

which, according to Shrimati Durgabai, is something higher in level from those that can be passed taking into consideration the opinion of the common people.

Mr. Tajamul Husain : May I be allowed to move a point of order ?

Mr. Deputy Speaker : What is the point of order, please ?

Mr. Tajamul Husain : My point of order is this, Sir, that the contempt of the whole House has been committed by my honourable friend in this way; you heard him out and he says that there are members of this House who have not understood the Hindu Code Bill. This amounts to a contempt of this House and I want a ruling on this.

Mr. Deputy Speaker : I do not think that there is anything in this point of order. All that the honourable member means is that the full implications of the Bill may be understood differently by different sections of the people. According to him they have not been understood in the manner in which he would like honourable members to understand it.

Pandit Thakur Das Bhargava : Besides this Sir, I do not claim and I am not at all prepared to say that I have understood the provisions of this Bill any more than the other honourable members of the House. About myself I am prepared to say that I have not understood fully all the provisions, all the clauses and all the implications of this Bill and this I can say about all the honourable members and myself in particular. The honourable members here, who are not lawyers, can say that they have fully understood the Bill; but the lawyers present here cannot say with confidence that they have understood all the provisions of the Bill as has emerged from the Select Committee. I am not permitted in this House but, if I be permitted then I like to put two or three questions to Mr. Tajamul Husain and he should give an answer whether he understands or not. It is not at all my intentions to commit contempt of the House. Very respectfully I beg to submit that it is not at all my intention . . .

Mr. Deputy Speaker : Every citizen is presumed to know the Law, every honourable member is presumed to have read this Bill. The honourable member can go on with his speech.

Pandit Thakur Das Bhargava : I was submitting Sir, after this introduction, I was submitting why I am in favour of Mr. Naziruddin Ahmad's amendment. Sir, I submitted some facts for your kind consideration, that this House is not so representative as it is to be tomorrow and this is not to take much time, in a few months the

new house will come into being and therefore it would have been proper to (postpone the discussion on this Bill till the new house comes into being).

A still stronger argument in favour of my submission is that you, Sir, are well aware of the fact that today property includes two different types of thing. One is lands and the other houses. As far as the landed property is concerned this Bill does not affect it. What will be its effect on succession in a country like India which is mainly an agricultural country and where 90 per cent of the people live in villages. After the death of a person his lands will be governed by one law and his house in the village will be governed by another law. What will happen to me ? If I have some property in Delhi then this property will be overned by one law and my landed property in Bahadurgarh will be governed by another law. My house built in my fields at Bahadurgarh will be governed by one law and my house at Delhi by another law. Is this uniformity ? If such a thing is being maintained then what the result would be ? The appointment of an heir takes place at Bahadurgarh whom the Hindu Code does not recognise, then that boy, who is the appointed heir, will of course inherit the landed property at Bahadurgarh but on the residential house of the deceased some one else would have a claim. The boy will get the landed property but will have no claim on the house, then after all where the boy will go ? The effect of this Bill would be that it will not apply on landed property. I think that Dr. Ambedkar wishes to pass a Bill whereby economic holdings could be made and the landed property of average man may not be partitioned. But when this Act will come into being and when the abolition of zamindari takes place, I am not aware of this.

Shrimati Renuka Ray : You can introduce such a Bill immediately.

Pandit Thakur Das Bhargava : Respectfully I beg to submit that intentions are not so easily fulfilled in this world as my honourable sister thinks that simply by introducing a Bill this intention will be accomplished. This is a Bill for the benefit of the country, but how many obstacles this Bill is encountering. How much time the Land's Bill, whereby the rights of everybody will be usurped, will take and where will it be passed ? This is under the power of the Provincial Government. I wish that we may make such changes in our constitution whereby, as far as the question of lands is concerned, under

the constitution, this may also be within the powers of the Central Government. If this Bill is passed then I see in it the defect that it does affect the residential property and does not include the landed property. This is a great confusion. A change has now been made in the original Bill that now this Bill will also apply to the lands in the Centrally administered areas, i.e., it will be applicable on both the residential and landed properties of Ajmer Merwara and Delhi. In other provinces this Bill does not apply to lands. In Delhi and Ajmer-Merwara this will apply to both the rural and urban properties. This is a great defect of this Bill and which knock out its bottom.

As yet the people are not aware how this Bill would affect them. For this reason only I had submitted that full publicity has not been given to this Bill. I know that if today people were to know that through this Bill such far reaching and fundamental changes are being made in their law of inheritance, changes which will have affect on each and every family of India, then at one time the people of the whole of India on coming to Delhi would present their applications that this law may not be passed. Many people are not aware of this. The knowledge is shared by the members of this House. Bar associations and a few of those who read newspapers. You can well understand how small the number of such persons is. Such a Bill, which affects the entire Hindu Society, has not been given sufficient circulation and no opinions on this have been taken. A committee was set up, it took evidences at many places and the report of the committee is with me. If you would see as to where the members of this Committee went, what they did and whose evidences they recorded; then you would find that the committee has asked the opinion of some well placed and educated persons only and they have not taken the opinion of a major part of the country. In this there is no question of education. For this Bill every mother and father, who fully realize their responsibilities, can give their opinions. Everybody is affected by this and so every person is competent to give his opinion. Besides this I would submit that nobody has the knowledge of the changes that have been made-by the Select Committee in the original Bill. Only the members of the Assembly have information of these changes, the rest of the people do not know what changes the Select Committee has made. Now the question arises that as the Select Committee has made changes in this Bill so its circulation has become very necessary. Leave aside the old question that no law should make

rapid changes in the customs of the people till the opinion of a majority of those people, who are to be affected by it, be not taken. The Bill that is being introduced today is one wherein the Select Committee has made such changes as are of vital importance and about which everybody must have full information. For this reason only its circulation is all the more necessary.

