

I would like to tell my honourable sister Shrimati Renuka Ray, who is not present here at the moment and other sisters that as elections are likely to be held after a few months, this question can then be placed by them before the public. You can tell the people that we have framed such a Hindu Code Bill and want to pass it. If the people vote in your favour on this issue, then we can surely pass it here.

Thus, I would like to request the Government to consider over this matter and not to pass it at this moment. To conclude, I would say this much, "Not to the left, not to the right, come in the middle to find out the golden mean."

Shri R. K. Sidhva (C. P. and Berar : General): Sir, My friend has mentioned the Parsi Matrimonial Act. Will you kindly give me five minutes to explain?

Mr. Deputy Speaker : I am not going to allow it because he did not criticise it in any manner. He said the Parsi Marriage Bill was sent round to all persons all over the world. He used that as an argument in the case of this Bill which involves three hundred millions people. Therefore on that ground the Hon. Member cannot claim a right to speak.

Shri R. K. Sidhva : No. Sir, He has made incorrect statements.

Mr. Deputy Speaker : Then the Hon. Member must have brought it to my notice. We cannot start an argument over every matter.

Shri R. K. Sidhva : Have I no right to speak on this Bill ?

Mr. Deputy Speaker : Every Member has a right to speak, I have absolutely no doubt about it. Only time does not seem to permit.

* **Dr. Bakhshi Tek Chand** (East Punjab : General): Sir, the debate on the Bill has gone on for several days. Both sides of the question have been put before you. I do not want to repeat the arguments which have been given on the one side or the other. I have only two submissions to make, one to the supporters of the Bill and one to opponents of the Bill and after that I have to place one suggestion for consideration of the House for such changes as I think should be made in the Bill to make it acceptable to all or at any rate to a large part of the House and also of the country. I will ask the indulgence of the House therefore for a few minutes to permit me to place my views before it.

The first suggestion that I have to make to the opponents of the Bill is this. They say that this House is not competent to touch the

*C.A. (Leg.) D., Vol. VI, Part II, 14th December 1949, pp.585-99.

provisions of Hindu law, because it is a matter of a time honoured religion which has come to us through centuries and that it is only a *Pandit Parishad* which will be competent to effect any change. I submit with great humility that is a position which cannot be accepted for a single minute. Hindu law, as has been pointed out by Sir Alladi Krishnaswami Ayyar and others, has never been static. It has changed from time to time. Each time when the structure of society changed a *smritikar* appeared—a sage, a rishi, a muni—and he made such modifications as were suited to the times. This process went on for centuries until the country came under British rule. During this period, the only changes that could be made in the law were either by judges who were to interpret the law or by the legislature. No new sage could appear with the authority of a Manu or a Yagnavalkya or a Viswamitra. Either the judges who were duty bound to interpret the law as they found it in the *smritis* or *nibandhas* could interpret it or the legislature had to intervene. It is idle therefore to contend in the year 1949 that the legislature is not competent because it consists of all types of people who are not learned in the *smritis*. That is a argument which I submit, should be rejected forthwith. If you see the course of events that the legislatures of this country have followed for more than a century, you will find that whenever it was found that the Hindu law or any branch of it was found to be defective, legislation was introduced. It began with the Removal of Sati Act in 1829 under the guidance of late Ram Mohan Roy The custom of *sati* which was considered to be a part of Hindu religion, but which was not really a part of it and which was an abuse, if I may say so, of the principles of religion, had to be done away with and for that purpose legislation was introduced as far back as 1829.

Mr. Deputy Speaker : There is too much of whispering going on. The reporters are unable to take notes. I am also not able to hear.

Sjt. Rohini Kumar Chaudhari : The Speaker's voice is indistinct. He has got two mikes close to each other. We do not hear him properly either.

Mr. Deputy Speaker : He is speaking before the phone. Each seat has been converted into a small phone. What am I to do?

The Honourable Member will kindly resume after Lunch. The House is adjourned till 2.30 p.m.

Shri A. Thanu Pillai (United State of Travancore and Cochin): May I make a suggestion ? (Interruption). My point is this.

Some Honourable Members : The House has already been adjourned.

Mr. Deputy Speaker : You are late. The House has already been adjourned

Shri A. Thanu Pillai : I am sorry. I did not know.

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. Bakhshi Tek Chand : Sir, when the House rose, I was referring to the Acts passed in 1829 under the inspiration of Shri Ram Mohan Roy for the abolition of *sati*. Now as we all know, it was argued at that time that *sati* was a part of Hindu religion. It was said that *sati* was one of the essential features of our *dharma* and any interference with it would be an attack on Hindu religion. But the sense of the community prevailed, the law was passed and *sati* ceased to exist. This custom, as I was saying, was not a part of Hindu law. It was an innovation which has been introduced during the, what are called dark ages, or the medieval ages. Luckily that was removed by legislative enactment.

After that we had the 1850 Act for the removal of class disabilities so far as inheritance was concerned. If a person or the heir changed his religion the right of succession was not affected. That was the second great change that was made in Hindu law. Then came another very great reform in 1856 when the Widow Re-marriage Act was passed. For centuries it was believed that the Hindu religion did not permit the re-marriage of widows.

Shri Mahavir Tyagi : May I know. Sir, if the Treasury Benches are represented.

The Honourable Shri K. C. Neogy (Minister of Commerce): Government is one and indivisible and so long as there is one Minister present I think he is competent to represent the whole Government.

Mr. Deputy Speaker : I think it is always a healthy ambition for Members on the other side to come and sit over this side.

Dr. Bakhshi Tek Chand : As I was saying, widow re-marriage was considered to be an essential feature of Hindu religion and any suggestion to repeal that law or to enact a permissible legislation which

would enable a widow to remarry was opposed tooth and nail. But under the leadership of Shri Ishwar Chandra Vidya Sagar and other leaders of that day public opinion asserted itself and this great disability under which Hindu women suffered was removed by another piece of legislation. Well, the Hindu religion did not come to an end by the enactment of that legislation.

