

what is called the co-parcenary. Let me take the other question. It is said that the co-parcenary—I hope Members understand that coparcenary is something very narrow and very limited and it is not the same thing as a joint family, which is quite a different matter—system enables the Hindus to preserve the property, to retain it, that there can be no break-up, there can be no squandering of money so to say on the part of any member of the family. A question that I want to put to the House is this : Is it true under the existing law of the Mitakshara that this property cannot be alienated, cannot be squandered ? The answer is completely in the negative. Let me give you one or two illustrations. I am taking the case of the father. The father can alienate joint property for antecedent debt. All that the father has to do is to first of all create a debt, say one thousand or two thousand rupees on a personal promissory note. Subsequently, after six months he becomes entitled to sell the whole of the co-parcenary property, if that becomes necessary for the purpose of meeting that antecedent debt. Now, a submission that I want to make to the House is this : Does the lodgment of such enormous power in the hands of a father to sell the property for purely antecedent and personal debts ? I want the house to bear in mind that the Mitakshara law makes a distinction between the father and the manager so far as the alienation of property is concerned. True a manager cannot alienate a property belonging to the co-parcenary unless and until it is proved that there is a family necessity for which alienation is necessary. But with regard to the father, there is no such obligation at all. A father can create a debt personally for himself and he becomes entitled to alienate that property for a purely personal debt which has not been incurred for the purposes of the family. The only limitation that is imposed upon the right of the alienation of the father under the Mitakshara law is that the debt must not be impious, must not be for an immoral purpose and if it is not immoral, then the father can alienate the whole of the property of the co-parcenary. There is no limit at all.

Similarly, take the case of the son. It is also under the Mitakshara law within the competence of a son to demand the partition of the family property at any time he likes. I could have well understood the argument for the conservation of the co-parcenary property if the rule of Hindu Law was that no co-parcener was entitled to alienate the property, that the property must remain the property of the coparcenary, but that is not the case. The root of dissolution, the root

of destruction of the co-parcenary property is in the co-parcenary itself, because it is the co-parcenary law that gives a vested right, a right from the very birth to demand partition of the property and disrupt the whole of the society.

Thirdly, even if a son does not alienate his property, he can create a debt on the property for his own personal pruposes and the creditor who has advanced that money under Mitakshara law has a perfect right to sue for the partition of the co-parcenary in order to recover his debt. A stranger, therefore, under the Mitakshara law has a right to break up the co-parcener. I would like to ask my honourable friends, who are worried about this matter, where a large part of the estate, of the assets lies outside the co-parcenary property and so far as the co-parcenary property is concerned, the father has a right to alienate without any kind of limitation except the immorality of the debt, the son has a right to break up the property at any time he likes and the son has a right to create a charge on the property enabling the creditor to sue for partition, is it something which might be called a solid system, which is fool-proof and knave-proof ? My submission is this, that the co-parcenary property law as it stands, contains within itself the elements of disruption. Therefore, the Bill is doing nothing very radical in saying that the share shall be held separately. As we all know to-day the condition is such that everybody wants to live separately. The moment a father dies, the sons claim that there shall be a legal recognition to facts, as they exist to-day. There is nothing that is radical at all in this part of the Bill.

Of course, I should say one thing which I think is generally not realized. I started by saying that a distinction has to be made between co-parcenary and joint family. This Bill while it does away with coparcenary, maintains the joint family. It does not come in the way of the joint family being maintained. The only thing is that the joint family in the Mitakshara law will be on the same footing and of the same character as the joint family under the Dayabhaga law. It must not be supposed that because the mitakshara law docs not prevail in Bengal that there is no joint family. There is a joint family. The only distinction will be that the members of the joints family instead of holding their rights as joint tenants, will hold them as tenants in common. That will be the only distinction that will be between the existing law in the Mitakshara and the future law in the Mitakshara.

Now, I come to woman's property. I do not know how many members of this house are familiar with the intricacies of this subject.

So far as I have been able to study this subject, I do not think that there is any subject in the Hindu Law which is so complicated, so intricate as the women's property (An honourable Member: "As the woman herself ") : As the woman herself. If you ask the question, what is *stridhan*, before answering that question, you have to ask another question and find an answer for it. You must first of all ask, 'is she a maiden' or 'is she a married woman'. Because what property is *stridhan* and what property is not *stridhan* depends upon the status of the woman. Certain property is *stridhanam* if she has obtained it while she is a maiden; certain property is not *stridhan* if she has obtained it after marriage. Consequently, if you ask the question what is the line of inheritance to the *stridhan*, you have again to ask the question whether the *stridhan* belongs to a maiden or the *stridhan* belongs to a married woman. Because, the line of succession to the *stridhan* of a maiden is quite different from the line of succession to the *stridhan* belonging to a married woman. When you come to the question of succession to married woman's property, you have again to ask the question, does she belong to the Bengal School or does she belong to the Mitakshara School. If you ask the question whether she belongs to the Mitakshara school, you will never be able to find a definite answer unless you probe further and ask whether she belongs to the Mithila School or the Benares School or some other School. This is a most complicated subject. At the same time, I should like honourable members to bear two things in mind. One is this : so far as women's property is concerned., generally speaking, it falls into two categories. One category is called her *stridhan* and the other is called widow's property. The latter property is property which she inherits from a male member of her family, and according to the existing law property which she owns only during her life time and subsequently that property passes to the reversioners of the male heir. That is the position.

Therefore, so far as women's property is concerned, we have two different sorts of inheritance and two different sets of property, *stridhan* property and widow's property. The heirs to *stridhan* property are quite different and distinct from the heirs to the property she inherits from a male member. The question, therefore, we have to consider in codifying this particular branch of the Hindu Law is this. Are you going to maintain the two principal divisions which exist at present, namely, *stridhan* property and widow's property? Secondly, are you going to maintain the double line of succession; one line of succession

for the *stridhan* property and another line of succession for widow's property? These are the two principal questions which arise when one begin to codify this law. The Committee came to the conclusion that so far as codification was concerned, its purpose would be defeated if we allow the present chaos to continue. We must either decide that a woman will not be entitled to have absolute property or we must decide that a woman should have absolute property. We must also decide what should be the line of heirs for a woman: whether they should be uniform or they should be different. The Committee came to the conclusion that so far as right to property is concerned, there should be uniformity and uniformity should recognise that the woman has absolute property.