Before I submit anything about these changes, I wish to draw the attention of the House towards one point. I regret to say that the Law Department itself which is an embodiment of law because its name even is Law Department, these same people do not respect the law. When these people themselves establish such a procedure that they must not have established, then I will have to say—

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I do not want to touch the question that has been decided by your predecessor. That question has been decided. That ruling is final for me. I do not question it. I highly honour that ruling although I know that this ruling according to my opinion was not correct, yet I do not want to question it.

Mr. Tajamul Husain : No one can say inside the House that the ruling of the Chair is wrong.

Mr. Deputy Speaker : I am sorry the honourable member has not understood Mr. Bhargava at all. What he says is that he does not agree with the ruling but he cannot question the ruling here. It is open to any member to think for himself and also to say that in his opinion he does not accept it, but he is bound by the ruling. I think there is nothing wrong.

Pandit Thakur Das Bhargava : I am very sorry that whenever my honourable friend Mr. Tajamul Husain raises any point of order it does not survive even for a minute. I wish that he may raise such a point of order which I may also be able to reply. I know that at this time he is enquiring from another honourable member whether this Bill applied to lands or not but he pretends and says that he understands this Code Bill. Then I like to submit that I am perfectly within my rights if I say that on the ruling I hold a different opinion. I wish to submit a few other fundamentals that have not at all been touched by the Honourable the Speaker's ruling. Most humbly I beg to draw the attention of the House particularly towards the fact that this House which is a constitution making House, is a master of her

laws. None of our matters can be referred to any court in the country. If this house forsakes its principles for the sake of passing a certain Act then we commit such a mistake that we cannot be absolved of its responsibilities. I beg to submit that in this redrafted Bill, reported by the Select Committee, the mistakes that we have committed therein are of three types. Firstly when a Bill comes before the House, comes in the possession of the House, and is introduced in the House, then after this except for the House no member of the House, however big he might be, however good he might be, cannot even change a comma therein without the consent of the House. If there be any electrical mistakes then it is another thing; and if that also be a material mistake then it will have to be printed again and re-circulated and after again being introduced in the House can be referred to any committee. Very respectfully I beg to submit Sir, that I am presenting two or three technical points for your kind consideration., About these points I will have to submit very humbly to the other honourable member, but not to Dr. Ambedkar as he is familiar with technical rules and things, and he knows how much injustice can be done by forsaking these technical rules. So I was submitting that by forsaking these technical rules except injustice and unlawful things nothing beneficial can be accomplished. Mr. Oslow has been a very famous speaker of the house of Commons. He had said that no work should be done in contravention of the technical rules. For the protection of minorities, for the protection of the House as a whole, there are technical rules, and these rules are of such a fundamental character that whenever the limits will be transgressed nothing except mistakes can be accomplished. This principle has been laid down in the May's Parliamentary Practice, which is the convention of the mother of Parliaments. The convention is that as soon as Bill is introduced it passes out of the hands of the member introducing it and comes within the power of the House. I am translating the words of May's Parliamentary Practice which I will soon read out to you.

Mr. Deputy Speaker : I do not think anybody in the House doubts that any honourable member even though he may be the mover has got the right to change the Bill when once it has been placed before the House. As I understand it, the Honourable Speaker's ruling is that the very same Bill was considered in the Select Committee. Therefore, there is no good canvassing that position. The Honourable the Law Minister did not say that another Bill was considered in the Select

Committee though the other draft which he placed before the Select Committee was considered along with the original Bill. As any honourable member is entitled to place amendments before the Select Committee instead of sending piecemeal amendments, according to him, he printed all his amendments and placed them before the Committee. That is the ruling of the Honourable the Speaker. Barring that, the honourable member can go on. Nobody doubts the position stated in May's Parliamentary Practice that it is not open to a member even though he may be the mover of the Bill, to change the Bill when the house is seized of it. The Honourable the Speaker has said this has not been done. We are bound by that; otherwise the honourable member may go on.

Pandit Thakur Das Bhargava : I wanted to submit only this much that after hearing your opinion I have become still more staunch on my belief. You have decided that if it is somehow proved that in fact no amendments on this controversy came before the Select Committee then it should be accepted that the redrafted Bill should not have been considered. For this reason I would submit that I have no need to quote the ruling again before you. Sir, I have got a ruling of Hansard Vol. 215 of 1873 wherein at page 302 it has been laid down that if a member gives notice of introducing a Bill and this Bill is printed then that member cannot make any changes in the Bill before the second reading, and if he makes any changes then the Honourable the Speaker gave the ruling that the Bill be withdrawn—the Bill cannot be further discussed.

Mr. Deputy Speaker : The position of law is accepted, there is no need to canvass that. I do not think the Honourable the Law Minister denies the position of law that he is not entitled to changes . . .

The Honourable Dr. B. R. Ambedkar (Minister of Law): No.

Mr. Deputy Speaker : . . . any comma or semi colon except as accepted by the Select Committee. But it is open to him to place matters before the Select Committee. I think that was the ruling of the Chair. The honourable member may go on.

Pandit Thakur Das Bhargva : Sir, very respectfully I wish to submit that if the other original Bill is placed before the House then I will have no objection. Had this Bill been considered in the House in this manner then nobody would have any objections. After being introduced in this manner the Bill should have been technically considered clause by clause and word by word. If this procedure has

not been adopted and if the Bill was sent to the Select Committee and in the Select Committee it was not considered word by word and clause by clause then I would like to ask if the first Bill was before the honourable member or was it in his pocket or had he come after reading it at his house. I wish to draw your attention Sir, towards Parliamentary Practice. No member of the Select Committee has any claims against this. I have with me strong reasons and I wish to draw your attention Sir, towards them. In the first place perhaps in the majority report it is written:

“We confined our deliberations to this redrafted Bill.”

Shri L. Krishnaswami Bharathi : May I interrupt ? This is not correct.