After that there have been numerous other Acts by which Hindu law has been modified by the Parliament or the Legislative Assembly of the day. Most of you will remember the great agitation which took place in 1890 and 1891 when the age of Consent Bill was introduced. At that time the cry was raised that it would be a gross interference with the Hindu religion if a legislature consisting of Hindus, Muslims, Christians and dominated by bureaucrats were to legislate in regard to a custom which permitted intercourse with a child wife below the age of twelve. If you have a recollection of what appeared in the papers, even advance papers like the *Amrit Bazar Patrika*, you will see in what kind of convulsion the Hindu society was at that time. But again the legislators persisted and that Bill was passed a Bill which ultimately has culminated in the last session by almost unanimous vote of the House in the further amending Bill which our friend Pandit Thakur Das Bhargava introduced and which if I remember aright was unanimously passed by all sides of the House. At that time none of our friends thought that this Assembly was not competent to legislate with regard to a matter which was considered to be an essential part of the Hindu religion. Coming to more recent times, you will find that in 1916 the Indian Legislature passed what is called the Dispensation of Property Act, an Act which has had the effect of repealing the law which has been laid down by Privy Council in what is known as *Tagore versus Tagor* case. In that case, following certain texts of the *Smritis* the Privy Council had ruled that behests or gifts in favour of a class of persons who are unborn on the date of the gift were void according to Hindu Law. That had continued to be the law for about sixty or seventy years. It had been suggested that that was a wrong interpretation of the texts. The matter was examined and it was found that certain texts according to their literal meaning could only lead to the conclusion at which the Privy Council had arrived. This was found to be a great handicap and a great injustice. Therefore the legislature again intervened and by a unanimous vote of the House, it passed that Bill in 1916.

After that came what is called the Removal of Disabilities Bill. Under certain texts of Hindu Law as enunciated by some of the *Smritis* if a person was suffering from a physical disability, if he was blind, if he was deaf and dumb he was not entitled to inheritance. Many people thought that whatever the meaning of the texts might be, this was a great hardship. If out of five sons, one was deaf or was blind or suffered from some other disability, it was more necessary in his case that he should get a share in the father's patrimony rather than the persons who are physically fit and capable of earning. Well, that text might have been of some validity or of some utility at a time when in ancient times the structure of society was such that in order to increase the family wealth it was necessary that all should work. It had become obsolete and the Hindu community revolted against it and the agitation was such that the Indian Legislature passed this Act in 1928 after which persons suffering from physical defects were allowed to inherit in the same way as persons who were physically sound. This was another inroad into Hindu Law.

Then came another and very important Act, Act II of 1929 by which certain classes of people, who till that time had been ruled by the courts as not entitled to succeed to property, were allowed to succeed. According to the text of the *Mitakshara* school, it had been ruled by the courts in India and ultimately by the Privy Council that there were only five classes of females who were entitled to succeed, because these five were mentioned in *Mitakshara*. The Bombay school was of opinion that this list was not exhaustive but it was only illustrative and the great commentator Nil Kantha and his followers held this practice was due to a wrong interpretation of the *Mitakshara* in Northern India. Well, a Bill was introduced in this Assembly and after a great deal of deliberation that Bill was passed and the daughter, the sister and the sister's son and so on were all included in the list of heirs. That again was a great change in the structure of Hindu Law particularly in Northern India.

You are all aware of the Sarada Act. I will not repeat that. At that time also it was argued and argued seriously in this House also that fixing a minimum limit for marriage was an interference with Hindu religion. Well, the opposition did not succeed and the legislature persisted and the Bill was ultimately passed.

After that, we have had what is known as the Deshmukh Bill. That Bill of 1937 had a great effect : it effected a very great change in

Hindu Law of succession. In areas governed by *Mitakshara* school, when there was a joint Hindu family after the death of one co-sharer, if he left no son the widow was not entitled to any share. She was dependent upon the brothers-in-law or the husband's father and the other coparcener, dependent entirely upon their mercy for their maintenance. She was to receive only food and clothing and nothing else; mere maintenance only. Under that law it was enacted that childless widows would be entitled to the same share of the property as her husband would be entitled to and if she so liked, she could even ask for the property to be partitioned. It was held at the time that Hindu women in a joint family being entitled to sue for partition was considered to be repugnant to the fundamental principles of the Hindu Law, but the Legislature again made this change, a change which was warranted by the changing times, by the rising consciousness not only among women but among the men in this country, among Hindus who wanted that this should be done to their sisters and mothers. Now, at that time also there was a great deal of stir in the country but ultimately that stir also died down. Twelve years have passed and we cannot say that Hindu society in any way has crumbled to pieces or that Hindu religion has been attacked in a very vital matter so that it is now going to pieces.

I come now to more recent times. In 1946, shortly before the present Assembly came into existence, a Bill permitted marriages among sagotras was passed by this Legislature. That Bill did not interfere with the prohibited degrees. Even though persons were living in different parts of the country and did not belong to the same caste, yet because they belonged to the same Gotra according to some technical meaning of the texts, the marriages could be invalidated, Such marriages, even though performed in several parts of the country, their validity was in doubt. That was again an enabling measure which was passed in 1946 and to which no serious objection has been taken.