I know a great deal of the argument that is always urged against women getting absolute property. It is said that women are imbecile; it is said that they are always subject to the influence of all sorts of people and consequently, it would be very dangerous to leave women in the world subject to the influences of all sorts of wily men who may influence them in one way or another to dispose of property both to the detriment of themselves as well as to the detriment of the family from which they have inherited the family property. The view that, the Committee has taken is a very simple one. In certain matters or certain kinds of property which is called *stridhan* property the Smritis are prepared to invest woman with absolute right. There can be no question at all that a woman has an absolute right over her *stridhan* property. She can dispose it of in any way she likes. My submission to the House is this. If the woman can be trusted to dispose of her *stridhanam* property in the best way she likes, and nobody has ever raised an argument for the obliteration of that rule of Mitakshara, the burden of proof lies upon the opponents who say that the other part of the property, namely, widow's estate, which the woman has inherited, should not become her absolute property. It is they who must prove that while the women are competent to dispose of a certain part of the property which they possess, they are not competent to dispose of a certain other part. The Committee, on a very careful examination, failed to find a satisfactory solution of this dilemma. The Committee, in my judgement, very rightly, came to the conclusion that if in certain cases women were competent and intelligent to sell and dispose of their property, they must be held to be competent in respect of the disposal of the other property also. That is the reason why the Committee have made this rule that women should now possess absolute property.

The other question that arises on this issue, namely women's property is the share of the daughter. I know it would be a very great under-statement to say that this is a ticklish question; it is a very anxious question. There are many people in this world, in India today, both orthodox and unorthodox who cannot help producing daughters; they do. I do not know what would happen to this world if daughters were not born. At the same time, they do not want to extend to the daughter the same love and affection which a parent is bound to extend both to the male and female issue. But, I am not going to use any such high level of argument in favour of the proposition which has been enunciated by the Select Committee; I am going to speak on a much lower tone. The first thing that I would like to address myself to this house is this. The inclusion of the daughter among the heirs is not an innovation which is made by this Committee. Honourable members who are familiar with the law of inheritance as it prevails both under the Mitakshara and Dayabagha, I am sure, will admit that the daughter is included by both of them under what is called the compact series. As members will know, Hindu heirs are divided into several categories. The first category, is called, compact series. After that, there is a series of heirs spoken of as *Sapindas*, then comes *samanodaks*. After that comes the *bandhus*. *Bandhus* are divided into three categories : *Atma bandhus*, *Pitru bandhus* and *Matru bandhus*. The compact series is really a special class of heirs which does not conform strictly to the basic principles of heirship surrounded round *gotraja*, *samanodaka* and *bandhus*, because it is a mixed category. It is a category which is based on double foundation. It is based on propinquity; it is also based on religious efficacy. They do not conform to any of the criteria which have been laid down for determining the categories of *sapindas*, *samanodakas* and *bandhus*.

If you take both the laws, the Mitakshara as well as the Dayabhaga, you will see that the daughter is included within the category known as compact series. The only distinction between the Mitakshara and the Dayabhaga is this. According to the Dayabhaga the necessary element in heirship is the capacity to offer oblation. Consequently the Dayabhaga makes a rule between a daughter who is unmarried, a daughter who is married, a daughter who is married but has a son, and a daughter who is a widow. They give preference to a daughter who is married and has a son. Next to that they give preference to a daughter who is married. The unmarried daughter comes

third. But it is within that category, the reason being that a daughter who is married and has a son, is ready there to offer oblation, because her son can offer oblation. A daughter who is unmarried, has no son, and therefore his possibility of offering an oblation does not exist. That is why she has been kept down. But the point I want to emphasize, and which I want the House to bear in mind is that there is no innovation as such in the inclusion of the daughter in the category of compact series. She has always been there both according to the Mitakshara and according to the Dayabhaga. The only innovation which the Bill seeks to make is to raise the status of the daughter. Under the Bill she becomes simultaneous heir, along with the son the widow, the widow of the predeceased son, son of a predeceased son of a predeceased son, widow of a predeceased son of a predeceased son.

The point is this that originally, and particularly according to the Mitakshara Law, no female was entitled to any kind of share at all. This law was changed in the year 1937 whereby the widow of the deceased, the widow of the predeceased son and of his grandson and great-grandson—they were all made simultaneous heirs along with the son. The only omission that was made was in respect of the daughter. The government at that time was not prepared to lend its support to put the daughter on the same level as the widow and the widows of the predeceased son and the predeceased son's son. This is therefore the only innovation that the Bill makes. It merely raises it up in the order of heirs. It is not that for the first time she has been made an heir.

Now I come to the question of her share. As the Rau Committee has pointed out, and as many of the witnesses who know the Shastras have pointed out, that it is impossible to deny the fact that the daughter according to the Smritis was a simultaneous heir along with the son and that she was entitled to one-fourth share of her father's property. That has been accepted as a text from the Yagnavalkya and also from Manu. I once counted 137 Smritis and I do not know why our ancient Brahmins were so occupied in writing Smritis and why they did not spend their time doing something else it is impossible to say, assuming that that occupation was a paramount occupation of the day. There is no doubt that the two Smritikars whom I have mentioned—Yagnavalkya and Manu, rank the highest among the 137 who had tried their hands in framing Smritis. Both of them have stated that the daughter is entitled to one-fourth share. It is a pity that somehow

for some reason custom has destroyed the efficacy of that text: otherwise, the daughter would have been, on the basis of our own Smritis, entitled to get one-fourth share. I am very sorry for the ruling which the Privy Council gave. It blocked the way for the improvement of our law. The Privy Council in an earlier case said that custom will override law, with the result that it became quite impossible to our Judiciary to examine our ancient codes and to find out what laws were laid down by our Rishis and by our Smritikars. I have not the least doubt about it that if the Privy Council had not given that decision, that custom will override text, some lawyer, some Judge would have found it quite possible to unearth this text of Yagnavalkya and Munismriti, and women today would have been enjoying, if not more, at least one-fourth of the share of their property.