Pandit Thakur Das Bhargava : The original Bill has not been considered clause by clause and word by word in the actual sense of the term. In the popular sense as the Honourable the Speaker said before and in the sense in which Shri Balkrishna Sharma submitted before the House, the Bill was before us, then I have no objection against the Bill. I am prepared to accept that whatever Shri Balkrishna Sharma and the Honourable the Speaker have stated

(English translation of Hindi speeches is over)

Shrimati G. Durgabai : On a point of order. He is questioning the ruling of the Speaker..

Mr. Deputy Speaker : I understand the honourable member, though I do not understand every word that he says, I am bound to safeguard the ruling of the Speaker. I am not interested in seeing that what I may have said today, may be upset by a Chairman who follows me. The ruling of the Speaker is there. Though the honourable member speaks forcibly on one or two points, I understand that he wants to persuade the house to allow the country an opportunity to consider the Bill. That is all that he means (Honourable Member “NO. no.”. I may say immediately I do not intend to go behind the ruling of the Speaker.) Any arguments that may be advanced for consideration by the house of the country at large is welcomed but not in a spirit to question the ruling of the Speaker.

Dr. Mono Mohan Das : On a point of information. I want to be informed whether the next ten minutes will be taken up by the honourable Member so that we who do not understand Hindustani could return to our hotels.

Pandit Thakur Das Bhargava : Since you have been pleased to say that you do not follow me and I want every word to be followed by the House and by your goodself I will speak in my broken English.

Shri T. A. Ramalingam Chettiar (Madras : General): Hitherto you have had no consideration for those who did not know Hindi. There is a large number of them here and if you do not care for them and you do not want them to listen, it is your own look out.

Pandit Thakur Das Bhargava : I had already decided to speak in English and my friend's orders are only supplementary. But after what you have been pleased to say, I will continue in English.

Mr. Deputy Speaker : Whatever has been heard has been heard in Hindustani.

Pandit Thakur Das Bhargava : I am not going to repeat all that I have said as it will not be possible. In future I shall submit to you what I have to say, so that I may not be charged for attempting

Mr. Tajamul Husain : There should be no repetition.

Pandit Thakur Das Bhargava : I do not want to be ordered by Mr. Tajamul Husain. If he does not want to ...

Mr. Tajamul Husain : I am addressing the Chair.

Pandit Thakur Das Bhargava : I do not want Mr. Tajamul Husain to make unintelligent interruptions.

Mr. Deputy Speaker : I am sorry that, Mr. Tajamul Husain goes on interrupting repeatedly. I am here to protect the house so that there is no repetition. It is unfortunate that we are spending much time in this way.

Pandit Thakur Das Bhargava : I do not want to repeat. I submit that the manner in which the Honourable the Speaker gave his ruling I respect it and I will not say a word against the ruling, though I maintain. Sir, that ruling is not the last word.

Mr. Tajamul Husain : It is the last word in this House.

Pandit Thakur Das Bhargava : I am not going to be taunted by these things. I think the House can revise its own order. I can quote a ruling to this effect from the book 'Decisions of Chair. At the same time, let the house not think that I am asking the Deputy Speaker to review that order at this stage. I am not doing so. Let the House not be impatient. But may I ask where is the rule that a ruling once given cannot be revised ? There is no such rule. Since I am not attempting to get the ruling revised., this does not arise. What I was saying was that the ruling of the Speaker was to this effect that the Bill was considered along with this redrafted Bill not in the actual sense nor in the technical sense in which we understand what

“consideration” is. I submitted for your consideration that in the technical sense in which we use the word “considered” this Bill was never considered.

Shri Mohan Lal Gautam : I beg to state that this is a repetition of what he spoke in Hindustani.

Mr. Deputy Speaker : In so far as to enable me to understand the full implications.

Pandit Thakur Das Bhargava : Without these preliminary remarks I could not make myself understood and those who know would have realized that I could not do more than this.

I was submitting with a view to convince you that as a matter of fact the real consideration, technically so called, was only given to the redrafted Bill. I said that I wanted to submit certain arguments : firstly, the report says that “we confined our deliberations to the redrafted Bill”. Secondly, Sir, the dissenting note of Bakshi Tek Chand as well as of Balkrishna Sharma says the same thing. I do not want to read further because the members have read it and it will be waste of time to read it again. When Mr. Balkrishna Sharma spoke the Honourable the Speaker was pleased to accept his statement. He again repeated in his speech that “we confined our attention to this redrafted Bill” : and when you see the report you will find that in the report itself there are some indications for instance in clause 99 that only the re-drafted Bill was considered in the technical *sense*.

Mr. Deputy Speaker : I am not able to follow what the honourable Member is driving at so far as this is concerned.

Pandit Thakur Das Bhargava : I am sorry I have not heard what has fallen from Mr. K. C. Sharma.

Honourable Members : Order, order.

Mr. Tajamul Hussain : Sit down !

Mr. Deputy Speaker : If you will permit me I will try to get along. There are two questions. If it is a question that we ought not to proceed with this Bill, then that point has been decided, The Bill has been taken into consideration. The Speaker has said that this Bill was before the Select Committee and with the other amendments that have been tabled. Therefore, so far as that matter is concerned, I may immediately say I am not in a position to go beyond the ruling of the Speaker. Apart from the question of a similar case in the Civil Procedure Code, a ruling has been given and it is not desirable to go over it in the same case. It may not be a precedent for some others.

When it comes up in any other connection it will be open to the Chair or members of the house or whoever might occupy the Chair for the time being to go behind the previous ruling. At this stage in the same proceedings I am not prepared to go behind it. In these circumstances I would like to ask the honourable member for what purpose these arguments are raised. If as I understood sometime ago, it is only for the purpose of persuading the House to accept the motion for circulation in view of the fact that the Select Committee did not look into the original draft but the other one, both of them were before the House. So it is not as a point of order but for the purpose of persuading the House, which I can understand. For that reason May's Parliamentary Practice and other rulings need not be referred to. So far as the matter of law is concerned enough has been said and I would request the honourable member, if possible, to conclude this portion of his argument and proceed to some other matter;

Siri R. K. Sidhva (C. P. and Berar: General) : Sir, the previous speaker, Pandit Thakur Das Bhargava said that the Speaker's ruling is not final. May I, Sir,' draw your attention . . .