Now, I would ask Hon. Members to bear in mind what we did in the last April session of this Assembly. My esteemed friend, Pandit Thakur Das Bhargava brought a very simple Bill consisting of one section only, but a Bill which was of a most far-reaching and important character. By that Bill it was enacted that notwithstanding any text of Hindu law or any custom or usage having the force of law to the contrary, a marriage between various castes of Hindus would be deemed to have been validly made. That was a very great step, a

step which permitted inter-caste marriages and which removed such restrictions as one must marry either in his own sub-caste or, at any rate in his caste. That was the measure which was passed by this House unanimously, and so far as I remember at the consideration stage the only voice raised against it was that of Dr. Ambedkar. All other Members orthodox and un-orthodox, person governed by *Dayabhaga*, *Mitakshara*, by the *Mayukha*, person governed by tribal customs and everybody supported the Bill. Dr. Ambedkar : of course accepted it on a very narrow ground. He was entirely in favour of the principle of the Bill but he thought that as this Hindu Code which was a very embrative measure was before the Assembly and therefore we should have a comprehensive measure that was a very technical type of objection. Otherwise we all unanimously supported that Bill and it came sometime late at the end of April. Now I will ask my orthodox friends who say that Hindu *Dharma* is in danger as to what has become of that. We were saying when the Constitution was under consideration that we want to have a classless and a casteless society. That is contrary to certain texts of Hindu law which have been in force in various parts of the country for centuries, but still the Bill was enacted and it is a part of the law of the land. At that time, if I may be permitted to say so, nobody took an objection that this House was not competent to deal with it because it had been elected only for the purpose of framing the Constitution or for the purpose of carrying on the day to day administration. Abolition of caste system in the matter of marriages was surely not part of the day to day administration of the country. It was a very vital and a very material and a very substantial change in Hindu law of marriage, the law which prevails in some form or another in all the Schools from Kashmir to Kanya Kumari and from Bengal to Gujarat but we all did it with open eyes when the Bill was passed and Mr. Munshi who was here at that time said that the Bill was a far-reaching one, though the Bill is a very short one; it is a very big change and a very important change. The whole House cheered him at that, I will ask my orthodox friends, the opponents of the Bill where was their regard and their enthusiasm for Hindu Law or Hindu *Dharma* at that time? I submit, therefore with great deference to my orthodox friends that this cry which is being raised, that this Bill which is now before the House is all attack upon the Hindu religion that the foundations of the Hindu religion will be undermined, that the whole fabric of Hindu society and Hindu culture will crumble to pieces or that this House is not

competent to enact a measure of this kind simply because it does not have many learned pandits or that the Members who are here were not elected for a specific purpose. I submit with the due deference that there is no force in this objection and I would most respectfully ask my orthodox friends to consider the history of the legislation which I had placed before them the various measures which we ourselves have passed in recent times and to consider that they might attack the Bill upon other grounds, but to say that this House is not competent either being merely a legislative assembly or that we have got no mandate of the country to look into this measure to enact or consider it and pass it, I submit with very great deference that that argument is not sound. I will ask them to examine the Bill upon its merits to accept it or to throw it out. It is one thing to say that the Bill has not been sufficiently considered; it is one thing to say that there are provisions in the Bill which require further discussion and examination; it is one thing to say that the bill requires to be re-cast in certain matters. Even today as I suggested and as Sir B. N. Rau in his original report of the Committee said perhaps it will be advisable to take this reform of Hindu law in parts. I can quite understand that, but when every morning—I hope I will be pardoned for saying so— every mail has been bringing in letters during these months, letters and reprints from speeches delivered by persons, resolutions passed by the *Dharma Sangh* and this society and that society, all giving the opinion of this great man and that great man and saying that this Assembly is not competent to deal with them : I with the greatest deference and in all humility submit that that is neither correct nor logical nor reasonable, and therefore, I would submit to my friends, the opponents of the Bill not to press those arguments but to look at the Bill very reasonably, rationally and with a proper point of view.

That was my submission to my orthodox friends and now I may be permitted to say a word to our friends, the supporters of the Bill.

Shri H. V. Kamath : Are they heterodox or orthodox?

Dr. Bakhshi Tek Chand : Well let everybody decide it for himself. Now the position is that this Bill was introduced. It had as we know a very brief discussion at the first stage. When we met in the Select Committee we were given only six days to consider this important Bill and when certain objections were raised by Members of the Committee to some parts of the Bill, we were told that the principle

of this proposal goes against the fundamental principles of the Bill which have been accepted by the House when it passed the first reading and therefore, we the Members of the Select Committee who wished to move amendments to those vital matters are out of court and we were out of order. We submitted to the ruling and we had only six days to discuss this Bill in the heat of July and we did the best that we could under the circumstances within the short time at our disposal and within the narrow limits which were laid down by the Hon. Law Minister at that time. That was not only the Law Minister, but there were certain enthusiastic Members of the Select Committee who thought : "Well now is the time we have got this Bill; let us push it through in this very session and before the month of October or November arrives, it will be a part of the Statute Book." Several objections and several arguments were given : 'Let us wait for a few months.' Ultimately the Select Committee decided to proceed with it on a majority of two.

Things have gone in such a way that within one month this Bill could not be put on the Statute Book. Things have dragged on due to circumstances much beyond the control of us, beyond the control of the majority of the select Committee. One point which

3 P.M. I raised in the Select Committee and one which I also dwelt at some length in my note of dissent and which I ask the permission of the House to repeat was that this Bill is a very half hearted, and a very, if I may say so, a very truncated measure. I fully endorse the view and I have no hesitation in repeating it, that the time has come when we must give full rights to our sisters and our daughters; that is to say, the time has come when we cannot allow the old texts to continue, or their interpretations which have been given by the British Courts that a woman has not got a full estate, that a woman is not entitled to succeed to this type of property or to that type of property and so on and so forth that must go. In the first place I maintain, and I have always maintained it that all that is against our original Hindu law. I maintain and I hope to show; if the Hon. Deputy Speaker will permit me a few more minutes, that this theory that a woman's estate is limited is a creature, a creation of the British Indian Courts. It is not countenanced, not supported by the *Mitakshara* law not by the *Mayukha* nor by the *Smritis*. All that must be done away with But in order to do that, what shall we do? I suggested that some changes should be made in the Bill, that we must look at it from

another angle which will give woman a higher status than we have got in the Bill; they said “No, we have got the Bill having the *imprimature* of Shri B. N. Rau and the authority of Dr. Ambedkar, and no change of a substantial nature can be made in it.” That was the attitude of the supporters of the Bill. If I may be pardoned for saying that, in the Select Committee and later on also, they have not been less fanatical than the opponents of the Bill. They say, “ Well there is the Bill, take it or leave it and reject it if you can. That is being repeated now after the declaration which the Prime Minister was pleased to make a few days ago, and which I know, must naturally, tie down most Members of the House in their vote.”

