

All that I said was that Jain and Sikh members will be given preference to other members. I have no intention of shutting out any others.

As it stands at present, I find that the suggestion of the Government is very reasonable. They have spent so many days on the discussion of this Bill and have given one more day. If still on Monday, 4 P.M. it is the general wish of the House that they should go on, I am absolutely in the hands of the House. So far as the Chair is concerned, it is satisfied that there has been sufficient discussion.

Shri Mahavir Tyagi : I protest against this. I feel that the Chair's benign eye should not make a distinction between any class, caste or creed. Your eye should go round the House without distinction of majority or minority.

Mr. Deputy Speaker : The Hon. Member has thoroughly misunderstood me. Whenever a Bill comes up for discussion which affects certain communities—unfortunately there are different communities in this country—a chance should be given to the representatives of all communities to express their views. If the Hon. Member reads this Bill, he will find that the scope of the Bill includes Jains and Sikhs also. A number of Hindus have already spoken and so I must allow some Jains and Sikhs to speak now. We must know their viewpoints before we go through the Bill clause by clause.

Shri Mahavir Tyagi : I protest

Mr. Deputy Speaker : I cannot tolerate this. The Hon. Member will kindly note that it is improper to use this language.

* **Prof. K. T. Shah** (Bihar : General): Sir, originally when the Bill was first introduced and this motion came before the House, I had no great intention to intervene in the debate. But now that the debate has proceeded so far and a variety of view have been placed before this House, now that there is freedom of voting from Party mandate, I feel it necessary to make some observations arising out of the motion, and of the Bill, which I trust, will receive the consideration of the Hon. the Law Minister and his colleagues.

You Sir, have been pleased to say that I have been called upon as a Jain to speak on the matter. I stand here only as a member of the House, and can claim no special right or privilege to speak as a member of any community. I call myself only as Indian citizen and

*C.A. (Leg.) D., Vol. VI, Part II, 14th December 1949, pp. 602-607.

do not regard a belief in any particular faith a qualification or a disqualification for participating in discussions like this. I speak only as a member of this House.

Sjt. Rohini Kumar Chaudhari : On a point of order, Sir, you called upon Prof. Shah to speak on behalf of the Jains but he says that he does not claim to represent the Jains.

Mr. Deputy Speaker : It is no point of order. ‘

Prof. K. T. Shah : I may also add at the same time that I am going to support in general the provisions underlying this Bill even though I happen to have tried to form an opposition which is not yet recognized. Coming though, as it does, from a member professing to be in the opposition, and coming also from one who has consistently opposed almost every provision of the Constitution, every attempt at legislation of a structural or reforming kind that this Government has made. I hope and trust that the support that I am now extending, unconditionally and unreservedly to Bill will meet with the appreciation that it deserves. Unless Government feel the wisdom of the old saying that the Devil may also quote the Scripture and that, therefore any support coming from me should be looked at askance, it should be welcome. If that is their view, the opposition to this Bill would be served much more effectively by me than I at least would like to wish.

Holding this view, Sir, and offering my co-operation in this manner, I would like to say in all humility, with the utmost deference to this House, and even at the risk of incurring the charge that we as a people lack a sense of humor, I would not like to use any expression or illustrating which might in any way introduce a tone of levity or lightness in this discussion. I regard this matter, this subject, as so vital to the very existence of our country, I regard this Bill as of such far-reaching consequence that I will not allow any expression or illustration to creep into my remarks which might in any way give any observer, any outsider, any student of our affairs, an appearance as though we are not sufficiently serious in this matter.

Having made these observations, I would proceed to examine some of the objections that have been raised some of the pleas that have been urged in regard to the subject matter or even the basic principle of the Bill. The challenge has been made, Sir, whether this body is

competent to deal with a subject of this character, whether the House has been elected on a clear issue to determine the contents of this Bill, or whether there is sufficient urgency in this matter to allow this House to deal with this proposition. I for one do not think that there can or should be a question about the competence of this body to deal with subjects of this character. The Hon. Member, who spoke just before me, has given a number of illustrations in which structural changes including the Constitution had been proposed by legislative measures in this House and carried. Even more important reforms had been made by the legislature preceding this which was not of the same sovereign character that this Legislature is, and therefore the question as to the competence of this House to deal with matters of this character seems to me to be irrelevant, unbecoming and if I may say so, not quite respectful towards this Assembly, for while it is quite true that this single issue was not placed before the electors, those of us who recollect the manner and method by which we have been elected to this House will realize that not on any issue

4 P.M. was this House elected except that of acquiring independence and shaping a constitution for the country. If you press that argument too far, I am afraid you will render many matters with which this House has dealt with as either illegal or *ultra vires*. I would not like therefore that any suggestion of this character can be or should be advanced so as to throw any doubt whatsoever, on the competence, the authority and correctness of this House in dealing with and disposing of such matters.

Sir, in general elections also, it is not possible to have each issue separately examined. As all those, who have an experience of popular general elections, will realize general elections are always fought on a multiplicity of issues. There is therefore not any clear indication of a majority on any individual issue of such complexity as we are dealing with now. Unless the Constitution provides a method like referendum, unless we had a constitutional device like that suggested by Mr. Gokulbhai Bhatt, we would find it extremely difficult if not impossible, to get a clear verdict of the people on issues of this character. There would really be no means of ascertaining popular opinion. Even then there may be those who would say, given the state of public education in this country, given the state or the condition in which the press in the country is monopolized by a few individuals, given also the lack of experience of the voter in matters of this character,

the decision of the people, even if competent, may be open to question. I would therefore suggest that an argument of this character ought not to influence the judgment of this House and we should confine ourselves to the discussion of the proposition, as I am happy to see in many quarters it has been.

