly, if under the existing Hindu law a coparcener has an inherent right to break up a co-parcenary, then my submission is that the question that this Bill breaks up the co-parcenary becomes very much less momentous than is thought of by most members of the House as well as people outside.

Let me therefore take the first question : What is the extent of the non-co-parcenary property which a co-parcener may hold, notwithstanding the fact that he is a member of the co-parcenary ? Now, my friends, who have paid attention to this subject and know what the position is under the Hindu law, will know that there is no disqualification upon a co-parcener to hold separate property while he continues to be a co-parcener. A co-parcener may have capacity to hold two different sorts of property—property which belongs to the co-parcenary and property which does not belong to the coparcenary, but belongs to himself and does not go, by what is called survivorship.

Let me give the House some idea of the extent and nature of the property which a co-parcener can hold, although he is a co-parcener. I have taken from the existing text books on the Hindu law, the following categories of property which a co-parcener can hold, notwithstanding the fact that he is a co-parcener. Firstly, property inherited by a hindu from a person other than his father, grand-father and great grand-father. If a Hindu gets property from a person who is not his father, grand-father or great grand-father, that property is

in his hand and is separate property and does not belong to the coparcenary. Secondly, property inherited by him from his maternal grand father, thirdly gift of ancestral moveables made to him by his father and fourthly property granted by government to an individual who is a member of the co-parcenary becomes his personal property and not the property of the co-parcenary. Then fifthly we have ancestral property lost to the family and recovered without the aid of the family property. That also, although originally co-parcenary property, becomes his private property. Then sixthly, there is the income from separate property and purchases made from the income of such property. They are also private property. 7, share of a co-parcener by partition if he has not male issue. 8, property held by a sole surviving co-parcener when there is no widow with the power to adopt. 9, separate earning of a member of a joint family co-parcenary and 10, gains of learning. Such vast amount of property included in these 10 categories is today under the Mithakshara law the private property of a co-parcener. It does not become the property of the co-parcenary.

Let me illustrate this by one plain illustration. There are hundreds and hundreds of clerks in our Secretariat, some drawing small salaries, some drawing huge salaries more than the salaries of the Members of the Cabinet—Rs. 4,000 (Honourable Members : “Clerks ? Are they clerks ?”) I mean officers. In a certain sense they are glorified clerks.

The point I want to put to the house is this : that such large income as gains of learning, which come up in individual cases to Rs. 4,000, if there was a joint family in the true sense of the word, ought to go to the joint family for the joint maintenance of that family. What happens ? Under the Gains of Learning Act passed only a few years ago, this very Assembly, not I mean the Members, passed a law that such gains of learning, which form, as I say, the principal part of the income of a joint family and which a member is enabled to earn by reason of the education that was given to him out of the family income, have now been made his personal and private income. My submission to the House is this : when so large a property, as I have mentioned, included in these ten different categories have already been made in modification of the original laws of Mitakshara private property, what is the balance of property that is left which can be said to comprise the co-parcenary property ? My submission is that really very, very small volume of property is left to comprise within