Mr. Deputy Speaker : I do not want any further arguments on the matter. I have already given my ruling that so far as this proceeding is concerned the Speaker's ruling is final. I cannot allow any questioning of that. It is therefore unnecessary to reinforce the argument or to strengthen my hands.

Pandit Thakur Das Bhargava : Sir, it is far from my mind to invite you to give a ruling contrary to the Speaker's. I am not going to request you to do that. I can quite understand that it is not desirable to review a ruling when it is given in the same case, though I know according to law you are perfectly competent to give another ruling. The law is not so narrow as not to provide for cases in which injustice is perpetrated. So I shall desist from speaking any further on this subject that the ruling of the Chair may be looked into. What I am submitting is that there are several motions before the House and it is not the only motion for circulation. This Bill could go before the same Select Committee and it could come back to the House in 15 days. As I submitted already it is not a matter of dilatory tactics. All that I want is that the house should adopt a procedure which is according to law and which is fundamentally right. I am a member of this House and as such I have a right to see that the Bill sent to Select Committee is considered in a manner which the law requires. There is no escape,

therefore, from its recommittal to the same Select Committee. This is the reason which I want to submit before you. After all the taxpayer has to pay for every minute of the time taken in this House and I hate to take a dilatory or obstructionists attitude. All the same . . .

Mr. Tajamul Husain : You are doing it all the same.

An Honourable Member : He is again on the Speaker's ruling.

Pandit Thakur Das Bhargava : I hope the house will bear with me for a little more time . . .

Mr. Deputy Speaker : Is the honourable Member likely to take more time ?

Pandit Thakur Das Bhargava : Yes, Sir.

(The House rose for lunch)

The Assembly re-assembled' after Lunch at

Half Past Two of the Clock

Mr. Deputy Speaker (Shri M. Ananthasayanam Ayyangar)
in the Chair.

Pandit Thakur Das Bhargava : Sir, when the House rose for Lunch I was submitting for your consideration that the functions of a Select Committee are to go through the text of the Bill word by word ; the function of a Select Committee is to go into the text of the Bill clause by clause, and if necessary, word by word. I would refer to May's parliamentary Practice.

Mr. Deputy Speaker : May I request the honourable Member to proceed to another point because I have already given a ruling ?

Pandit Thakur Das Bhargava : I respect your ruling. You were pleased to say that you are not going to reverse the ruling given by the Chair and I do not want it to be reversed. As a matter of fact I am unfortunate that I have not been able to make myself fully appreciated. The ruling of the Chair says that this Bill was with the Select Committee at the time when the draft was being considered. I do not dispute that at all. My dispute is that the functions of a Select Committee were that they should have gone through the original Bill clause by clause and word by word. It is not only this. As the House is bound so is the Select Committee bound to consider the Bill clause by clause and word by word.

Mr. Deputy Speaker : We will assume that under the ruling both the original Bill and the amended draft were there and they looked into it clause by clause. What follows next? Is it the question that we ought not to go into this and it is not competent to do so ? If that is so, it has already been ruled. When once it has been ruled how is it open to go into it again ?

Pandit Thakur Das Bhargava : On a question of fact I would still request the Members of a Select Committee, to kindly enlighten the House whether both the Bills were taken and considered together. Assuming that this is correct my contention is that unless and until every clause of the original Bill was taken, unless and until it was considered clause by clause and word by word the requirement of law and procedure is not complied with.

Shri H. V. Kamath (C. P. and Berar: General): Has not the question of competence of the Select Committee been disposed of by the Speaker once for all ?

Mr. Deputy Speaker : I am trying to meet that point myself. Whenever I find it difficult, I will ask the honourable Member Mr. Kamath. to help me.

I have already said I am anxious to know what follows. I will assume for the moment that both the Bills were there and that the other draft Bill was considered clause by clause. What next ? What is the legal objection ?

Pandit Thakur Das Bhargava : I request you to give me two or three minutes to explain my position. There is another aspect of the case also. Besides this being a fundamental rule that the original Bill should be taken clause by clause and word by word the way in which the entire Bill is to be considered is that each clause must be considered of the original Bill, then the new clause, then the Schedule, then the new Schedule. Parliamentary Practice gives that. The next question is what is the effect. What follows—this is the question before you. I beg to call your attention in this connection to the general principles of practice and law as well as the particular point involved. In regard to the general practice the rule of law is absolutely clear that when any law or any practice or the general principle requires that a certain procedure is to be observed, unless and until that procedure is observed the thing cannot be regarded as having been validly done. For this principle I will quote another authority of the Privy Council itself which is 1936 Privy Council page 253.

Mr. Deputy Speaker : I am assuming the next step also. I am only taking the honourable Member's argument step by step. Let us assume it is so—that the Select Committee did not consider this or considered something else. Then the honourable Member evidently wants to say that I have no jurisdiction to go into the matter. It is with respect to that I want to say that it has already been ruled by the Speaker. I shall hear the honourable Member if he is able to satisfy me that that ruling does not cover the point he has stated. So far as I am concerned I have considered it carefully and I believe the same has been covered. I would therefore suggest to the honourable Member to proceed faster without taking any more time. Already we have taken much time on this. There are other speakers also waiting to speak. I would like the honourable Member to dispose of this point as early as possible and go to any other point if he wants to.