The opposition to the Bill is led and is made up of people for whose opinions, I have personally very warm regard. I am not, therefore, prepared to say that this is an opposition of vested interests, that this is an opposition inspired by ulterior motives or dictated by other considerations. I fully realize, Sir, that the opposition has in many cases very serious grounds for holding the views that they do, and though, I have the misfortune of differing from them, I cannot for that reason say that their views are not entitled to the widest consideration we can give them. On that standpoint, I feel that there is a great deal of force in the arguments of those who question the urgency of the matter and are prepared—if not differ discussion—at least take much more time on the discussion than seems likely to give to this matter, but by saying this, I should not be misunderstood I should not be understood to say, that I would like the matter to be indefinitely postponed. I should like this body whose sovereignty, I would not question, to give a decision on this matter once and for all, and though I am fully alive to the consideration advanced by one of the hon. speakers that there is no guarantee that the next House will accept the decision, even if we give it, I feel that once an indication is given, once a sign-post is erected, once a road is built, it would be difficult to reverse the engine and go back. However, that is a matter of faith rather than of reason, of general belief rather than of intellectual conviction, and I am therefore, open on this matter, altogether, but taking however into consideration the main points that have been urged against the merits of the provisions contained in the Bill, I feel it impossible to accord my support to the opponents of the several sections of the Bill, several chapters in the Bill, or the provisions in the Bill. The main difficulty centres round, so far as I can see on the position of women. I have already said Sir, that I have not the slightest desire to bring in the least bit of levity in this discussion, and therefore, some of the arguments, some of the points made earlier in this debate on this matter leave me somewhat cold. We are building up a country of equal citizens irrespective of religion, sex, class or creed. If that is the principle upon which we take our stand, if that is the preamble of our Constitution and the guiding

principle of the life that we are to build up for this country hereafter then I think that the provisions of this Bill are in full conformity with the ideals enunciated in the preamble to the Constitution and as such, anything which we now propose, that would be in any way different from or derogatory of this provision, ought not to be accepted by us. The attempt made in this bill to place women on a position of equality in regard to family relationships, in regard to inheritance, in regard to property, in regard to marriage or divorce, is an attempt not only in consonance with conditions now prevailing all over the world and coming into vogue in our society as well, but are conditions, which in my opinion are dictated by a full realization of the actual conditions and observed trend of events everywhere. It is true that for ages past, marriage has been regarded as a sacrament, but there is nothing, so far as I can see in this Bill, to prevent anybody from realizing and treating it even today as a sacrament. After all, I venture to submit, sacrament is a mere matter of your own heart and creation than an imposition from outside. How many sacraments are there, which though continuing to be sacraments are daily broken, broken in the worst possible manner and disgrace, both the breakers and those who are parties to that? Sacraments cannot change merely because the law gives a particular character to the relationship of man and wife as is attempted to be in this Bill. Whether or not, the law declares and recognizes a union to be a civil marriage or a civil contract, those who are parties to such a union, who have a very highly idealized opinion of the nature and function and objects of such a union will not cease to continue to do so. If however, circumstances develop which make it impossible for them any longer to continue in that position, if conditions develop which make it impossible to maintain that high ideal. I for one think that it would be much better to discontinue the relationship by any legal and reasonable manner that can be found than to continue it to the mutual prejudice, to the continued misery of the parties concerned or the offspring. It is not a very pleasant matter, Sir, to suggest that there should be freedom for divorce if unions could be all made in the form in the ideal, in the spirit in which they were supposed to have been made, but we live in a mundane world, with material considerations, with human weaknesses and therefore, it is too much to expect that merely by an ordinance, merely by a fireman, we would continue to keep and maintain unions in the idealist sense in which they have been believed conceived and maintained.

Permission, therefore to dissolve in a legal, reasonable public manner unions which have become oppressive, which have become a source of misery to the parties and their off-springs, is nothing more in my opinion that a recognition of the actual prevailing circumstances and the developments that may have in any given case taken place, and therefore, it is that even though one may not like the idea, one must recognize realities, one must face the actual position and admit that it is much better that we should discontinue or dissolve such unions than that we should continue a misery for such parties.

The idea that these unions should be monogamous in character while they last is also one which in my opinion is the basis, is the foundational condition of a continued happiness, continued success of such unions. There may be occasions, however, when such unions as I have just said prove unbearable or intolerable by circumstances that neither party could foresee, but in that case, without too much fuss, without going into an operation that might involve washing of the dirty linen and mere playing to the gallery, so to say, by sensationalism, we might in our law devise machinery by which this union could be easily dissolved without unnecessary prejudice to any party. I do not see therefore that we need insist upon reasons or conditions or excuses that any other legal systems have been made necessary for granting divorce and I think it would be much better if divorce is made easy, simple and unexpensive, more than is at any rate, the case in some of the western countries whose model we have been following. The question of inheritance, the question of enjoying a share of the patrimony is again one which does not seem to me to be a just cause for the degree of heat that it seems to have evoked in this House. After all, in this country how many people are in a position to have property and leave such property outside beyond their life? If you go by standards, if you go by measurements such as that of the income-tax statistics, you will find that perhaps less than a million people are in a position to have an income of about Rs. 250 a month and that would include all people, not only those who are regarded as income-tax payers, but those who try or manage to escape that.