The original Bill had raised the share of the daughter to one-half. My Select Committee went a step further and made her share full and equal to that of the son.

I am not entitled to disclose what happened at the Select Committee and how this provision came to be made. I am perfectly

Shrimati Renuka Ray (West Bengal: General): Unanimously !

Mr. Deputy Speaker : Was it a compromise between twice the share of a son claimed and half the share provided in the Bill ?

The Honourable Dr. B. R. Ambedkar : It was not a compromise. My enemies combined with my enthusiastic supporters and my enemies thought that they might damn the Bill by making it appear worse than it was.

Shri. H. V. Kamath : Have you any enemies.

The Honourable Dr. B. R. Ambedkar : However, this is the position, namely, so far as the daughter's share is concerned, the only innovation that we are making is that her share is increased and that we bring her in the line with the son or the widow. That also, as I say, would not be an innovation if you accept my view that in doing this we are merely going back to the text of the Smritis which you all respect.

I might also say that in discussing this question about the share of the daughter, myself, and the members of the Law Department examined every system of inheritance. We examined the Muslim system of inheritance : We examined the Parsi system of inheritance : We examined also the Indian Succession Act and the line of succession

that had been laid down and we also examined the British system of inheritance, and nowhere could we find any case where a daughter. was excluded from a share. There is no system anywhere in the world where a daughter has been excluded.

Now, Sir one question has been brought forth constantly—that the giving of the share to the daughter means disruption of the family. I must frankly confess that I cannot appreciate the force of that argument. If a man has twelve sons and one daughter, and if the twelve sons on the day of the death of the father immediately decide on partition and obtain a twelfth of the total property of the father, is the partition going to be much more worse, if there was a daughter, the thirteenth, who also demanded a share ?

Twelve share or 12 fragments is not a better situation than 13 fragments. If you want to prevent fragmentation we shall have to do something else, not by the law of inheritance but by some other law, whereby property shall not be fragmented so as to become less useful from a national point of view for purposes of national production.

Shri T. A. Ramalingam Chettiar (Madras : General): Is the Hindu Code applied to agricultural land ?

The Honourable Dr. B. R. Ambedkar: It is not. I am saying generally.

I think I have, so far as I know, exhausted what I have to say on the various points of controversy which I had seen raised both by members of this House as well as by the members of the public. I hope that the clarification which I have given on the various points will allay the fears of members who are not well disposed towards this measure. They will realise that this is in no sense a revolutionary measure. I say that this is not even a radical measure and I should like to draw the attention of the members of this House to one important fact, namely the constitution and composition of the Rau Committee. There were four members of that committee but I should like to point out that two of them who have signed the report are far from radical members of the Hindu community. My friend Mr. Gharpure, whom I have known for a long number of years, is one of the most conservative members I know

Shri H. V. Kamath : Politically or Socially ?

The Honourable Dr. B. R. Ambedkar : Politically and socially also. In fact I have no hesitation in saying that he may on certain

occasions find it very difficult to touch me even with a barge pole. He is so conservative. My friend Mr. T. R. Venkatarama Sastri is no doubt a liberal but he is certainly not a radical so far as I know. If these people conservative in their attitude have signed the report I think we can take it for granted that the measure to which they have put their signature could not be revolutionary and certainly could not be destructive of the foundations of the Hindu Society. So far as I am concerned I am a very conservative person : Although some people may not accept that fact, I am indeed very conservative. All I say is that I am a progressive conservative and I should like to tell the House one important fact which I think every one of us must bear in mind, particularly the conservative members of this House. The great political philosopher Edmund Burke who wrote a big book against the French revolution because of its radicalism and revolutionism did not forget to tell his own countrymen who were very conservative, one very important truth. He said that those who want to conserve must be ready to repair and all I am asking of this house is this : that if you want to maintain the Hindu system, the Hindu culture, the Hindu society, do not hesitate to repair where repair is necessary. This Bill asks for nothing more than repairing those parts of the Hindu system which are almost become dilapidated.

Shri H. V. Kamath : Sir, on a point of reminder, the Honourable Dr. Ambedkar promised some citations from the Smrities. Will he keep promise ?

The Honourable Dr. B. R. Ambedkar : I shall do so at the end. Fortunately for me I have secured a copy of Mr. Dwarkanath Mitter's own book "Rights of Hindu Women". I was going to cite certain text, which show that the rights which the Vedas had given to women were taken by the Smrities in the meantime and some other smrities tried to restore those rights. I shall cite them in the course of my speech.

Shri Deshbandhu Gupta : Could the Honourable Minister enlighten the House as to the evidence which was produced before the Select Committee?

The Honourable Dr. B. R. Ambedkar : As Honourable Members know two bodies came to us and asked for evidence to be taken. The Committee decided that their evidence be taken. One body came and one body sent in a written reply. That body was the Dharma Nirnaya Mandal. In general they are absolutely in agreement with the provisions contained in the Bill. The other gentleman who came obviously was not.

Mr. Deputy Speaker : Motion moved:

“That the Bill to amend and codify certain branches of the Hindu Law, as reported by the Select Committee, be taken into consideration”.

Two amendments were not pressed. What about the next amendment ?

Pandit Thakur Das Bhargava : Sir, I am not in a position to move any of my amendments.