Pandit Thakur Das Bhargava : My humble submission is that the previous ruling of the chair did not consider this point. The only point raised by Mr. Naziruddin Ahmad was that the motion cannot be allowed to be made as only the redraft was considered. That was the simple point. This point which I am urging in regard to taking up clause by clause was not even argued. The effect will be this that a Bill will be sent to Select Committee and if you don't observe this fundamental rule, any other Minister may, after the Bill, put a redraft, get it considered and the real purpose of this fundamental rule that it should be considered clause by clause will be defeated. This is sufficient ground that no person had a right to make any alteration whatever in the Bill—for this I would refer you, Sir, to the ruling of the Speaker in the Commons (page 301 of Hansard, Volume 215). If you agree with me in this and in the Committee being required to go through it clause by clause then the position is absolutely clear that this Bill must be recommitted to the same Select Committee. Let the Select Committee devote two hours—I do not want that the Report should not come in this session—I want them to devote two hours and consider the original Bill clause by clause, and we will consider it then. This point, I may submit was never considered by the Speaker and I beg of you kindly to consider this point.

Leaving aside this point as you have asked me not to spend any more time on it, I would take up the other points. Now the question is what is the effect of this. One met as I have already submitted is that we must abide by the rules, and the rules in a matter of this

kind are fundamental rules which cannot be disobeyed. Then what is the real effect of it? That I am submitting to you. Now the differences or discrepancies between the provisions of the original Bill and the Bill as it has emerged from the Select Committee relate not only to matters of procedure but to matters of great substance. In the Dissenting Note given by Bakshi Tek Chand and Pandit Balkrishna Sharma it has been pointed that as a matter of fact in the redrafted Bill very drastic changes were made and they have given examples of the changes. I am not satisfied that they have exhausted all the substantial changes in the minutes and I would beg of you to consider it from that point. When I began my speech I invited your attention to the fact that in this measure, as it has emerged from the Select Committee after the redrafted Bill was considered, many changes have been made which are certainly destructive of the institutions which we have not in the Punjab. I will first of all call your attention to the institution of appointment of an heir. In regard to the appointment of an heir we know the views of the Honourable Dr. Ambedkar. He himself stated that he thought that the adoption of heirs is an artificial affair. I also think so. We remember the speech made by Mrs. Hansa Mehta at the time when the Bill was sent to the Select Committee. She also made certain remarks. Now, according to the present measure, no person could adopt an heir in any form except in the *Debate* form whereas according to the original Bill the *Kritrim* and *Goda* forms were also allowable. So far as adoption is concerned adoption of a son is a mere fiction. How can such a son become a real son? But the Hindu law provides for it and I have no quarrel with those who believe in it. But in regard to appointing heirs to property, just as the Romans did by way of *Nominis Hereditio*, if the people in the Punjab had got practices like that nobody has the right to touch them. According to our institutions, in the appointment of an heir, though it is in effect just like an adoption; there is no religious efficacy, there are no particular ceremonies. There is no question of age. The son is not engrafted in the family of the adoption but he continues in his own family. There are various rules and the Punjab High Court has given hundreds of rulings over this point. That institution is too strongly fixed in the public mind and you will be tampering with the custom of at least a crore of people if you are not allowing it in this Code. According to the Hindu Code no other form of adoption will be allowed, that is the provision in the present: it does not go far enough. I understand that so far as custom is concerned, custom has been ruled out except to the extent which has been recognised.

When I read the speech of Dr. Ambedkar himself which he was pleased to deliver at the time when the Motion was referred to Select Committee, I found that his attitude was very reasonable and he made certain statements in regard to custom which are very much opposite to the provisions of the Bill. Sir, I doubt very much whether this Law Department Committee had on its personnel our Law Member himself. I do not know who those persons were who tampered with the Bill, but at the same time I can certainly say that I very strongly suspect—though I do not know it—that Dr. Ambedkar must not have been there because he is very anxious to see that the customs of the ninety per cent of the people are not affected—as I am anxious to see. Either this thing missed him—he may not have appreciated it—or some other persons might have been there who were not Members of the Select Committee. They entirely changed the face of the Bill, which they had not the right to do; then it was the other Bill which was considered—it is a fiction that the original Bill was there and considered. Sir, I would refer you to page 3652 of the proceedings (9th April 1948) in which Dr. Ambedkar said:

“His second comment was that the Bill had not taken into consideration the customary law. He cited some ruling of the Privy Council. I should have thought that at this hour of the day it was unnecessary to cite the authority of the Privy Council because it has been well established by a long course of decisions, that so far as the Hindus are concerned custom would override the text of the “*Smriti*”. We all know this. But what are we doing ? What are we doing is this. We are shutting down the growth of new customs. We are not destroying existing customs. The existing customs we are recognising because the rules and law which are prevalent in Hindu society are the result of customs. They are born out of customs and we feel that they have now grown so sturdy that we can indeed give them flesh and life in the body politic by one legislation.

Dr. Ambedkar was referring to the speech of Srijut Rohini Kumar Chaudhuri: He also said :

“that we had not taken into consideration the question of the tribal people, whose life is undoubtedly governed in a large measure by customary law. If my friend had read the definition in this code as to who is a Hindu and who is not and to whom this Code applied, he would have seen that there is a clause which merely said that persons who are not Muslims, Parsis, or Christians, shall be presumed to be Hindus : not that they are Hindus. The result is that if a tribal individual chooses to say that he is not a Hindu it would be perfectly open to him under this Code to give evidence in support of his contention that he is not a Hindu, and if that conclusion is accepted by the Court he certainly would not be obliged by anything contained in this Bill.

The position is this : if I accept my institutions as good, if I appoint my heirs according to the custom which governs me, then according to Dr. Ambedkar I am not a Hindu. That is my difficulty. Either you must provide for these one crore of people and accept their customs or. . . .

The Honourable Dr. B. R. Ambedkar (Minister of Law) : I have no desire to interrupt my friend, but I must say that I do not accept the interpretation that he puts upon that part of my speech. It refers to quite a different matter.