In a population of over 300 millions, the income tax paying class number about one million, or with their dependent about three to four millions and that is less than one per cent of the total population who can possibly afford to have some property that can be divided or that can be the cause of disaffection or of inequality of rights as

between the descendants of common parents. I see really no reason why on this subject any heat should be generated, as regards the recognition of equal rights of daughters and sons in the matter of division of patrimony. Speaking for myself, I may say, I do not believe in any property at all, and the sooner the day comes when property as a whole is abolished, when provision is made for everybody by the community, provision to see that everybody gets work and gets his or her wants or requirements met, the sooner that day comes the better for the community. And this source of evil, a learned lawyer called it the source of strife, I call it this property which is the source of evil, I say that property should be abolished, and the sooner it is done the better it would be for the community and for legislations of this kind. If it were possible at this stage to suggest an amendment of the kind I like, I would even suggest that all clauses relating to property be abolished or deleted and a simple proposition be inserted, that while property continues, property of any kind, both land or personal, it shall be equally divided. That would be sufficient for the time being and we ought to endeavour that the day draws nigher and nigher when property as a whole will be abolished and everybody would have the same right to work, the same right to enjoy a given standard of life as those who are advantageously situated with patrimonies in their hands.

On these two crucial issues therefore, one of marriage and the other of inheritance, I say that the Bill goes no further than what conditions around us necessitate. If and while you maintain an individualistic society, if and while property remains to be the corner-stone of or the foundation of your social system, and the profit motive remains the governing impulse of the social machine, so long I see no reason why there should be inequality. The equality should not be merely nominal. Political equality, the right to vote would mean nothing so long as economic equality also is not assured to every human being, to every citizen of this country. One has heard a great deal and I was very glad to hear it all that in the essence of Indian civilisation, in the essence of our social system, the highest honour is paid to womanhood. If that is true—and I do not doubt it—then I do not see why mere sanction of equality in property should be excluded, if you are really so worshipful of womanhood, if you are so respectful and reverential to womanhood, why do you hesitate at all to give her equal right to what after all, is mundane property, that which must

be left behind by every one of us. However much we may be attached to it, however much one may hold and accumulate property, I do hold and I say it with the utmost reverence and the utmost humility, that I consider that in the process of evolution, woman seems to be more highly evolved, a finer organism than man, it is not, however, any disparagement of either sex. All I say is that, given the function that nature seems to have entrusted to women, given also the function and the objects with which womanhood has to deal in this social system, we cannot rever, we cannot regard or respect womanhood too much, and as such I would not like the least sign of inequality, the least semblance of differentiation or invidious distinction between man and woman, as between son and daughter of the same parents.

The question, however, of adoption or of guardianship and so on, does not interest me to the extent that some Hon. Members of this House seem to be interested in it. Adoption or for the matter of that, testamentary powers appear to be artificial extension of the human personality beyond death which is utterly unnatural, in my point of view. It is bad enough to have and hold and control property, it is bad enough to have and hold the property and the profit motive in our minds while we are alive. Why should we continue to prolong our personality? Why should we desire to insist upon our orders being obeyed even after death? Why should there be this artificial extension of personality by such an instrument as adoption? Knowing, however, that it is an ancient institution, knowing however, that it is an institution which many regard as a point or as a factor in their salvation, I am not prepared to suggest that here and now we should abolish it. I am prepared to say, if you regard it as a source of your salvation, if you regard it as something by which your personality is perpetuated, your civilisation or culture or work in life is continued, then it is necessary. But, in that case, you need not have inequality between man and woman. No discrimination or legal restriction between man and woman. The same right should be extended to every one in the community. I base my support of this Bill on grounds of social justice, economic equality and of political propriety. I should think that the Constitution that we have adopted, that the ideals that we have held before us, that the hopes that we have entertained of a planned and

progressive society here after, in view of all that, I think we cannot do better than take this Bill as the beginning in the right direction. We cannot do better than recognise the provisions it has incorporated, regarding removing all inequalities as between man and woman. It is not merely a matter of recording every five years or every three years one's vote at the general election. It is also a matter relating to life and work, of equal opportunities to health and education of standard of life and the same fulfilment of the elementary wants of human beings, in the matter of food, shelter and clothing. These should be available, and should be made available if they are not available by the concerted and common action of our society as a whole. Society should realise this obligation that it is not merely a paper proposition that we have enunciated in our Constitution, but it is a sacred duty and obligation that ought to be discharged at the shortest measure of time that we can manage it, that all these things should be made available to every citizen of the country so that the hopes and aspirations that we have formed, so that the hopes that we have entertained ever since the freedom of this country was achieved, could be realised. It has been said by a very great American—President Lincoln, that a nation cannot be half slave and half free. While not exactly Slaves one half of this country, of our community still feel disabilities and weaknesses or invidious discrimination against them, which it does not wish, should be allowed to continue any longer. In this connection may I mention a statistical fact which perhaps is not realised by every person in this House. It is this. While woman is in a majority at birth, on the overall population she is in a very striking minority. Whatever may be the conditions in a province like Utkal, on the whole, in India woman has always been in a minority almost beginning from the age when marriage begins, from about fifteen onwards, their numbers go on thinning so that in the over all population woman was and is still in a minority. What is the significance of that?

[At this stage Mr. Deputy-Speaker vacated the Chair which was then occupied by Shri S. V. Krishnamoorthy Rao (one of the Panel of Chairmen).]

I for one think, that is because of the unequal treatment given to women as between boy and girl, as between son and daughter that

it has resulted in a majority at birth being reduced to a minority on the whole, so that that charges of unequal treatment must be faced. Here is a Bill which tries to remove that. There are many provisions in the Bill which may not satisfy everybody, even those who on principle accept the Bill, even those who realise that it goes a great way forward in rationalising our society, simplifying our legislation and organising our social system to a given end. But we are not discussing details just now. Specific provisions apart, the principle underlying the Bill, the motive spring of the entire structure should commend itself to the House and I trust the House will accept it.