Mr. Deputy Speaker : As I have already stated in answer to the suggestion made by the Honourable the Mover of the Bill I shall allow those motions to be made without any speeches at the time of moving the motion. After all the amendments are moved whichever are relevant and are admitted, there will be discussion on them as also on the original motion.

Shri Deshbandhu Gupta : On a point of order, Sir, is it open to an honourable Member to say that he is not in a position to move his amendments?

Mr. Deputy Speaker : It is.

Mr. Naziruddin Ahmad : Sir, I am directed

An Honourable Member : By whom ?

Mr. Naziruddin Ahmad : I am directed to move my amendment without a speech at the first instance. (*An honourable Member*; “Who has directed you?”) I am directed by the Honourable Deputy Speaker. I find that honourable members are extremely impatient.

Shri R. K. Sidhva (C. P. and Berar: General): No, we are not. Proceed.

Mr. Naziruddin Ahmad : I have been directed, I repeat, to move my amendment without a speech. On account of the eloquence of my honourable friend the Law Minister I was already speech less

Shri L. Krishnaswami Bharathi : You are already disobeying your mandate.

Mr. Naziruddin Ahmad : There are the bright ladies who have also created a profound impression upon me and just before I stood up Pandit Thakur Das Bhargava, a very powerful member, said that he was not in a position to move.

Mr. Deputy Speaker : Is this preamble necessary for moving his amendment?

Mr. Naziruddin Ahmad : I was already rendered speechless and that is why I was expressing my gratitude for suggesting that I should not make any speech.

Mr. Deputy Speaker: The honourable Member will speak later.

Mr. Naziruddin Ahmad: Sir, I beg to move with considerable amount of nervousness :

“That the Bill be circulated for the purpose of obtaining further opinion thereon by the end of 1949.”

Mr. Deputy Speaker: Amendment moved :

“That the Bill be circulated for the purpose of obtaining further opinion thereon by the end of 1949.”

Shri B. Das: Sir, as this is a dilatory motion I suggest it may be ruled out of order.

Shri Mahavir Tyagi: On a point of order; in the morning also there was some ruling about dilatory motions. I submit, Sir, that they are the privilege of a Member. Although I stand by Dr. Ambedkar in many respects with regard to this Bill, I submit that dilatory motions are the privilege of those Members who are not in power—of individual Members as well as parties. Let it not be tabooed. It is a democratic right of Members to delay business if they choose to do so. Therefore a motion should not be disallowed because it is considered to be diatory. Dilatory motions are the privilege of a House of democracy.

Mr. Deputy Speaker: I do not see any point of order in what Mr. Tyagi has said. He wants full discussion to be allowed on this. As regards the point raised by Mr. B. Das I am not able to understand it. Does he mean to say that under any of the Rules such a motion is not allowable ? If so when Report is presented, the procedure is this. (*An honourable Member:* “What Rules are they ?”) The rules that we adopted last session.

The Rule says :

“If the member in-charge moves that the Bill be taken into consideration, any member may move as an amendment that the Bill be re-committed or be circulated or re-circulated for the purpose of obtaining opinion or further opinion thereon.”

Therefore under the Rules this kind of motion is allowed. I want to know how I am expected to disallow this motion.

Shri B. Das : I am aware of that Rule. But I was guided by the ruling of this morning that no dilatory motions would be allowed. I therefore raised the point of order.

The Honourable Dr. B. R. Ambedkar: May I be permitted to say something ? I think the point raised by my friend Mr. B. Das is a perfectly correct point of order, because of this

Honourable Members : No.

Pandit Thakur Das Bhargava: When the Deputy Speaker has given a ruling it cannot be questioned.

Mr. Deputy Speaker: The honourable Members will not speak all together. They will rise in their seats and speak one at a time. Let me hear the Honourable the Law Member. I will allow an opportunity to every Member to speak on this point provided he is able to make a proper contribution to the debate. Nobody need be impatient.

The Honourable Dr. B. R. Ambedkar: Sir, as you will recall the motions which are permissible under the Rules of Business fall into two categories : One set of motions are such that the Speaker must put them to the House; the other set of motions are such that the Speaker must first be satisfied that they are proper motions before he can put them to the House. Let me illustrate this by reference to a motion for adjournment. Under the Rules every honourable Member is permitted to move an adjournment motion. But merely because a certain member has tabled an adjournment motion that in itself does not authorise, enable or empower the Speaker to put it to the House, because it is laid down that unless the motion is held to be admissible by the Speaker the motion shall not be put. I can give various other illustrations. With regard to a motion like this, namely, the adjournment of the consideration of the Bill and circulations for further opinion, my submission is that such a motion falls within that category of motions where the Speaker is required to be satisfied before he can put the motion to the House. It has been the universal practice in this House that any such motion for the postponement of the consideration of the Bill or for circulation, made after the Select Committee has made its Report, is *prima facie* dilatory. Unless the member who makes the motion advances substantial reasons for such a motion and the Speaker is satisfied that the reasons advanced are substantial such a motion will not be admissible. There are many rulings in these books but I should like to draw attention to ruling No. 1 in book No. 1. In regard to this motion no substantial reasons have been given.

An Honourable Member: But he has not spoken at all.

Mr. Deputy Speaker: Let the honourable the Law Member conclude.

The Honourable Dr. B. R. Ambedkar : I was only drawing your attention to a ruling (No. 1) in this book. There are various others also. It says:

“During the discussion on the Cotton Excise Duty Abolition Resolution a motion was moved to adjourn the debates on the Resolution. (*Which practically means sending it away for circulation or to leave it up.*)

“The President while accepting the motion on this particular occasion without creating a Precedent remarked :

“The Chair cannot allow a motion to adjourn consideration of a proposition to be moved merely in order to enable another item of business to come forward. It must be supported on substantial grounds.”

Pandit Thakur Das Bhargava: The ruling says it is not a precedent but you want to make a precedent of it.

The Honourable Dr. B. R. Ambedkar: The President says ‘I am ruling but I am not creating a precedent.’