Some Honourable Members : No, no.

Dr. Bakhshi Tek Chand : Well, it will have an unconscious effect, even if permission is given to everybody to vote as he likes. Well, I ask the friends who are supporters of the Bill, I ask my sisters ‘ Does this Bill do you full justice? Is this all that you want? Does it give you the rights you want?’ I say, ‘no’; I say most emphatically, ‘no, it does not’. It is a most truncated and half-hearted measure, and if I may say so, it will do the maximum of mischief to Hindu society and the minimum of good to the members of the female sex.

An Honourable Member : Are they agreeable to your solution?

Dr. Bakhshi Tek Chand : I do not know. Now I will deal with a few of the provisions of the Bill. One of the provisions of the Bill is that the chapters relating to succession, etc. will not apply to inheritance of agricultural land. Why? Because at that time when the Bill was introduced, the position was that under Entry 7 of the Seventh Schedule of the Government of India Act of 1935, this Legislature, the Indian Legislature could not pass any law relating to agricultural land, that was a provincial subject. Well, that was the position at that time. In 1938, Dr. Deshmukh’s Bill was extended to include agricultural land also. The matter went then before the Federal Court and the Federal Court agreed that this was *ultra vires* of the Indian Legislature. That was the decision of the Court and that was the provision of the Government of India Act, 1935. And therefore naturally, Sir B. N. Rau and the Committee, as well as Dr. Ambedkar and his Law department omitted it and they said this is a matter which will have to be left to each Provincial Legislature to deal with. But luckily, by that time, the Drafting Committee of the Constituent Assembly had published its Draft Constitution. In that Draft Constitution it has

been stated that Entry ? in the Seventh Schedule be amended so as to include or rather to make the subject a concurrent subject, namely, the subject of succession to immovable property or movable property, including agricultural land. That was the provision. I suggested at that time, in my minute of dissent, both in the Select Committee and in my minute of dissent, that we might wait for a few months so that whatever measure we adopt to give redress to females, giving them a share in their father's or husband's property that that might apply to all kinds of properties. What you want is uniformity of law, and I venture to point out that instead of uniformity, you will have diversity, and instead of unity, you will have confusion. If this provision had been passed, the position would have been, when a man's immovable property is situated in a town, when he has urban property, to that movable property one law, namely the law of Dr. Ambedkar's court but with regard to agricultural land situated, some three miles off, the old law will continue. The sons will have all the rights from the moment of their birth and the rule of survivorship will remain, and nobody will know what is the position with regard to the property. See how many loopholes you are leaving? If you do not want to give the property to your daughter, you can sell her share in Poona and go and buy agricultural land five miles outside and then you can deprive your daughter of her share, and thus circumvent the provisions of the Bill. But now luckily, what has happened? To-day when we are at the end of this first of the second reading of this Bill, the situation is this. The suggestion of Dr. Ambedkar and the Drafting Committee has been unanimously accepted by the Constituent Assembly and it will, God willing, come into force on the 26th January which will be long before the third reading of this Bill. I asked the other day whether he is going to make a change now so that this particular clause in the Bill which excludes agricultural land be removed so that we might give one fourth or half or full share or no share, and he said, "No."

The Honourable Dr. B. R. Ambedkar : I do not think the Hon. Member is entitled to disclose a conversation. All I said was that that was my present view : later on we may reconsider the position, Now that we have power, one of the impediments in our way had been removed.

Dr. Bakhshi Tek Chand : I am very glad that my learned friend has corrected me. I am much thankful to him for the correction, that his present intention is not to repeal that clause, but to retain the distinction but later on...

The Honourable Dr. B. R. Ambedkar : I have not said anything like that at all. I do not think my friend is entitled to use a conversation.

Dr. Bakhshi Tek Chand : No conversation, but what you have said now on the floor of the House.

The Honourable Dr. B. R. Ambedkar : These are matters which I alone cannot decide. I have to take the consent of my colleagues.

Mr. Deputy speaker : The Hon. Member may go on with the Bill as it is, saying that the Bill as it is does not provide for agricultural land. He need not refer to private conversations.

Dr. Bakhshi Tek Chand : Take the Bill as it is. Whether the change will be made now or later with the consent of the Cabinet or other parties is a different matter. But what is the position now. Agricultural land is being excluded. Agricultural land forms more than 80 per cent of the property of Hindus in any part of the country. Therefore our sisters, daughters and other female relations are excluded under this Bill from succession to a very large portion of property. That is another reason for which it is necessary to reconsider the Bill and not to proceed with it in its present form. Whatever law you may have, you should apply it to all property—agricultural, urban, movable or immovable.

Pandit Balkrishna Sharma (U. P. : General): If my Hon. friend will give away for a minute I would like to know, whether, if this law is applied to agricultural property also, it will not lead to veritable fragmentation of land. (*Interruption.*)

Mr. Deputy Speaker : Let there be no interruptions. The closure may come in at any time and I am giving a warning to the House in advance. The less the interruptions the greater is the chance for a larger number of speakers to take part.

Dr. Bakhshi Tek Chand : With regard to fragmentation I am not afraid of it. It is bound to come about if you have a larger number of heirs. If a man has five sons, there is bound to be fragmentation and if he has two daughters also there will be more fragmentation. I am not afraid of fragmentation whether with regard to immovable or urban property also. If you have one or two houses, two sons and five daughters and they decide to divide the property, there is bound to be fragmentation. Therefore, with great deference to both parties this argument is wholly extraneous and should be left out of consideration.