Shri Lakshminarayan Sahu (Orissa : General): (*English translation of the above speech*) I would like to say, Sir, that I did not mention this thing as a joke that there are more women in Utkal. The number of women in Utkal exceeds by three to four lakhs and when it is not possible to find out a match for their marriage, then they are married to a *Sahada* tree.

Prof. K. T. Shah : I am speaking of the whole country and not of any particular province. Therefore it is not necessary for me to answer this particular question. Let it be left there.

***Sardar Hukam Singh** (East Punjab : Sikh): Sir, at this late stage of the debate, I feel it is not very easy to advance fresh arguments or make new points on the subject on which so many distinguished lawyers and eminent scholars have taken part for so many days. But as I have been called as a representative of a particular community to which this Bill applies, I must say something which should represent the feelings of my community so far as this particular code is concerned.

I do not agree with my learned friend Prof. Shah when he said that he wants to speak only as an Indian. I would have gladly repeated the same phrase, had this code applied to every citizen of India but as it stands it applies to certain communities only. Therefore I feel and believe that I have a right and a duty to speak on behalf of my community.

*C.A. (leg.) D., Vol. VI, Part II, 14th December 1949, pp. 607-10.

Though I have the advantage of having heard so many scholars at the same time I feel I have certain disadvantages as well because most of the things have been said and if I repeat them they would look stale. I have, therefore, decided to confine myself to certain points only which particularly concern my community and on which I feel that I have to express my views.

At the outset I might make it clear that I do not want society to stagnate. I am not one of those who would say that social laws should remain as they are, I would like to change them as times change. I am not so orthodox as to say that we have no right to march with the times. Nor am I of the opinion that this House is not competent to enact this legislation on account of its being elected indirectly or on account of lack of a special mandate as regards this Bill or on account of any other reason, I feel that this House is competent to enact any legislation and hence this Bill also is within its competence. In spite of all this, I feel that I cannot lend my wholehearted support to this measure as it stands.

If the original scheme had been adhered to as suggested by the Rau Committee, perhaps certain portions of this Code might have been passed without opposition. There must be unanimity on certain branches of this Code. But I will confine myself to certain points only and therefore I do not want to touch on all aspects of the general principles of the legislation.

The Preamble says that the Bill is intended to amend and codify certain branches of the Hindu law as now in force. But when I look into the Bill, I find that there is nothing of Hindu law that is being codified here. Divorce is being taken from the Christian countries and the law of inheritance from Muslim law. To me it is rather a misnomer to call it a codification of Hindu law.

Dr. Mono Mohon Das (West Bengal : General): There are so many castes and tribes in the country among whom the divorce custom is prevalent. Are they not Hindus? Does the hon. Member want to get rid of them?

Sardar Hukam Singh : If you will permit me, I will come to that question later. I hope you will have the patience to hear me.

As I said I will confine myself only to certain points so far as my community is concerned and will not go beyond them. In the Preamble, it is said, that the Bill is intended to amend and codify the Hindu law and I repeat that I do not find that in this Code. If

as we were told by the Mover at the outset that 90 per cent, of the people have divorce, I have no objection and let them remain as they are. You might call that Hindu law but not this system you are introducing in this Code.

In clause 2, it is said that this Bill applies to Sikhs as well. It would have been a matter of gratification or even of much pride to us, if Sikhs had been included among Hindus for the conferment of certain rights. But what I find here is that as soon as the embrace is extended in clause 2 a severe blow is dealt to all customs and usages by clause 4. All custom is gone and usages eliminated. I must submit here that "custom" in clause 3 has been defined as "having been continuously and uniformly observed" and that it must be "certain and not unreasonable nor opposed to public policy". Why should such a sacred rule of conduct be treated with such contempt that it should be ruled over once for all? I have grave objection to that. My objection is particularly based on this fact that my Province, namely the Punjab, is a Province where custom is the first rule of law. In all matters like divorce, marriage, succession, inheritance, wills etc. custom is the first rule as is laid down in the Punjab Laws Act. They have those customs which they observe from a long time and everybody in the village understands what that rule is which he is to observe. There have been judicial pronouncements on these customs and they are ordinarily understood by every villager, There is no dispute about that. Therefore, I feel that this change would bring about a fresh phraseology and would create complications for simple peasants who have all along understood their laws well.

My second objection is about marriage. I might make one observation here. It might be said that the Sikhs have all along been governed by Hindu law up to now. But what I object to is the change that is being brought about. I have no objection absolutely if the Hindu Law were to continue as it is. But as the changes are being brought from outside, I feel the Sikhs must have a grievance and feel that either customs should be allowed to remain as they are or they should not necessarily be bound to revolve round the wheel as it goes on. I was referring to the marriage question. Of course I feel that in Hindu law or in Hindu culture the wife has so long been advised to merge herself into the will of the husband. She has been an embodiment of sacrifice. That has been her nobility and greatness. If now our females feel that they have been subjugated for so long a time, that

they have suffered and that they are not prepared now to continue to suffer, I would certainly advise my brothers to take up the subordinate position. But I feel that this insistence on equality in every matter and in home life would not be conducive to happiness or peace in the family.