Pandit Thakur Das Bhargava : In this matter I would call your attention to page 81 of ‘ Decisions of the Chair ’ which says that there are certain motions which can be stated to be of a dilatory nature. The question of circulation is not certainly one of such nature. But there are motions of a dilatory nature and it is in the discretion and power of the Chair to allow them or not to allow them. One page 81 of this book in regard to re-committal of motions it has been held that though to start with, it may be regarded as a dilatory motion, if something happened in the Select Committee or some events have transpired since, the Chair is perfectly authorised to say that it is not a dilatory motion. Now the honourable Member has not been asked what the reasons are and before that my honourable friend gets up and says that it is a dilatory motion. It is absolutely wrong for him to suggest at the very outset that it is a dilatory motion. A circulation motion is not a dilatory motion. Unless the Speaker comes to the conclusion that nothing has transpired in the Select Committee or no further events have taken place which justify him to retard that motion I think the Speaker is not entitled to say that any of the motions are also dilatory. Ordinary motions countenanced by the rules cannot be regarded as dilatory motions.

Mr. Naziruddin Ahmad: Sir, I think matters can be cut short in a minute. The precedent relied upon by the Honourable the Minister of Law does not apply to this situation at all. The heading is, “Adjournment of Debate”,

The Honourable Dr. B. R. Ambedkar: This is an adjournment of debate, if the motion is carried.

Mr. Naziruddin Ahmad : No, it is entirely different as I shall show. The sub-heading is “Adjournment of Debate: Motion when allowed to be moved:”. I do not move for an adjournment of this debate, which certainly could be done under amendment No. 2, that is:

“That the consideration of the Bill, as reported by the Select Committee be postponed.”

My object is continuance of the debate, consideration of the motion, and I want the consideration to be taken along with my motion. A further reading of the ruling relied upon by Dr. Ambedkar will make it absolutely clear:

“During the discussion on the Cotton excise Duty Abolition Resolution a motion was moved to adjourn the debate on the Resolution.

“The President while accepting the motion on this particular occasion without creating a precedent, remarked : The Chair cannot allow a motion to adjourn consideration of a proposition to be moved merely in order to enable another item of business to come forward. It must be supported on substantive grounds.”

As I understand it, there was at the time one motion before the House and there was another perhaps more interesting or more important in advance. A Member proposed the adjournment of the discussion of a resolution which was under consideration so that another more interesting Motion may be taken up. It was the attempt to adjourn the first Motion that was said to be unacceptable. Here I do not propose adjournment of the debate.

The Honourable Dr. B. R. Ambedkar: It all comes to that.

Mr. Naziruddin Ahmad: Here we are concerned with the interpretation of Rule 52. The plain reading of this rule would show that the motion is in order. Without abrogating the rule it cannot be held that it is out of order.

Pandit Hirday Nath Kunzru (U. P. : General): This Bill admittedly has created a great deal of feeling and it would be most undesirable to add to it by restraining the discussion in any way. I think the only way of making every section of the House feel that full opportunity was being given to it to express its opinion on this and to allow the discussion. Whatever our individual views regarding the merits of the Bill before us may be, that should be no ground for opposing the Motion of my honourable friend Mr. Naziruddin Ahmad.

Dr. Ambedkar quoted a ruling of the Chair in regard to a matter that is not on all fours with that under consideration now. In the first place the ruling was given in regard to a Resolution and not in regard to a Bill. In the second place, the rules lay down clearly that so far as a Bill is concerned a Motion may be made not merely that the Bill be circulated but that it may be recirculated, not merely that it should be referred to a Select Committee but that it should be recommitted to it. The language is therefore absolutely clear. If, whenever a Motion is made for the re-committal or re-circulation of a Bill, it is opposed on the ground that it is a dilatory Motion, the clear

rights, the rights most unequivocally given to Members by the Rules will be completely *null and void*. We may feel impatient that a Motion like that of Mr. Naziruddin Ahmad may be ruled out. We may be ready to turn it down, but that is no reason for not allowing it to be moved. In my humble opinion, it is most assuredly in order and we shall be doing a great injustice if in order to pass a law in which we are keenly interested we whittle down the rights of Members and try to interpret the Rules in a manner convenient to whatever may happen to be the majority at any particular time.

Shri L. Krishnaswami Bharathi : Sir, the only point is that under Rule 52(2) no doubt every Member has a right, but the important point is that it is subject to admissibility which is at the discretion of the Speaker. All that Dr. Ambedkar said was, that we have no doubt the right to ask interpellations, but that certainly does not mean that all interpellations should be put on the Agenda Paper; it is subject to admissibility. There being the discretion, all that you have got to decide now is, whether it is in the nature of a dilatory Motion. You may ask Mr. Naziruddin Ahmad to give his reasons. If you are satisfied that he has a good ground to move his Motion, then you have got the discretion to allow him to move it. Therefore, it is now for you, Sir, to ask him and be satisfied; and if you are satisfied that he has valid grounds, certainly he can move the motion. That is a point which Dr. Ambedkar raised. Every Member is entitled to speak and take his chance. All that you are concerned with, is a matter of procedure; the procedure being that a Motion is subject to admissibility, which is within your discretion. I may suggest that you may ask Mr. Naziruddin Ahmad to give his grounds and it is ultimately for you to decide whether it is in the nature of a dilatory motion, in which case you have to rule it out of order; but if you are satisfied about the grounds then, you may allow the motion to be moved.

Mr. Tajamul Hussain rose—

Babu Ramnarayan Singh : Sir, I have something important to say.

Mr. Deputy Speaker : On the point of order ?

Babu Ramnarayan Singh : Yes, Sir.

Mr. Deputy Speaker : All right.

Mr. Tajamul Husain (Bihar : Muslim): Sir, I caught your eye first. I have also got a point of order.

Mr. Deputy Speaker : After this point of order is disposed of Mr. Tajamul Husain's point of order will be considered.