Under this Bill more than 80 per cent of the property is being excluded. That is one serious drawback from the point of view of reform.

One of the objections raised is this. A man may have a house and a small bit of land. Some of the villagers have a *kutch*a shop also. There will be so many divisions and the son-in-law will be introduced into the family. Some supporters of the Bill say that it is a reasonable objection and therefore we must introduce a clause at the third reading by which the dwelling house of the family will be excluded from succession. That is to say, the daughter though she will be entitled to succession, will not get a share in the dwelling house. If that is so that will reduce the urban property still more. Out of the 30 crores of Hindus, except a few rich people, how many possess more than one dwelling house in which the whole family lives? Normally in the villages it is one house and a piece of land. If a trader he has a small *kutch*a shop also. If you exclude the dwelling house from the inheritance of the daughter, you take out another slice from the property.

Another objection is that the sons-in-law will be introduced, and what might happen in most cases is that they will create trouble and since they could not manage the property in another village, they will arrange to sell it to some local person. That will lead to the disruption of the family. To meet that, suggestions are being made that the daughter will no doubt get a share but only its money value. You must then give to the brothers a right of pre-emption within one or two years of the marriage; the brothers will be entitled to pay to the sister or her husband the money value of the share and keep the property. That again, I submit, will lead to great trouble. It will be difficult to ascertain the market value of the property and this will lead to endless litigation and confer little on the daughter. Agricultural land is excluded, dwelling houses are excluded and various other things will come in. It may be said that the whole share is too much, give her a half or a quarter share, I ask why not give her a full share?

If you analyse the Bill calmly and quietly and not take as *smriti* which has come down from the Heavens, it will be found that it does not give the minimum of benefit to the female heirs.

This Bill will destroy the Hindu joint family. Whether, it is good or bad, people still cling to it. Yesterday our revered brother Mr. Alladi Krishnaswami Ayyar pointed out that in the villages in Madras it is

still in force. My friend Mr. Santhanam may take another view. But it is there. Yet it is there and has a hold on some people, whatever might their proportion. All other principles of Hindu law such as survivorship, succession, the son having a share you are abolishing. What is the necessity? The necessity is to enable the daughter to get a share. I therefore submit that parts 5, 6 and 7 of the Bill introduce drastic changes in the Hindu family system and give the minimum benefit in its present form to the females.

I would therefore ask the supporters of the Bill whether it is necessary to push the Bill to a final vote at this stage either tomorrow or in the next session. Is it not desirable to give the matter more consideration and to see whether there is any other way of securing full benefit to the female members of a joint Hindu family, whether they are governed by *Mitakshara* or *Dayabhaga* and at the same time causing the least disturbance to the systems that prevail in various parts of the country.

I have made my submissions both to the orthodox and reformer friends. I have to make only one suggestion. I have not worked out the scheme in my mind, it will take a lot of time. But I shall place before the House the broad outlines of it. And I will ask Dr. Ambedkar, I will ask the other legal Members, I will ask the reforming Members, I will ask the orthodox Members to see whether that is not an alternative worth considering. In fact, up to this morning I was hesitating to speak on the subject and my view was to place it before the Committee which, it has been promised, will be meeting shortly and I had intended if I am a member of that Committee to place it there. But when I was called upon to speak to day I thought the best course was to place it before the House. My suggestion is this.

What is our objective? Our objective is to give to the female members of our family full right in the property. What we should do therefore is this. Do not disturb the joint family. Do not overrule the law of survivorship. Let them continue as they are as long as they can. But a woman, as soon as she is married, should in the *Mitakshara* family become a full co-parcener in that property. At present she is a member of a joint family but not a member of the co-parcenary. I will ask hon. Members to permit me for three minutes just to place my proposal before them and then to consider it. Any interruption on that point will not help. It is only a proposal for your consideration, for the consideration of the Committee and for the

consideration of the Law Minister and the Prime Minister and others who may be interested in this matter. At present every woman after her marriage passes into the *gotra* of the husband, and she becomes a member of the joint family but with very limited rights. Up till 1937, her rights as given by the British Indian courts were those of maintenance only. She had no legal right in the property, she could only stay and enjoy it.

That was the position. In 1937 came the Deshmukh Act that on the husband's death she will be entitled to a share of the property—the same share as the husband—and also entitled to have her share separated if she could not pull on with the brothers-in-law or other members of the family. What I am suggesting is this. Add to that, only one thing namely that she will become a full co-parcener. Just as in the *Mitakshara* family, the moment a son is born he acquires the right in the father's ancestral property and from the moment of this birth becomes a co-sharer or co-parcener, similarly let a woman from the moment of her marriage become a co-parcener, with full rights. There may be her own sons and others. They will all continue to live together without any necessity to separate, But if she thinks that it is not possible to live together with them she can separate her share and take it way—separate it in the same manner as she can do under the 1937 Act after the death of her husband. That is one change. If you do that you will not disturb the father's property and you will not disturb the joint family. Let the joint family continue as long as it can. Somebody said it was crumbling. Somebody said it was Cruimbling only for the purpose of Income-tax. Others asked as to how many people pay Income-tax and said that 99.5 per cent. of the Hindu population does not pay Income-tax still they have the joint family system. These arguments mean nothing. If these are the circumstances under which the joint family is crumbling, let it crumble. But let it continue for as long as it can.