Then again my complaint is that only two kinds of marriages have been recognised in this Bill. One is the sacramental form and the other is the civil form. I must inform the House, though I believe, most of the Members would be knowing it already, that the Sikhs have another form of marriage which they have observed for the last one hundred years. That is called Anand marriage ceremony. That is a simple form. The couple are brought before the Guru Granth Saheb, they take a vow and go four times round the Granth Saheb, then offer prayer and then the marriage is complete. Now, it is not civil marriage because it has not to be registered anywhere. It is not sacramental marriage because the *sapinda* relationship or the restrictions of prohibited relationship degrees are not adhered to strictly. Therefore what I am afraid of is that this form of marriage that we have been observing for so long would not be a valid marriage. Doubts arose in the beginning of this century and then a particular Act had to be passed in 1909—the Anand Marriage Validating Act—when it was enacted that all marriages solemnised according to this form were valid. But now, as I read it, I am doubtful whether this marriage will be recognised under the Hindu Code. Therefore, I feel that the Sikhs would feel much concerned over this and would have grave apprehensions over this matter particularly. I want to bring it to the particular notice of the Mover that, left to themselves, they are not prepared to forego this form of marriage and he should take particular note of this.

Mr. Naziruddin Ahmad (West Bengal Muslim): Such a marriage would be invalid under this Bill.

Sardar Hukam Singh : I also feel that it would be invalid under this Bill and that is why I am submitting the position before the House and before the Mover particularly.

Then I have to submit one observation about divorce. It has been said that divorce is already there among a large percentage of the population. It may be. My appeal is this. If it is there let it go on. Do not restrict it with certain conditions that would make it more expensive. An ordinary man would feel that this change is not for

the better but for the worse. If they have an easy mode of dissolution of marriage now and are hereafter being compelled to resort to some more complicated and more expensive method, certainly they would not welcome it. It is argued that there are evils creeping. The bill is a permissive one. That there is no compulsion for anybody, but we have to be on our guard whether the remedy proposed is not worse than the malady itself. There are evils no doubt to a certain extent. But if we loosen the bonds, a small percentage of the population would be happy to break all ties and secure relief from their self-created miseries. But what about the large minority? Would you not be opening a trap for them, and a temptation to make mistakes, and have a trial of their future as they will realise that there is a way out to end it?

Then I come to my second main point and that is about adoption. Adoption in my province, that is the Punjab, is a peculiar institution. It is called the customary appointment of an heir. It has nothing to do with religion. It is a simple declaration for practical purposes, where the owner of a land nominates a person who is to be his assistant for cultivation during his lifetime and an heir to his farm after his death. As I have said, it has nothing to do with religion. There is no restriction as to age or as to relationship. You are now proposing in this Code that a daughter's son or a sister's son may be adopted but I must convey to you that already in the customary appointment of an heir daughter's sons are most ordinarily appointed, sister's sons also are appointed. There are absolutely no restrictions. A young man can adopt a man of his father's age, a man with many sons might be appointed as an heir. That might look strange to some people here but I tell you that it is a fact. A married man, a man with children might be appointed an heir. That is a most secular institution; it has got nothing to do with religion. How are you going to provide for such an institution? Are you going to throw it out? Surely that has the sanctity and sensation of ages, it is so popular in our part of the country that it cannot be thrown away like that. People would not submit to it so easily and so far as this part of the law is concerned, it would be a dead letter if it is pressed and forced on our people there.

Then there is the question of succession. I agree with my friends that our females, sisters and daughters, should have a share in the property, but I cut it short by saying that I agree with my learned friend Dr. Bakshi Tek Chand when he enunciated some time ago that

they should have a share in the father-in law's property and not in the father's property after marriage. I have particular reasons for that because as I have stated the circumstances of my province are very peculiar. The Punjab is a province of small peasants; small farms of three or four acres are the ordinary holdings. Such a person cannot be expected to have more than two bullocks which he might have secured after raising some loan, one *hal* and one *panjali* and one *gadda* also to take manure to the field or to bring fodder from the fields to his house. The Code would not apply to agricultural land, but what about the movables? What about his bullocks? Take the simple case of a family with one son and one daughter. The father dies, these movables are to be divided among these two. (*An Honourable Member : Why not ?*) I don't say that, I say it must be divided. Ordinarily they would have a cow as well and I think the Mover would have to give us the mode of dividing that cow, *hal* and *panjali*. The son-in law who comes from a distance, of say fifty miles, is interested in that part of the country; here he cannot live with this brother-in-law because the four acres holding cannot provide him with anything. His interest is elsewhere and therefore he must divide the property and go away. The sister would demand her share; surely she will take away one bullock, one half of the cart, one half of the *panjali* and would go away never to come back, thanking the framers of this Code, and of course not to be welcomed again ! (*An Honourable Member: The brother's own brother-in-law will thank him !*). That is a very easy question that is put, but it is not realised that when there are more than one-two, three or four—brothers in the East Punjab, they join the army, they are adventurers, they have gone to the farthest corners of the world to Argentine, Brazil and South America. They bring money from there and buy more lands, they live together with a common kitchen.

Sir my submission is that this provision would create difficulties. I agree with my learned friend Dr. Bakshi Tek Chand that so long as the daughter is unmarried she must have a share in her father's property, but as soon as she is married she must be transferred to her father-in-law's, there to have an equal share with right of partition and everything else. I am not against giving a share to the females— I might not be misunderstood in that respect.

I am afraid that our educated girls have much leisure. An ordinary girl, when she gets educated, does not absorb herself in the household

duties, therefore she has not enough work to keep her busy in the house.

[At this stage, Mr. Deputy Speaker (Shri M. Ananthasayanam Ayyangar) resumed the Chair.]