Babu Ramnarayan Singh : Sir, you have already quoted the rule. I am sure no ruling can be given by any President against a Rule. The thing is this : there may be a subject under discussion in the House on which opinions may be divided—it is quite natural. One section of the people may look upon the subject as a boon, and the other section may look upon the subject as a danger, as a plague, as a curse. That section of the people who look upon the subject as a curse has the right not only to delay the Motion, but even to kill it. Here also, I think this section has the right to move the Motion and I think justice demands that they may have all the privileges and all the rights.

Mr. Tajamul Husain *rose—*

Mr. Deputy Speaker : There is another point of order which the honourable Member is raising, I will come to it next.

I am afraid the honourable Member Mr. Naziruddin has himself invited all these points of order because he started one this morning. Apart from any technicalities we may ask Mr. Naziruddin what his purpose is and what important points he has in view in making his motion for circulation.

Mr. Naziruddin Ahmad : I think this question

Pandit Hirday Nath Kunzru : May I ask you, before Mr. Naziruddin Ahmad replies, whether you have come to the conclusion that the right of the member to move the re-circulation of the Bill is subject to the discretionary power of the Chair ?

Honourable Member *rose—*

Mr. Deputy Speaker : Order, order. Members must respect the Chair. When I stand up, they will kindly sit down. I think I have heard sufficiently. Is it not open to the Chair to ask for reasons ? It does not mean that I have come to a conclusion one way or the other. I am trying to make up my mind. I have heard Mr. Bharathi's point. Apart from the question as to whether the Chair, under the rules, has got the right to allow or disallow, I want to know on what grounds—if there are any—this motion should be accepted. After hearing that, I shall give my ruling.

Mr. Naziruddin Ahmad : My reply to that is two-fold. The first is the admissibility of the motion as a matter of law, and secondly as to the reasons for the motion, they are matters of merit. At present, I have been asked by the Chair not to make a speech and I have been entirely prevented from giving the arguments on the merits as

to why this motion should be accepted. I submit a distinction should be made between the legality and admissibility of the motion and the grounds on which it is based for the acceptance of the same by the house. I submit that at this stage, in order to admit the motion which I have made, I think, Sir, I may not say anything at all.

Mr. Deputy Speaker : I have heard sufficiently on this matter. So far as Mr. Das, point that this motion is one of a dilatory nature, I consider that this motion differs materially from the one referred to by the Honourable the Minister for Law. He quoted the rulings of the Chair and gave the instance of ruling No. 1 on the postponement or adjournment of the debate. When motions for postponement for which there are no particular rules of procedure are made, it is open to the Chair to treat them as dilatory motions and require to be satisfied on what substantial grounds an adjournment of the debate is necessary. So far as the present motion for circulation is concerned, it is one for which provision is made in Rule 52(2). The honourable the Minister for Law referred to the analogy of adjournment motions, but regarding adjournment motions there are specific rules laid down here, giving power to the Speaker to come to a conclusion as to whether *prima facie* a motion is in order or not. I am referring to rule 36. The right to make adjournment motions depends upon certain conditions as in the case of questions. Unless a question comes under one or other categories provided for under the rules it is open to the Speaker to disallow it; similarly, with respect to adjournment motions also, there are six conditions which must be satisfied. There is provision also for asking for leave. First of all, it is open to the Chair, if it so chooses, to say that a motion is not in the public interest, it is old and so on. Secondly, even if he chooses to admit it, he must ask if the motion has the support of at least twenty five members of the House; then leave is granted. In such cases special provisions have been made. This present motion for circulation does not fall in the same category as the others.

As regards ruling 120 on page 81, it refers to Select Committee motions. I do not find any ruling of the Chair till now, in either of these two books "Decisions of the Chair" in point stating that a motion for re-circulation is a dilatory motion. In these circumstances, I do not want to curtail the powers of the house. It does not mean, if I allow the motion, the House is obliged to accept it. Even if it is moved, the House may reject it after debate if it is not satisfied. Under these circumstances, inasmuch as the rulings are not clear on this point,

I do not want to throttle this motion. The honourable Member may proceed. I have already said that honourable Members will first move the motions standing in their names and then there would be a debate on all the motions together. The next amendment stands in the name of Pandit Mukut Bihari Lal Bhargava and Shri Jhunjhunwala.

Pandit Mukut Bihari Lal Bhargava : The motion moved by my honourable friend Mr. Naziruddin Ahmad is substantially the same. Therefore, I would like to support his motion.

Mr. Deputy Speaker : He need not give his reasons for not presenting. What about Mr. Jhunjhunwala ?

Shri B. P. Jhunjhunwala (Bihar : General): I join my friend Mr. Bhargava.

Mr. Deputy Speaker : So he does not press. Nos. 7 and 8, I have already said are out of order. The scope of the Bill is confined to the provinces and not to any acceding State.

Mr. Naziruddin Ahmad : In regard to States which have entirely united themselves within the Indian Dominion, they stand on a different footing. The Eastern States have combined with the province of Orissa. They are now part of India. The bill will apply to them.

Mr. Deputy Speaker : I can understand it only this way,—Whether they have become part of a province or not if they are parts of a province, the Bill will apply. It is not necessary that a copy of the Gazette should be sent to every village and every corner of the country. If the State has become a part of province, it takes all the rights and liabilities of the province. I do not see any reason why the Bill should be once again circulated. Therefore I rule admenment No. 7 is out of order. No. 8 is also out of order. No. 9, does Mr. Bhargava move ?

Pandit Thakur Das Bhargava : I have already said that I do not propose to move.

Mr. Deputy Speaker : Then the next amendment. Mr. Naziruddin Ahmad.

Mr. Naziruddin Ahmad : Sir, I beg to move as an alternative to the one which I have already moved:

“That the Bill be re-committed to the same Select Committee, to which it was sent, for a further report thereon with reference to the original Bill which was referred to it on the 9th April, 1948.”