What I am suggesting is not something new or something which is against the spirit of Hindu Law. If I may say so, it is in accordance with the spirit of the original law—the law of the Veda, the law as given in the early *Shashtra* by Jaimini and others. I do not want to prolong my speech. But I would like to state what the position was in Vedic times and in times which shortly followed. You please read certain portions in Dwarkanath Mitter's book published in 1913 on “the position of women in Hindu Law”. You also please read

in Volume XI of the Allahabad Law Journal a very learned article by the late Dr. Satish Chandra Banerjee of Allahabad, one of the most promising and most eminent lawyers that this country had produced but whose career was unfortunately cut short by his death at a very early age. It is a very elaborate article. Also the book of Dr. K. Biswas of Patna. All these contain quotations from the Vedas and other persons who came in before Manu as to what the position of women at that time was. The position of the women at that time was that, she was a full owner of the property of the husband. Maharishi Jaimni says, commenting on the Vedic texts, that "the wife is entitled to the wealth from the moment of her marriage and whatever is acquired by the husband also belongs to her." That is to say she becomes a full co-parcener. Then, dealing with another text, he says "Not only is the woman possessed of the same religious and civil rights as man but all wealth which he (that is the husband) acquires is at her disposal. She is entitled to control even the disposition of acquired property by the husband"—his own acquired property. That is the conception of a co-parcener which we had. Just as a son from the moment of his birth gets a share and can control the father's alienations, unless they are for family necessities or for just purposes, similarly should the woman have the right from the time of her marriage. My submission is, let us go back to these old Vedic texts and all our Hindu law and its glory before the period of degradation began and the rights of women came to be curtailed, and let us make her a co-parcener. That is one branch of my suggestion.

The other branch of my suggestion is the one which Sir Alladi Krishnaswami Ayyar made yesterday that a woman should have full right to alienate her property and this fiction of a Hindu widow's status must be done away with. With regard to that I would ask the indulgence of the House for two minutes. All my friends who are opposing the Bill say "we want to go to the *Shashtra*". We don't want to go beyond the *Shastras*, particularly the *Mitakshara* which was followed by the country. With the exception of Bengal the whole country has followed it. What was the law of *Mitakshara* on this point ? I would ask you to look to Vijñaneshwar, Chapter II, Section 11 verses 2 and 4 of his commentary on Yagnavalkya as to what is a woman's *stridhan*. After quoting certain things, that is whatever is given by way of presents to the woman at the time of marriage—which is not important—he says: "And in addition to that, the *stridhan* consists

of all property obtained by inheritance by partition, by seizure (that is by adverse possession)" and so on. That is to say, the property inherited by the woman from her husband or from her father or anybody else ought to be her full absolute property and nobody can control it. This was the law laid down by Vijnaneshwar in the 11th Century. That had continued to be law until the British came. Another commentator of the Banaras school N. S. Viramatadhira repeats it. Nilakantha, the author of *Mayukha* which is the leading authority in the Bombay Province, particularly in Gujarat and the Island of Bombay again repeats it. Except in Bengal in every other Province, that was the law until the British came. When the British came they said. "Well, let us examine the original texts of *Mitakshara*". They said it was a commentary upon Yajnavalkya. Yajnavalkya used certain specific notes and used the word *adi* and *adi* is interpreted by Vijnaneshwar in this manner. That was the position. A great deal of struggle went on. Of course some Courts struggled, particularly Madras, for a number of years. But ultimately the Privy Council said, "Well we must do it", though it was quite contrary to the rule which the Privy Council itself had laid down that if there was a difference between the *Smritikar* and the commentary we must follow the commentator. That was the rule they laid down, but somehow or other they departed from it here.

So, I say, go back to the Vedic position with regard to the position of a daughter's and a husband's family, and go back to the position of *Mitakshara*. Tear off all this mass of judicial literature which has arisen in this country during all this period and go back to what was the law up to the eighteenth century. If you do these two things, I tell my friends, the supporters of the Bill and those who want to reform, that you will be getting much more. If the woman becomes a co-parcener in a husband's family. You don't disturb the joint family; the sons may continue. There may be good things in it, there may be bad things, but let it crumble away and die its natural death later on. But give the woman a right in her husband's property, the same right as the son or the husband has. There may be some further points to be considered as to how this property is to go after her death and so on, but these are details into which I won't enter. I will ask Hon. Members to give this matter the most serious consideration and then to see whether this is not a scheme which is not much better.

With regard to the unmarried daughter, I see no reason whatsoever why she should not get a full share along with the brothers in the father's property, because no dowry has been given to her and she

should not be made dependent. Some of my friends have been painting glowing pictures of the love which the brother has for the sister and how they take great efforts for the marriage of the sister. Quite true some people do it, many do it, but we know of cases also to the contrary where the brothers, particularly the brother's wife corners the whole thing and very little is left by way of dowry to the sister particularly if she is going into a family which is not very strong and has not got much influence in the village. So, we must make provision for that also. May I say that there is considerable authority in the *Shastras* also for that. Some say her share should be one -fourth, some say equal, some say it should be one-half. I am not for half. Following the Mohammedan law : she must be given full.

Shri B. L. Sondhi (East Punjab : General): For how long will the unmarried girl continue to enjoy the property?

Dr. Bakhshi Tek Chand : Once property is vested, it vests and there is no question of divesting it. After all it won't create much disturbance in the family. We must make some provision; we can see that adjustments are made later on.

A word regarding the Chapter relating to marriage and the Chapter on divorce. My objection to this portion of the Bill is a very simple one. The first part of the Chapter deals with monogamy and I am a whole-hearted supporter of the provision that every Hindu should marry once only and not more than that. The majority of our people do that.

Shri H. V. Kamath : Once or not at all.

Dr. Bakhshi Tek Chand : All the arguments that there is no son etc., are of no use. Where is the guarantee that if you marry three wives one after another, one of them will produce a son? It is all a matter of chance. Therefore that is an argument which does not appeal to me in the least. As a matter of fact and as a matter of practice the large majority of Hindus have only one wife and I see no reason why that provision should not be put in here.

Shri Lakshminaran Sahu : In Utkal there is an excess of three lakhs of women. If you start talking of one for one, I should like to know where would you provide for the three lakh extras ?