The State should provide occupation for their leisure hours, give them useful and constructive work to do. Legislation like this and divorces would not root out the evils that you want to eradicate. Before destroying the joint family, the State must provide for old-age maintenance, illness allowance and several other things. If the pious duty is gone a mere charge on property would not do. The effects of this legislation, so far as I can think out, will be further fragmentation, love and sympathy, eliminated divorce and partition courts in larger numbers, female infanticide promoted, and care and attention of children neglected.

Shri V. I. Muniswamy Pillay : *rose—*

Shri B. Das (Orissa: General): Sir, are we continuing till 7 O'clock..

Mr. Deputy Speaker : I have no objection to sit till 7 o'clock. What is the general sense of the House?

Some Honourable Members : No. no.

Shri L. Krishnaswami Bharathi (Madras : General) : Sir, we can sit as long as there is a quorum.

Some Honourable Members : No, no.

Mr. Deputy Speaker : I have heard sufficiently. One voice cannot multiply itself into many. How long is the hon. Member likely to take?

Shri V. I. Muniswamy Pillay (Madras : General): About fifteen minutes.

Shri L. Krishnaswami Bharathi : Sir, the idea is to give opportunities to as many Members as would want to speak. It is rather surprising that people don't want to speak. I suggest that we sit as long as people are ready to speak and we are here to hear and when there is no quorum we will automatically stop.

Shrimati Purnima Banerji (U.P. General): The argument forwarded by hon. Members is that many members want to speak
5 P. M. on such an important measure as the Hindu Code. When there are so many of us who are willing to say what we want to say and can be accomodated what is the objection to sitting till seven?

Mr. Deputy Speaker : I entirely agree. If majority of the members are willing to sit and speak I have no objection.

Some Honourable Members : Yes, we are willing.

Mr. Deputy Speaker : Very Well. Let Mr. Muniswamy Pillay finish. We will see.

* **Shri V. I. Muniswamy Pillay :** Coming as I do from a community that was at the outside of the Hindu Society for centuries, I welcome this measure of religious and social reform. We, who form one-sixth of the population of India, welcomed the advent of Mahatma Gandhi who revolutionised the Hindu society so that not only Caste Hindus but all sections of the Hindus could have an equal place. Some of the friends who preceded me said that religion was in danger. I do not know wherefrom and in what from their objection springs. This country is proud of many *Avatars*—Lord Buddha, Sankara, Ramanuja—and great social reformers like Ram Mohan Roy and in the present century, the great Mahatma Gandhi who found that untouchability was eating into the very vitals of our nation and himself showed the way for inter-caste marriage. All these reforms show that we are in line with the present age. Whenever any social reform came up before the legislatures, obstructions were placed in the way, so that reforms may not come about. Coming from Madras, I may inform this House what kind of trouble we had when the Temple Entry scheme was before the Madras Legislature. Even in the matter of removal of social disabilities of untouchables, the Ministers had to find themselves in the midst of people who threw chilly powder in their face. Such is the state of affairs when we bring social reform in this country. The great Sankara who brought *Advaitism* to our land, when he was asked by his Guru “Who are you?” he said:

न मे मृत्युङ्क्षा न मे जतिभेदः।

पिता नैव मे न माता न जन्मः॥

न बंधुर्न मित्रो न गुरुर्न शिष्यः।

चिदानंदरूपः शिवोऽहं शिवोऽहं॥

These were the words uttered by the great Sankara. He never differentiated man from man, woman from woman. He thought every one was equal. I do not understand why there should be so much opposition to this Bill. In the South the great philosopher. Thiruvalluvar has given to the world tenets as to how a man and woman should

*C.A. (Leg.) D., Vol. VI, Part II, 14th December 1949, pp. 611-14.

move; what are the conditions under which they should live. They are pearls. I do not understand why there should be objection to the woman getting equal share in all amenities that are given by God to the human beings.

Some of the members who preceded me said that the time is not opportune. This measure has been before the country ever since the resolution of the Central Assembly was adopted on 20th January 1944. This Hindu Code has reached the nook and corner of India and not only educated men but the masses in general have understood the theme of this legislation. I do not know whether such members, as told the House that it is not competent to deal with this Bill, are talking with a sense of their responsibility to the country. I do not know whether members of this Assembly who have the proud privilege to produce a Constitution for thirty crores of people, which has been welcomed not only in India but in foreign countries, are not competent to deal with this Bill for the uplift of women in this country. We have clearly laid down in the Fundamental Right of the Constitution that the State shall not discriminate on grounds only of "religion, caste, sex....". We have got again Article 15 (3) which says that "Nothing in this Article shall prevent the State from making any special provision for women and children." Again in Article 46, it is stated : "The State shall promote with special care the educational and economic interests of the weaker sections of the people....." do not women come under this category , and ought they not to be protected? After all, this legislation is a permissible one and ought to be welcomed by everybody.

If you study the rules regarding marriage, inheritance, adoption and all these things of Hindus in the different provinces, you will find that they are not the same. They differ in many places. In the Constitution we have said that we must evolve a common Civil Code. This legislation is, in my opinion, the forerunner before we come to that stage. I come from a district where there are a lot of hill tribes. Their marriage ceremonies, laws of inheritance etc. differ substantially from those of Hindus, although they profess to be Hindus. Among the picturesque *Toda* aboriginal community, there is polygamy and due to this social evil the community is dwindling. The ceremonials of the other tribal community of *Badagas* also differ from those of Hindus, although they profess to be Hindus. The custom among them is that when a man wants to marry a girl, he has to pay dowry— what they call *Thiraipanam*. After that, if the woman wants to go away from the husband and if another man were to pay the same dowry i. e., *Thiraipanam*, the woman is free to choose another man.