Mr. Deputy Speaker : Amendment moved :

“That the Bill be re-committed to the same Select Committee to which it was sent for a further report thereon which reference to the original Bill which was referred to it on the 9th April 1948.”

Shrimati Renuka Ray : In view of the Speaker's ruling, it is out of order. It goes against the Speaker's ruling.

Mr. Deputy Speaker : The re-circulation motion is before the House. Why should the House not consider this motion also after all ?

Shrimati Renuka Ray : It goes against the Speaker's ruling of the other day.

Mr. Deputy Speaker : May I ask the Lady Member how it goes against the Speaker's ruling ?

Shrimati Renuka Ray : The Speaker ruled that the Bill is the same as committed to the Select Committee and therefore there cannot be a motion for recommitment to the Select Committee. There has been no substantial change in the Bill.

Mr. Naziruddin Ahmad : There are many substantial changes as I shall show.

Mr. Deputy Speaker : No speeches across the benches please. So far as the arguments advanced by the Lady Member are concerned, what I feel is this. The Speaker certainly said that the Bill considered by the Select Committee is not different from the one committed to it. But recommitment may be on various other grounds. Therefore, unless any objection is taken on other grounds

Shrimati Renuka Ray : The words "original Bill" are there.

Mr. Deputy Speaker : Original Bill is the same as the other Bill. Therefore, he has said "original Bill". We will drop the word "original".

Shrimati Renuka Ray : I would humbly submit that the word "original" is there. Therefore, we cannot drop it now from the motion,

Mr. Deputy Speaker : The Speaker ruled that the Bill that came out of the Select Committee was the original Bill and therefore there is no harm in using the word "original". The objection taken was that the original Bill was not considered by the Select Committee. Hon'ble the Speaker ruled that it was the original Bill itself that was considered by the select Committee. Therefore, the honourable Member has stated in his amendment that the original Bill be recommitment to the Select Committee. The argument advanced by the Lady Member is against her own objection. I find there is nothing wrong in this motion.

Shri R. K. Sidhva : The Mover's intention is quite different. He does not consider this Bill as the original Bill and therefore he wants this to be sent to the same Select Committee.

Shri H. V. Kamath : Though the intention of the Mover is clear, I think my honourable friend Pandit Naziruddin Ahmad, in drafting the amendment has slightly over-reached himself. I would suggest to him that he may reconsider the whole matter and bring it up again sometime later.

Mr. Deputy Speaker : I do not consider that the use of the word 'original' affects the position at all. On the other hand, the Speaker's ruling was that it was the original Bill that was referred to the Select Committee and that it was that Bill that came back in a modified form. I cannot accept that as an objection. There is no good, spending more time over this matter.

Amendment No. 13 may be moved.

Pandit Mukut Bihari Lal Bhargava : My amendment is substantially the same as the one moved by Mr. Naziruddin Ahmad. I will speak in support of it and not move mine.

Mr. Deputy Speaker : The honourable Member will then have to take his turn after that of the Movers of the other amendments.

Amendment No. 14 is not moved.

Mr. Naziruddin Ahmad : I intend moving my next amendment if my amendment No. 10 is passed.

Shrimati Renuka Ray : I rise to a point of order. Amendment No. 15 goes against the Speaker's ruling.

Mr. Deputy Speaker : The Speaker's ruling does not cover this point. This House may not be satisfied with the re-arrangement made by the Select Committee. Therefore the original motion that it be referred to the Select Committee can stand. There is no point of order so far as this matter is concerned.

Mr. Naziruddin Ahmad : Then, Sir I move:

"That the Bill be re-committed to the Select Committee with instructions for report on the original Bill as presented to the House restoring the original arrangement of self-contained separate Parts and Chapters for enactment separately".

Mr. Deputy Speaker : I am afraid, I must disallow this amendment. As there can be no objection to the re-arrangement of Parts and Chapters, I rule this amendment out of order.

Shri B. Das : Sir, before the next amendment is moved, I want your ruling as to whether one member can move five amendments ?

Mr. Deputy Speaker : Alternative amendments can be given notice of. The honourable Member has been sufficiently long in this house to know this.

In the next amendment of Mr. Naziruddin Ahmad, the only addition is of the words "31st December 1949". I do not think he need move amendment No. 16.

Mr. Naziruddin Ahmad : The Select Committee referred to there is a separate select committee.

Mr. Deputy Speaker : I do not think I can allow this amendment to be moved. The honourable Member must have given the names of the Members for the Select Committee at the time of giving notice of the motion.

Mr. Naziruddin Ahmad : I have divided it into two parts. First of all there is the idea of the Select Committee. If it is acceptable . . .

Mr. Deputy Speaker : The house cannot be asked to give its opinion first in a matter of this kind. As the honourable member has not given the names of the Members for the select committee to the Chair earlier, his amendment is ruled out of order.

Discussion on the general motion may now be resumed. I call upon Seth Govind Das to speak now.

Seth Govind Das : *Sabhapathiji*

Shri L. Krishnaswami Bharathi : During general discussion the honourable Member who has moved an amendment has the first right to speak.

Mr. Deputy Speaker : The honourable Member will leave it to the Chair. The Chair knows the procedure.

Mr. Tajamul Husain : I have been trying to raise a point of order for a long time. Sir, I shall be very brief. The honourable member Mr. Naziruddin Ahmad who is very keen on punctuation, on commas and full stops etc. has given notice of this amendment that this Bill be circulated. This is absolutely out of order. The honourable member should have worded his amendment thus. This Bill be re-circulated. That is my point of order. This is what the relevant rule says : 'any member may move as an amendment that the Bill as reported by the Select Committee be re-committed or re-circulated as the case may be for the purpose of obtaining opinion or further opinion thereon'. Therefore, the honourable member who is very keen on commas and full stops etc. should have put the words "re-circulated for further opinion". My point of order, therefore, is that as the wording of this amendment is not according to the rules, it may be ruled out of order.