Pandit Thakur Das Bhargava : I am very glad that I am wrong. It gives me satisfaction that Dr. Ambedkar did not want that the one crore of people should go out of the pale of the Hindu law. But all the same, the argument I was admitting was this. If this custom was good—and I claim it is good because according to the definition given in this very code, the custom is ancient, reasonable and not opposed to public policy or morality—I claim this custom should have been recognised by the Code. But this custom is not recognised. To a certain extent the *kritrima* form was adopted as a good form by the original Bill but the present Bill says that no adoption will be recognised except this kind of adoption which according to Dr. Ambedkar is governed by certain rules. What are the rules? A man must not be more than 15 years of age. He must be given by somebody in adoption. He must not have married. Even according to the present law of adoption these rules are not there. Supposing a Hindu's daughter and son-in-law have died then the daughter's son cannot be adopted; the sister's son cannot be adopted, even the nephew cannot be adopted if the parents are not there. It is common knowledge that even today this rule that if a person is married he cannot be adopted, is not in practice and according to law in vogue, it is not necessary that a person should not have married before he is adopted. Similarly about age. So, all these measures have been changed in such a way that they cannot fit in with the present conditions, or they cannot be useful to us or cannot govern us.

We passed in the Constituent Assembly that we want a Civil Code. Even if this were not the Hindu Code and if Dr. Ambedkar was charged with the duty of framing a Civil Code, (I think he will be so charged after the Constitution is passed.) he will certainly include this civil institution—the nomination of an heir—in the Civil Code also. A man may be able to help, in their old age, those who appoint him the heir. My submission is that this point alone is sufficient to see that as a matter of fact the re-draft is much worse than the original Code and full attention was not paid to the original Bill. If full attention had been paid, this thing would have been considered. Had it been considered clause by clause, you would not have arrived at this.

The Honourable Dr. B. R. Ambedkar : This part of the Bill was, if I may say so, very much considered.

Pandit Thakur Das Bhargava : I am very glad, Sir, that the original Bill was considered. Then the only technical point remains, that it was not considered clause by clause, there is intrinsic evidence that it was not so considered. What is the effect? Supposing there are provisions omitted. How were those provisions considered? When the entire attention was on the draft of the other Bill those clauses could not have been considered. This is not a technical matter...

Mr. Deputy Speaker : The honourable Member is aware that the House is not bound by whatever the Select Committee has done. The Select Committee have sent a recommendation ; it is open to the honourable Member to accept or not to accept it; if he does not accept it, he can persuade the House not to accept it. We need not go into that again. After all, some Members were there. It is not right to go into what they considered or what they did not consider, the honourable Member would do better in addressing the House as to why we ought not to accept a provision or why we should accept it.

Pandit Thakur Das Bhargava : I will accept your advice, Sir, I will not refer in future to what happened before the Select Committee. I will only say this point, with your permission. Even if the Select committee acquiesced in this fraud that the original Bill is not to be considered and the substitute Bill is to be considered, we are not bound. An accused, before a criminal court, acquiesces in a certain procedure which is illegal; then it does not bind him. May I quote some rulings? A Court is required to go into a question and find out for itself whether there is good evidence or record to bind an accused under section 107 Criminal Penal Code. The accused says, "I agree to be bound in that evidence". The Court says, "You are bound". But the appellate Court still rules that the right procedure was not observed and the acquiescence of the accused in a wrong procedure does not make the order legal.

Mr. Deputy Speaker : Is not the honourable Member satisfied with tearing the report of the Select Committee in pieces ? Should he also say they are "accused" ?

Pandit Thakur Das Bhargava : Those who are guilty of disregard of the fundamental rules of procedure which govern a Select Committee are today accused before the House. I am sorry I have to say something which may not be wholesome to some of my friends, but I do so

in all humility and with a view to safeguarding the rights and prestigious of the House. I now leave this point and come to the second point.

In regard to marriage and divorce which are very important questions, what does the Code say and what are the facts at present ? In Punjab no specific ceremonies are required for marriages which are called *Karewa* and *Chadar*, *Andazi marriages*. The woman puts on the bangles supplied by the husband or the husband puts the *Chadar* on the wife and there the matter ends. (*Shri Mahavir Tyagi*: "Charming marriage") It is very easy for Mr. Tyagi to avail himself of such a procedure. It is not a sacramental or civil marriage. Again, in the original Code there was a loophole. Such persons could come to court and get themselves registered. The changed rules is that unless the marriage is sacramental, it cannot be registered. There are other points on which I shall have occasion to speak before you, but I wish to make certain general observations in regard to what is happening in regard to many persons and what has not been considered from the point of view of the common man.

In the mofussil areas, the people are illiterate. They are poor. They do not know the intricacies of the law. On the question of divorce, when Dr. Ambedkar said that he was speaking for ninety per cent. of the population, I know that he was saying nothing but the truth. In regard to this ninety per cent. How does the divorce take place today ? They go to a petition writer and get a letter of release. Another way is they congregate together and put a white sheet on the woman.

The Honourable Dr. B. R. Ambedkar: And supply a good deal of liquor to the fellows assembled !

Pandit Thakur Das Bhargava : That may be so, but it is not part of the ceremony. What is the present law, Sir ? What have our leaders done for you ? I am a representative of those poor people. I include myself in them. But when Dr. Ambedkar just by his finger indicates that he is one of those he will excuse me if I do not agree. Dr. Ambedkar lives here in a paradise.

The Honourable Dr. B. R. Ambedkar : I have lived in Improvement Trust chawls for several years who charged me rupees three as rent.