Dr. Bakhshi Tek Chand : Here again religion has been brought in. In Baroda, in 1931 the Monogamy and Divorce Bill was passed by a legislature 95 per cent of the members of which were Hindus, under the aegis of a Maharaja who was an orthodox Hindu. For nineteen

years that Bill has been in force. Can we say that Hinduism in Baroda has come to an end because of that Bill? In Bombay Mrs. Munshi's Bill was passed in 1946 and became a part of the law of the land. In Madras, last year, the Madras Legislature passed a similar Bill. Thus, we have got practically the whole of South India where monogamy is a law of the land. Hinduism there has not been destroyed. All our Madras friends are as strong and as kicking as they ever were. Therefore, I consider this provision is a very salutary one and must be maintained.

Shri Gokulbhai Daulatram Bhatt : If you, Sir, permit I should like to ask one or two questions for information sake.

Mr. Deputy Speaker : He does not give in.

Shri Gokulbhai Daulatram Bhatt : Whatever you have said about monogamy is quite true but what I want to ask is whether a man is permitted to remarry in the life time of his first wife if she consents to such marriage?

Dr. Bakhshi Tek Chand : I am very glad, our respectable brother Gokulbhaiji has put that question. I say that you can *get* a woman's consent in any way you like. I have seen notorious cases of that. In one case there was an old man and an old woman. A very learned pandit, an astrologer was brought in and after performing all the *pujahs* he said to the woman. "Your husband is going to die during the course of the next three months; the only remedy against that is that he should remarry and if he marries again he will have a son" and all that. And that old lady, thinking that this great calamity was coming upon her, gave her consent. Now of course, there is not only one woman but five women in that house. (*Interruption.*)

Mr. Deputy Speaker : Order, order. The Hon. Member has been anxious to sit down for the past half an hour but on account of the frequent questions he has to go on.

Dr. Bakhshi Tek Chand : I come to the last point, the question of divorce. One of the great mistakes which have been made in this Bill is to make the provisions for the dissolution of civil marriages similar to the provisions for the dissolution of sacramental marriages. In this respect, the Bill as now reported by the Select Committee differs from the Bill which was originally framed by Sir B. N. Rau's Committee in 1944 and then revised by him in 1945. What I say is so far as civil marriage is concerned you maintain the present law which gives the same rights as the Bill gives. But do not try to introduce

provision for conversion of sacramental marriage into civil marriage. Sacrament is a sacrament. As has been originally suggested and as has been permitted by some of our old *Smritikars*, the rule of divorce should be limited within the narrowest possible bounds. With regard to this B. N. Rau's position was this.

Impotency at the time of the marriage which has continued up to the date of divorce. This is a condition to which no reasonable person can object.

Then the person may have been an idiot and the fact may have been concealed. This is a second physical thing, which cannot be quarrelled with.

In addition to these two conditions, you can allow divorce when a person changes religion. A Hindu may become a Muslim and marry. Under the fiction in the Hindu law, law that the marriage is indissoluble and the sacrament still continues, the wife is helpless. On what principle can you do that when the husband has changed his religion and gone to another and married wives according to his new religion?

Shri Mahavir Tyagi : Would it not result in this that whenever a divorce is needed instead of undergoing the routine legal proceedings, people will change their religion?

Dr. Bakhshi Tek Chand : No, they won't change their religion. In addition to the above conditions, you can add desertion of the woman for a certain period; call it five years, six years or seven years. These conditions are, I submit, nothing new. They were known to our ancient *Smritikars*. I feel that divorce should be limited to these three or four cases. Have we not seen cases in which the husband after marrying has abandoned his wife? Have these unfortunate women no remedy? They should have a remedy. But I would limit it to these three or four conditions. But do not introduce litigation. If it is a case of providing adultery, evidence can be faked. Some sort of collusive evidence can be produced and the charge proved. But I do want to introduce that in a sacramental marriage. My submission as in my minute of dissent is that the chapter relating to marriage and divorce should be recast. We have two kinds of Hindu marriages: the civil and the sacramental. In the one, you know the conditions under which it can be dissolved. In the other, you can have all your new modern ideas. I would ask the supporters of this Bill to give their serious consideration to it and see whether it improves the position of women. If my suggestions are accepted, it will make the present Bill much

better and women will rise to the full stature of their womanhood. They will have full right to property. It will give them emancipation on the economic side. Under the new Constitution there is adult franchise. We have women Ministers in charge of different branches of Administration. We cannot limit the right of woman, the mistress of the house and say that she would be entitled only to maintenance but not other rights. That would be a gross injustice. It would be contrary to our ancient Laws. What was introduced in between might have suited the particular circumstances and conditions of those days, but they are all outworn. They are not part of the Hindu religion and should be done away with. We should get rid of this jungle growth and go back to Vedic conceptions. These are briefly my submissions and I would ask everybody to give them their serious consideration.

The Honourable Shri K. Santhanam (Minister of State for Transport and Railways) : May I ask one question in clarification? Supposing a woman becomes a co-parcener in her husband's family ... will her share be part of the husband's share or will it be separate?

Dr. Bakhshi Tek Chand : So long as they are joint, it will be joint ownership of the whole family just as you and your sons are co-parceners in the property; but if there is a division, then she will become independent. It is a new addition just as a son. It is very simple.

An Honourable Member : Sir, the question may now be put.

Some Honourable Members : No. no.

Maulana Hasrat Mohani (U. P. : Muslim): I will take only five minutes.

Some Honourable Members : *rose—*

Mr. Deputy Speaker : Order, order. Will all Members kindly take their seats? I find a large number of Members interested in speaking, but as I said yesterday, if we go on at this rate, we may have no time even if we sit for a month or two months. There is no tendency on the part of Members to limit their speeches. This Hindu Code covers not only Hindus, Hindu law of marriage and customs but it applies to Jains and Sikhs also. It does not apply to Muslims, Christians and Parsis. (*interruption*).

An Honourable Member : There are clauses which affect other people also.

Mr. Deputy Speaker : Hon. Members know fully well that when the Speaker is on his legs, no Member should get up. I need not remind

hon. Members about that. I, therefore, propose to call a Member of Jain community and a member of Sikh community and then others. Prof. K. T. Shah.