In a land which has produced great saints and sages are we to continue these things? Whether it is the tribals or hill tribes they all have to be protected according to the New Constitution.

Sir, in Madras province, as has already been observed by some of my hon. friends, polygamy has been statutorily abolished. Now, unless we codify the law for the whole country, it is open to a man to leave Madras, get married in some other province and return to Madras. Unless there is a uniformity in regard to the law obtaining in all the provinces, it is not possible for the Madras province alone to have this law enforced.

The other cardinal points of the Hindu Code Bill which is now before the House are the chapters relating to marriage and divorce. It has already been pointed out how essential it is to have both civil and sacramental marriage. According to this, the Scheduled Castes find that the *yogam* must be performed and the ordinary *thali* tied. Then only does the marriage become true. Even now after the Civil Marriage Acts have come into force, I find people taking to this. I can find no reason why the same method cannot be adopted throughout and for all Hindus, orthodox or otherwise.

Clause 33(f) makes reference to “adultery”. I wish that the word “adultery” had not been used at all in the Code, for, as was pointed out by Swami Vivekananda, so long as there live three women in our land the chastity of India will be upheld. I do not think, Sir, that adultery is largely prevalent in any section of the Hindu society. There may, of course, be rare cases. But there is no reason why that should necessitate a statutory provision.

In sub-clause (2) of clause 9 and clause 16, I find penalties in regard to people breaking the law. The amount specified is too high, particularly for the poorer section of the people. I feel that it must be a very nominal amount. In the matter of judicial separation it is all right in the case of people who have got money and can afford to go to the courts to get a dissolution. But what about the villages in which India abounds. Communal panchayats consisting of members chosen by a few people will decide the matter, I do not think this procedure is correct. I think some formula must be evolved which will lead to the constitution of representative panchayats which will decide cases of dissolution.

Next I come to the question of *stridhana*, that is what is given to the women either by her father or by her brothers. What is to happen

if it is not properly used by the husband. I feel Sir, that some clause must be inserted so that the *stridhana* may always remain the property of the woman.

Clause 72 which deals with adoption says: "No adoption which has been validly made can be cancelled by the adoptive father or mother or any other person, nor can the adopted son renounce his status as such and return to the family of his birth." I think, Sir, if the son or anybody who is adopted were to misbehave and squander the money of the family, there must be a saving clause whereby such a thing could be prevented.

Section 93 deals with the dowry to be held in trust for wife and says that it shall come into force after the commencement of this Code. I feel, Sir, that section must apply to all cases existing before the commencement of the Code.

Sir, I would finally point out that bringing this Hindu Code into force will greatly relieve all those women who are under the harsh treatment of men. Many people have been saying that the women are enjoying equal privileges and facilities. But in reality it is not so. In a few cases it may be so. But about 90 per cent of the women are still suffering from many social hardships. Out of the four *yugas*, *Krita*, *Treta*, *Dvapara* and *Kali*, we are now in the fourth *yugam*, iron age and are strong to bring in reforms. We must see that the women enjoy as many facilities as men. It is said that the hand that rock the cradle shall win the world. Before they grasp forcibly these facilities let us give them peacefully. I, therefore, support the Hindu Code Bill that has been brought by this Government and when it has come into fruition I might say that my hon. friend Dr. Ambedkar who has taken so much of trouble would have added a further feather to his hat.

* **Shri O. V. Alagesan** (Madras : General) : Sir, yesterday Dr. Ambedkar said that he was very glad that it had fallen to his lot to pilot this Bill. Sir, his name is sure to go down in history as the able midwife that assisted at the birth of the Constitution of free India. Sir, he is ambitious. He wants to add a further feather to his cap and he is justified. His ambition is to supersede the ancient rishis, Manu, Yajnavalkya and a host of other ancient law givers.

*C.A. (Leg.) D., Vol. VI, Part II, 14th December 1949, pp. 614-21.

One of the previous speakers— I think it is Mr. Pataskar—made a reference to Section 44 of the New Constitution which relates to a uniform civil code for the whole country. He pleaded and asked: “Why not withdraw this Hindu Code and have a Civil Code? It may sound like pleading for postponing the day of mischief. But why does not Government come out with a statement of policy on this question? Is this a first step in that direction? Would they bring in more measures to put into effect Article 44 of the Constitution following this? I do not want to embarrass the Government, but all the same I would appreciate a clear statement of policy from the Government.

Sir, the other day it delighted everyone's heart to hear the hon. Mr. Santhanam pleading for monogamy. He challenged anybody to raise his little finger against this institution. Saint Tyagaraja admirably summed up Rama's character in his own inimitable manner in these words:

Oka mata, oka banam, oka pathni,

That is One word, one arrow and one wife.

We are all glad that that ideal has been placed before us. Sir, I ask, is it good only for the Hindus? Will the Government bring forward a Bill common to all and make monogamy applicable to all citizens of India ? I say this not to embarrass Government. I would like to repeat. When it is put in this manner, you will have to put the problem in its proper bearing. You will remember that there is a community in India which will object to it on grounds of religion and you will also remember the unhappy happenings that followed the partition in this country. You will be saying that it will be an interference with religion, that it will be against the secular nature of the State. Now the Prime Minister has declared that our State is going to be a secular one. We should educate the people on the secular nature of the State. There are many things that are happening on the other side of the border which are sure to have their reactions on this side. That State is based shamefacedly on a theocratic basis and they propose to carry the full implications of that policy and such a policy on the other side cannot fail to have its reactions on this side. So, people begin to entertain misgivings about the secular nature of our State. They understand it in this light and there is good reason for that, that secularism means meddling with everything Hindu, and fighting shy of any other group. That is the way in which the general mass of the people in this country react to measures like this.