Pandit Thakur Das Bhargava : You can crush them under your feet: you can crush them under your thumb, but Sir, do you think that any poor villager getting about Re. 1 or Rs. 1/8/- a day could go to a district judge without the help of a lawyer ? Dr. Ambedkar

is a lawyer. He wants that this world may be peopled by lawyers alone like me and by nobody else. What would happen to these people ? Will they go to a district judge for dissolution of marriage or divorce ? (*An honourable Member*, "Impossible") And this is not sufficient. Even if he obtains a decree, it should be confirmed by a High Court, which so far as Punjab is concerned, to the High Court at Simla. Now, this procedure is unknown to people. It is a great tyranny upon those people. You are legislating for those who live in the Marine Drive in Bombay or in the palaces of Calcutta and Delhi and not for these poor people for whom you have such a soft corner in your heart.

Shri L. Krishnaswami Bharati : He wants to make it difficult. Do you want to make it easy ?

Pandit Thakur Das Bhargava : Another answer is that they want to make it difficult. I do not want to make divorce easy. Absolutely not. I am in favour of divorce on one condition only, that you enact laws in which it may be very difficult to bring about conditions in which divorce may take place. Chastity and continuity of family life are the very pivot of our culture. But if I agree to divorce, it is because I see so many deserted women. It is on account of that I agree. How can a poor man who is absolutely illiterate be able to engage a lawyer and go to a district or high court ? It is impossible to accept this. This old Act of 1869 was enacted, not for the poor people of the Punjab or any other part of India, it was enacted for Christians who were of the same caste as the then rulers. There is a world of difference between them and these people. If you go through the provisions from article 38 to 50 of the Bill, you will come to the conclusion that such a complicated and intricate procedure has been laid down that it is very difficult to follow it. If you think deeply, you will find that the whole Hindu society will rebel against you if you pass those provisions. According to your law, if a man marries his aunt's (father's sister) daughter, that marriage is good; if he marries the daughter of his maternal uncle—it is in vogue in certain parts of Bombay, I understand.....(*An honourable Member*: "And Madras."). But so far as we are concerned it is regarded as highly incestuous. There is a very great difference. (*Shri Mahavir Tyagi*: "The man may be killed.") Mr Tyagi is not very far being correct. It is a fact that in all the villages of East Punjab—and I speak with such feeling not because I want to speak with force but I regard it as true if you allow

this thing to be done, that man shall be killed and nobody will associate with him. (*Mr. Tajamal Husain*: “Is there any compulsion ?”). If a man marries his sister or mother, is there any compulsion ? Is this an enabling measure ? This is going into the very vitals of the society. It is intolerable. It is impossible for us to be reconciled to this situation simply because in regard to some people there is such a custom. I do not say that those people should not be protected, but for them provision can be made.

Shri L. Krishnaswami Bharati: Exactly that has been provided if you refer to clause 7(5)—the parties should not be sapindas of each other.

Pandit Thakur Das Bhargava: May I humbly enquire if a daughter of the aunt can be married to a man ? I have seen the rules. I submit for your consideration that in these matters the law has been changed, and unless the law is brought to suit our conditions it is difficult for us to support this measure. That can be done. In the Select Committee amendments can be moved. I do not want that the Bill should be throttled or killed:

The Honourable Dr. B. R. Ambedkar: It can also be done by an amendment in this House.

An Honourable Member: I hope you will accept.

The Honourable Dr. B. R. Ambedkar: I shall be prepared to accept any reasonable amendment.

Pandit Thakur Das Bhargava : I am very glad, and to that extent I am agreeable to support this Bill.

Mr. Tajamul Husain: Does the honourable Member intend to finish today?

Mr. Deputy Speaker: The honourable Member seems to be interested in this than other person, who are affected by this Bill. I have been noticing it. I cannot ask the honourable Member when he proposes to finish. It is open to him to take a reasonable time without repetition.

Pandit Thakur Das Bhargava : It is not my intention to take one more minute than is necessary. If I am repeating, I may be called to order. If a Bill is there which affects the lives of thirty crores of people, it is not too much to consider it for several days.

Now I come to the provisions made by the Select Committee and to the most crucial questions in this matter. They are, whether in regard

to succession and maintenance, what should be our attitude. I fell strongly on these. As I submitted in my earlier observation, I am in favour of giving to the women of India rights over property, moveable as well as immoveable, so that they may be economically independent. But, at the same time, I am opposed to giving the daughter a share in the property of the father.

3 P. M I want that, so far as an unmarried daughter is concerned, she may be given full share like the son as long as she does not marry. But as soon as she is married the position becomes different. I see that there is a lacunae in our law, but it may be met by enacting that, as a woman marries a man, then the man and woman, when they are united in love, they may be united in property. Ultimately the man and woman may be joint owners and, when the father of the husband dies, both of them may succeed equally. Further on, the devolution of the property may take place in a particular way. I know that perhaps the demand for equality may not be fully met thereby. But in a matter of this kind, I do not think our sisters are well advised in weighing every question in golden scales. The yard-stick employed by them is not correct.

May I submit that, in regard to maintenance, they have such laws and such provisions the equal of which is not to be found anywhere else. Sir, the question of succession and the question of maintenance must be considered together. If they are not considered together, the difficulty will be that the full implications of the provisions will not be realised. Now, in regard to maintenance the duties of a husband or a man are quite different from the duties laid upon women. According to the Chapter on Maintenance, the wife has a right to be maintained by the husband, but has the husband a right to be maintained by the wife ? I am only saying that the rights are not equal. I maintain that the rights cannot be equal. They are diverse. Ladies and men have to do different work in life and on this basis it should be so arranged that the woman gets her full right and not an absolutely equal right.

Then again, Sir, a father has a right to maintain a minor son ; but, so far as the daughter is concerned, what are the rights of a daughter. Sir ? If a daughter is widowed or is married or unmarried, in every ease and whatever the age of the daughter, her maintenance is absolute obligation. As a matter of fact so far as the provisions for maintenance are concerned, I certainly want to congratulate Dr. Ambedkar for proposing that the ladies should be protected in every way and that

they should be well provided for. But while this useful provision is there, there is also the other thing that the ladies should get a share in the father's property.