Mr. Deputy Speaker : It is true that the honourable member who has tabled this motion, who is ordinarily careful with reference to punctuations has committed there error of not putting the word 're'. I ought not to decide it is a matter of form, but as one of substance and this motion for circulation comes after the report of the Select

4 P.M. Committee has been received. Therefore, it means under the circumstances only 're-circulation'. I have already given the ruling. The ruling will stand. The debate will be continued by Seth Govind Das.

Shri V. S. Sarwate : Mr. Deputy Speaker, Sir, I want to bring to your notice that I have already given a motion for re-circulation and it is based on those two motions. I do not know, why it was omitted in the consolidated list. These two motions are dated the 21st August 1948. I do not wish to take further time of the house. I will read the motion so that it can be taken up for further discussion. The motion stands thus ;

"That the Bill as reported by the Select Committee be re-ciurculated for the purpose of obtaining further opinion thereon"

Mr. Deputy Speaker : Have honourable members got copies of this notice? (*An honourable Member:* "Yes, Sir") I will ask the honourable member to read it out.

Shri V. S. Sarwate : The motion runs as follows :

"That the Bill as reported by the Select Committee be re-ciurculated for the purpose of obtaining further opinion thereon"

Mr. Deputy Speaker : When was this notice of amendment given ?

Shri V. S. Sarwate : Notice was given on 1st August 1948. The amendment forms part of Supplementary list No. 2.

Mr. Deputy Speaker : The motion was made on the 1st August and the 12th of August is the date of the Select Committee's report and possibly a week later it was presented to the House.

Shri L. Krishnaswami Bharathi : The motion was made on 31st of August.

Mr. Deputy Speaker : The motion need not be made. It is after the presentation of the report. But all notices lapse after the session is over. A fresh notice should have been given. I do not know if honourable Members have got copies of this.

Shri Jaspal Roy Kapoor : I have got a copy of this. It is a consolidated list; Notice of Amendments..... This was sent from

the office on the 28th August 1948. There are twenty-four amendments mentioned in this list and Mr. Sarwate's amendment stands as the fourth on this list.

Mr. Deputy Speaker : These notices were all for the last session. These notices have all lapsed at the end of that session. Only those amendments, copies of which have been placed on the table before each honourable Member now, these only will have to be taken for consideration. The other notices have lapsed. Therefore further debate will be continued by Seth Govind Das.

*** Seth Govind Das :** (*English translation of the Hindi speech*) Mr. Deputy Speaker, I find that the supporters and opponents of this Bill can be divided into four groups. One of the opponent groups consists of those persons who oppose this measure with the same viewpoint as was exhibited by certain antagonists at the time of enactment of law for the abolition of *Sati*, the law which was got passed by the late Shri Ishwar Chandra Vidyasagar for widow-remarriage and the measure put forth by Mr. Sharda for the prevention of child marriages being brought on the Statute Book. At the time of Sharda Bill, I was a member of the Council of State and I personally know the opposition that was then meted out to this Bill. This group is of the opinion that no change can be made in that what has been prescribed in the text of our *Vedas*, *Shastras* and *Smritis*. I do not belong to that group. It would be noticed even from reference to our *Dharmashastras* that if one *Rishi* (Sage) said something from time to time, the other said something else. Had this not been the case, our *Rishi* would not have written. *Smritis* numbering more than one hundred. If you go through these *Smritis*, you will find that the tenets laid down in one *Smriti* differ those contained in the other. Each of these *Smritis* enunciates a different principle. Then just as I have stated, I am not one of those groups who have opposed almost all the reforms that have been introduced hithertofore.

The second opposing group is that which on the one hand believe that there is obviously a necessity for making reforms in these affairs, but on the other hand, it holds that this is not the proper time for the enactment of such a legislation. This should be brought forth only after the new elections have taken place, and when our new representatives have been elected. I would like to say that there will

*C.A. (Leg.) D., Vol II, Part II, 24th February 1949, pp. 861-71.

not be any harm if instead of making any change in the Hindu Law at present, we do this even three years hence. This is a subject over which the whole country has got to think; all of us have to think, all of those who are sitting here have to think and those who are likely to occupy these seats in this House in the future shall have to think. Therefore, I feel that there is a good deal of force in the arguments advanced by the second group that it is neither the proper time nor the place to bring forth such a measure, and for this reason, I would urge that we should consider this aspect.

Just as I have stated, even the supporters of this Bill can be divided into two groups, one which does not at all like to see any of our old traditions, and does not want to recognise the fact that this country is one of the ancient countries having a brilliant past, glorious history, high culture and great traditions. Such type of reformers do not at all care as to what our past heritage is and how are we to reconstruct our country today ? These reformers have been considerably influenced by the Western education, and have scant regard for the ancient history, culture and even the old traditions in the sphere of social reforms. I would like to say that if such sort of reforms are introduced in this ancient country, this *Bharatvarsha* (India) will not longer remain as *Bharatvarsha*—but it would become something else. The other group of reformers is that which believe in the necessity of reforms being introduced but after having due regard to our ancient history, culture and traditions. I do not belong to the first group but to the second. I admit that it has become absolutely necessary to introduce reforms, but in spite of all this, we should carry out the reforms after keeping in view our old traditions, ancient culture and civilisation.

At this time when we are framing our Constitution, when we have already passed the clauses relating to the fundamental and justiciable rights and when it is hoped that our Constitution will be finally adopted sometime during the period intervening between the 16th of May and 15th of August next, it would have been quite in order had this measure been brought forth in consonance with the provisions of the new Constitution. Today when we call our country a ' Secular State ', when we admit that all the persons in this country—whatever religion they believe in, to whatever community they may belong, may be Hindu, Muslim, Sikh, Parsi—whoever he may be—he should be given equal rights of citizenship. Therefore, I would say that the Honourable