So in the interests of the secular State that we want to establish in this country, we should try to carry the people also with us. It is no good Government alone saying that we are a secular State, and if that is not properly understood, properly appreciated by the general mass of the people in the country, then the State cannot long continue to be secular. We will be losing the ideal that we want to realise in this country and we will be postponing the day of such realisation. That is why, Sir, I say that people are at present not in a proper mood. They are sullen. They are in a pique; just as a child which is in a pique refuses to eat even the sweetest thing, people are not in a mood to appreciate this reform. Even though it may contain some good parts. So the best thing would be not to press down the throats of the people anything which they do not want. Dr. Ambedkar last time quoted Burke. He struck a gloomy note and gave us a warning just as he did at the conclusion of his speech during the third reading of the Constitution He said :

“Anybody who wants to conserve should be prepared to repair.”

It is very good, Sir, we should be prepared to repair, but does this Bill represent mere repair? I should say it pulls down the house in which we have been living. It wants to plan a new structure. It wants to make structural alterations. It is not mere carrying out repairs here and there. It is a structural repair. I should say that it is a new structure that it wants to put in the place of the old one.

The Honourable Dr. B. R. Ambedkar : All repair is structural repair.

Shri O. V. Alagesan : I have no objection to carry out even structural repairs, but before carrying out such structural repairs, this House itself should undergo a structural repair. That is what I want to say. By saying this, I do not minimise even by an iota the representative and sovereign character of this House. Sir, when we put through other legislation—Prof. Shah was labouring this point—nobody is surprised. It is a routine matter, but this is treated on a different basis. This is viewed with suspicion, with anger. That is the reason why I say we should discriminate, and allow the House that will have been structurally repaired to carry out this reform with greater confidence and with a degree of success which can be attained by then.

Sir, another point is the atmosphere in which this Bill is sought to be pushed through. Sir, there was a great one in this country who led our thought and action. Even though we were slaves he taught

us to think and act like free men and we followed him. That was the tradition that he established. Long before this country was technically free, he ushered in an atmosphere of free thinking and action. But unfortunately, he is no more with us to guide us, but his example is there for us to follow. Even on a matter like the abolition of untouchability, temple entry and such allied matters, he advised that we should not accomplish those worthy objectives by means of legislation. He persuaded and preached to the people the necessity for such measures. He even imposed suffering on himself. That is how he brought about this mighty reform and it has become an established fact today. It is that way that we should follow and not force down reforms upon the throats of unwilling people.

Shri V. L. Muniswamy Pillay : It is for you to educate them.

Shri O. V. Alagesan : We should go about the country and educate the people. The general elections are coming very shortly and that will be the best time for it.

Shrimati G. Durgabai (Madras : General) : That is the whole fear.

Shri O. V. Alagesan : That will be a wonderful opportunity to educate the people on the various provisions contained in this Bill. There is much force in what the Congress President said yesterday. The Labour Government in Britain, how does it function? It has postponed a very important measure, a Bill for which they took the permission of the electorate. It had the sanction of the electorate but after taking note of the situation in the country, they have postponed it till after the general election. They are going to take the verdict of the people afresh and then push through the measure. When such is the case in regard to a matter on which the permission, the sanction of the electorate had been obtained, then I should think it is much more necessary in this case where we did not give even an inkling of our ideas to the electorate. Sir, we have seen the spectacle of this Bill being debated for two days in every session. It is like the promise for renewing the gold bangles for the next deepavali. That is how we have been going on and it is good that we go on like this, because, who knows even the sisters who have given their enthusiastic support to this Bill may change their minds tomorrow and they may try to improve it on their own lines. After all one does not remain static and more so woman.

Shrimati G. Durgabai : There are also some men who change their opinions.

Shri O. V. Alagesan : The great poet Valmiki who is the Adikavi of our country said this. The reference is only to the general characteristics of women. This does not apply to anybody in particular. Valmiki said :

Sathahvadhanam lolathram

That is :

Women change as lighting.

That is what he said.

Similarly they can change their minds and try to improve. I should like to ask you and the House whether they have not gained by waiting so far. They have gained because in the Rau Committee recommendations, the daughters had only half a share and now according to Dr. Ambedkar's Bill, daughters will be getting equal shares with the sons.

Again Sir, if they wait, they may get more. Daughters may get two times. Also we have heard on the first day the hon. Mr. A.K. Menon. The other day in a different place we heard Mr. Thanu Pillai., They are very anxious about this and they feel that they are being pushed back instead of being pushed forward. While the rest of India is pushed forward, the Malabaries very strongly feel that they are being pushed backward under this Bill. Sir, they may convince others and the whole land may come under Marumakkattayam, though the matriarchal system is disappearing elsewhere. Our friends from Malabar may be able to convince the other hon. Members of this House and then the whole thing may be Marumakkattayam and that will be a brighter prospect. They will not lose anything by waiting because they have got persuasive powers; they can persuade, they can seduce, they can manage all these things.

Mr. Deputy Speaker : The hon. Member need not use that expression.

Shri O. V. Alagesan : I am sorry. I withdraw the word.

We witnessed the wonderful spectacle in this House, Sir, of a speech which began as a wonderful satire and ended in a sorrowful sermon. Overnight the satire was converted into a sermon. So when we see this, nothing is impossible. It can be improved even according to the protagonists of this Bill in a very radical way and they may have a better Bill if they wait and then they can have the satisfaction of having taken the permission of the country also for that.