The Honourable Dr. Ambedkar told us yesterday that in times of old there was simultaneous devolution of property and that the daughter got about one-fourth according to Narad. I do not know what was the basis of social existence in those days and whether the family was then constituted as it is today. I do not know whether this point has been dealt with in some texts of Hindu Law. That is not an accepted proposition. Some say that this provision of simultaneous heirship refers only to unmarried woman. But, leaving that aside, I submit that, if in these times it was considered right, the question of questions is whether today, as we are situated after having observed the theory of Agnacy for a thousand years or more, are we justified in accepting the proposition that the daughter should get a share ? What happens in a family ? As long as the father is alive, the sons work with him in his business or in the field and they combine together to produce wealth. When the father dies of old age, that property which goes in the father's name is thus the result of the joint efforts of the sons and the father. Now, to say that the daughter should get a share of such a property which she had no share in producing—perhaps she was in some other place producing children, is not fair. Let me not be misunderstood. I do not want that the daughter should not be given full rights. She may have them. But I do not want that this innovation, which is of such a fundamental character that it will affect every home in our country, should be made. I know my people all right. Choudhari Ranbir Singh who is a Jat knows how his son-in-law will be received in the family. I have been a practising lawyer for forty years and I know that in the case of self-acquired property, the daughter gets a share when there are no sons. If this innovation is introduced in the villages, in regard to entire property the result will be endless trouble. In every home if you let the son-in-law and the father and the mother of the son-in-law to live together with aunt's son and his family, it will create an impossible situation. This is not because we do not love our daughters. We do everything for them. In our place, if a daughter comes home to her parents, something is always given to her by way of love.

Shrimati Renuka Ray : Daughters should not be born in this country.

Pandit Thakur Das Bhargava : To that I know what Dr. Ambedkar will say. He will say, 'Instead of son, daughters should be born. Do we not know that among many Rajputs, the daughters were killed ? I do not want that to be done. It is unnecessarily wrong. What I am submitting is that for hundreds of years we have lived in such a society. We have regarded the son as the very pivot of the family. Without a son the daughter does not count in the family. It is the son which protects a man from hell. (पतात त्रायते) If we were like the Muslims, we would certainly accept it, but it is very difficult. This interruption by Renuka Ray only brings into relief my argument that so far as the conceptions of the people are concerned and their mental outlooks are concerned, such an innovation would spell nothing but disaster. This is my humble submission and Mrs. Renuka Ray only supports me in this.

Mr. Krishnaswami Bharati : I do not know which part of the country he comes from, but it appears that he does not know the custom in the Punjab. In no other province I can say the conditions are the same. What are these conditions due to ? They are due to the fact that for thousands of years, our policy and our theory and our conception about the family has been exactly what has been in the Punjab. Sons-in-law are not all bad. Sons are not equally bad.

Shri Mahavir Tyagi (U.P.: General): It is the brother-in-law which matters.

Pandit Thakur Das Bhargava: There is a proverb which runs as follows:

(Translation of Urdu proverb)

(The following are the efficient causes of strife:

- (1) Construction of house in the place meant for deposit of village refuse;
- (2) A field in the vicinity of village common ; and (3) The habitation of son-in-law in the village.)

Another proverb.

(Translation of Urdu proverb)

(The yama, the son-in-law, the maternal nephew, chowkidar and the goldsmith can never be yours. You may try them if you please.) This is the truth. Let me say : Ask any person to go to the Punjab and find out among the Sikhs and Jats.

So far as this Bill is concerned, when this Bill was introduced, I remember that in the Objects and Reasons, this thing appeared:

"The Bill aims at providing uniformity in all branches of Hindu law for all provinces and for all sections. The old complex, intricate and different provisions

of Hindu Law have also been simplified. Most of the provisions in the Bill are of a permissive or enabling character and impose no sort of compulsion or obligation whatever on the orthodox section of the community. Their only effect is to give a growing body of Hindus, men and women, the liberty to lead the life which they wish to lead without in any way affecting or infringing the similar liberty of those who prefer to adhere to the old ways."

Now, Sir, in this very spirit, Dr. Ambedkar spoke yesterday. We want to see both the sections, the enlightened and the non-enlightened are accommodated. My humble submission to him is that so far as that is concerned, he is right; but for those humble people, whom you will neither regard as enlightened nor non-enlightened on the path of social life, you have not given the right provisions in the Bill and my humble request to Dr. Ambedkar is : Let him also kindly allow them to live on this earth.

Now, Sir, the very essence of a codification is that it includes certain enabling measures to accommodate the progressive and recognises customs which have grown in spite of texts to the contrary. It was never intended that established rights and provisions of law should be changed in this ruthless manner, which will create bad blood in the whole of the society. All our customs and all our cherished institutions are being crushed by this Bill.

When I come to the other provisions, as regards the succession, the position will be still more astounding. Now, Sir, so far as the Mitakshara is concerned, we know the consanguinity is the basis and so far as the Dayabhag law is concerned, religious efficacy is the basis of inheritance. Dr. Ambedkar has been kind enough to give us another basis of inheritance. I do not want to say that he is far from wrong in what he is doing. He is doing the right thing, but I do not know what is the barometer for weighing this natural love and affection. Love and affection may also be perhaps understood. What is natural love I do not know. According to our conceptions, the brother is very dear to us. In our sacred Ramayan, in Lakshman, brotherhood is enshrined. Sir, 'Uncles' who are just like parents are very dear to us. But what is the position of 'uncles and brothers' in Hindu Code. If I were to tell you how that position has been affected, where they have been relegated, where they have been put, in the list of heirs you will simply be astounded. If you kindly see the Seventh Schedule which has been sought to be made applicable to a Hindu in regard to inheritance, you will find that the first clause includes seven kinds of people and I want to know, Sir, how this new principle of natural