Shri H. J. Khandekar : (C. P. and Berar : General) : Why not the Harijans?

Maulana Hasrat Mohani : *rose.*

Mr. Deputy Speaker : I am not going to allow this Hon. Member to come in now I will first start with the others.

The Honourable Shri Satyanarayan Sinha (Minister of State for Parliamentary Affairs) : I want to make one suggestion. If the House agrees, we can sit till 7 o' clock today and even after that, if members are not satisfied and there are still others who want to speak we can sit on Saturday also. Government is prepared to allot half of Saturday for this business. There will be no Question Hour on Saturday and before Lunch we will have more than 2½ hours. If that suits your purpose and if the House agrees, the House agrees, then that will obviate all the difficulties.

Mr. Deputy Speaker : I think it is a very reasonable proposal. I have already said the House will sit on Saturday. There is no going back upon that. If owing to exigencies of public business, it is necessary that we should sit on Saturday, heavens will not fall. We are sitting on Saturdays for committee meetings. I have requested the Government to cancel Select Committee meetings on that day. I shall also see that no Select Committee meetings are fixed for Saturday. Hon. Members will be relieved of all other parliamentary work so that they can take part in the discussion on the Hindu Code.

The Hon. Minister for Parliamentary Affairs has just suggested, on behalf of Government, that they are willing to allot Saturday, which they had originally intended for other Government business, for the discussion on Hindu Code. Finding that more Hon. Members are anxious to speak, they are prepared to allot Saturday, the forenoon of which will be earmarked for non-official Member and the afternoon, allotted to the Hon. Minister of Law for his reply. In addition, he makes another suggestion for the acceptance of the House. It is open to them to accept it or to reject it. In view of that there are many Hon. Members who are anxious to speak. We may sit till seven o'clock today. I leave it at 5 o'clock today, when I shall find out whether the House is tired or is still active to continue the discussion. Personally

I and my friends of the panel of chairmen are prepared to sit till seven o'clock. I am entirely in the hands of the House in regard to this matter.

The Honourable Shri Satyanarayan Sinha : Sir, I said on behalf of Government, that they are prepared to allot half of Saturday for the discussion on the Hindu Code Bill. But as you have already said that the whole of the day would be allotted for this purpose, Government will agree to that.

Mr. Deputy Speaker : I hope Government will accept the suggestion which I have made.

Pandit Govind Malaviya (U. P. : General): Sir, I wish to submit to you in connection with your ruling, that on the assumption that Saturday will be a free day, some of us have made important and unavoidable engagements elsewhere. Speaking about myself, I have got some unavoidable and important engagement on that day. I hope, Sir, you will keep that fact also in mind. If we had known that Saturday would be a working day we would not have done that. Now this will be upsetting all our engagements, and I, therefore, request that instead of Saturday some other day might be fixed for the discussion of this important measure. It is open to the Government to do so easily. They can take up Government work on Saturday and allot some other day for the discussion of this measure. We will have no objection to that But I hope that the House will appreciate that if others who wish to take part in this debate, are not able to come on that day, they should be given some consideration.

The Honourable Shri Satyanarayan Sinha : I think, Government will have no objection if Hon. Members wish to sit on Monday. On Saturday we shall take up other Government business.

Shri Ajit Prasad Jain (U. P. : General): Why not continue tomorrow and finish the discussion on this Bill?

The Honourable Shri Satyanarayan Sinha : On Saturday we are meeting for Transacting Government business. Government is prepared to have the discussion of this Bill put for Monday, but all the same Saturday will be an Official day.

The Honourable Shri K. Santhanam : Members will have less time on Monday than on Saturday, But if the members are willing to conclude the debate on Monday we won't have any objection. But if the postponement is due to dilatory tactics. . . .

Mr. Deputy Speaker : I am really sorry, our friends are not cooperating. A suggestion came from Pandit Govind Malaviya and some

other Hon. Members—he is an important member and is taking keen interest in this Bill on one side or the other—that they would prefer this measure being taken up on any day other than Saturday and Government in consideration of their wishes was prepared to take it up on Monday. The Government spokesman has said so. Hon. Members are aware that on Monday there will be the question hour. Knowing this full well they have accepted that day.

Sjt. Rohini Kumar Chaudhari : Most respectfully I would like to point out to you, Sir, that Saturday is a holiday given to us for certain purposes. I am willing to forego that holiday if there is an important reason for it. Now I want to ask this House, is it convinced, is it willing to finish this Bill as early as possible? What is the urgency for this Bill? We have more important Bills. We have the Insurance Bill which, according to you, must be passed into law this session. If this Bill

Mr. Deputy Speaker : The hon. Member will resume his seat. We have been hearing this objection from some Hon. Members that there is no hurry to get on with this Bill. I am afraid there is no unanimity of opinion in this House so far as that matter is concerned. If there was that unanimity we would not be thirsting for time like this. It is a well known fact that opinion on that point is divided. On the mere suggestion of one Hon. Member I do not want to take the opinion of this House.

Now it is clear that Saturday will be an official day when official business other than the Hindu Code Bill will be transacted. On Monday I propose to allow the non-official members to speak till mid-day. In the afternoon I propose to call upon the Hon. Dr. Ambedkar.

Shri Mahavir Tyagi : Several of us have been waiting long to catch your eye. Shall I take it as your ruling that, on the Hindu Code Bill no more Hindus shall be allowed to speak?

Mr. Deputy Speaker : I did not say so; nor would I say so. The Hon. Member has, unfortunately, though he is very alert, misunderstood me. All that, I said was that, not one single Jain or Sikh member, to whom also this Bill equally applies, has spoken.

Shri H. J. Khandekar : What about Harijans?

Mr. Deputy Speaker : The sponsor of this Bill is the Leader of the Harijans. It is no good saying that the Harijans do not belong to the Hindu community. I think Harijans are as much Hindus as any others. This caste consciousness need not be pursued any further.