love and affection is affected by this provision. In the first place Son ; widow; daughter: this I can understand very well. Then you find 'son of a predeceased son': Even there I will allow it. Then comes 'widow of a predeceased son'. Sir, I do not understand how under the law of natural love and affection she is preferred to a daughter, son or an uncle. I do not think that so far as the question of natural affection is concerned, the widow of a predeceased son, or son of a predeceased son of a predeceased son can be accepted. My opinion is that the Bill is based on a wrong stand-point if it provides for them. I can understand if this is only for providing for ladies, if they were not provided elsewhere. If they wanted not a widow, but the wife of a predeceased son or the wife of a son, I can understand it.

The Honourable Dr. B. R. Ambedkar : This is by statute. If my honourable friend will read the Women's Property Act, 1937, he will understand why these people have been put in the category simultaneously.

Pandit Thakur Das Bhargava: The friend of Dr. Ambedkar knows it quite very well. But in that 1937 Act when that provision was made, the 'daughter' was not included.

The Honourable Dr. B. R. Ambedkar: I have said so.

Pandit Thakur Das Bhargava: You want to add this to enable the daughter to succeed a father and succeed the father-in-law too. This is absolutely unfair. I do not see why you do not provide for this when you are making a new Code. You were making laws in which all claims should have been satisfactorily met. How should you have put in these provisions, because the Act of 1937 was there. I do not think this committee was justified in doing this. They ought to have given a full code in which every claim was satisfied. You cannot justify it otherwise. Therefore, you took protection under that Act. That is the position, Sir.

When I come to clause 2 of the original bill the 'mother' was considered as the better heir, because the 'mother' was a class by itself and the mother succeeded alone. Here I can understand natural love. Now the father has been placed along with the mother and they both come together. But if you proceed further what I maintain will be better understood. When you come to the second case, you find son's daughter, daughter's daughter. The son's daughter has got a special place in Mitakshara law and according to Mitakshara, she is one of the favourite heirs. What happens now, Sir, is that in the original

Bill in the first class, the daughter's son preceded mother and father. Now the daughter's son is sent on to the bottom. Then if you proceed further, Sir, in class IV, the brother and the sister come. And in class V, brother's son, sister's son, brother's daughter all come in. I can only state that a brother's son is made equivalent to a sister's son and a sister's daughter. Now, this is equality run mad, I should say. In our families, we know what is a brother and a brother's son. This is the result of the system or the institution of a family as we have been observing for the last 1000 years. We cannot get away from this violent conflict. You are introducing provisions in this Bill which will make every person rebel against you, because these innovations in practices cannot be made by order. According to the provisions of this Bill, every Hindu, male and female has got an absolute right of making a will and every male and female in future will be absolute masters of this inheritance. You have given in my hand a power to the detriment of the ladies and I do not want that it should be used to the detriment of the ladies. After all, a father when dying will be within the power of the sons and the sons will see that the father disinherits the daughters by will. While I am saying this, I may tell you, I have a daughter and I have provided for her when I provided for my sons. In the house in which I have been living with my sons and in the house in which my sons' wives have been living, I do not want that the daughter and her husband, her father-in-law and mother-in-law, her elder-brother-in-law should all come and occupy some rooms. That would be an impossible proposition.

Mr. Deputy Speaker: Under the Bill there is not much chance of the father-in-law and mother-in-law being protected.

Pandit Thakur Das Bhargava : They can come with the son-in-law. I will show there is a very good chance of a thing like this taking place. The father who does not want to touch even water at the house of the daughter, will get the property of the daughter, and her husband. I am coming to that subsequently.

I am only submitting that the ladies will be under a greater jeopardy of losing their rights in this way. The father will disinherit the daughter. She is not a heir according to class I; she does not succeed to the property of the father-in-law as wife of the son; but she succeeds only as a widow. Where is she then ? I do not understand. She will be put to a great loss. I want, Sir, that the women should get their full rights. The theory which I have propounded.—I have not given

very great thought to it—I have only submitted it for the consideration of the entire House and for the consideration of Dr. Ambedkar—I do not know how it will affect other interests—there may be flaws and I do not vouch for it—but I consider, at the same time, that it will be a better arrangement than the present arrangement. The theory is that an unmarried daughter succeeds simultaneously equally with the son. The woman on marriage becomes joint owner in husband's property as husband would be joint owner in her property, then both succeed in husband's family.

Then, again, Sir, what would happen to the brother's son ? and the sister's son ? They are both on the same level. The brother's son lives in the same house probably or next door and does service everyday ; the sister's son lives at Allahabad or Madras or some other place. How will they be equal. In regard to other provisions also.—I want to be brief.—If the House wishes me to go into the other provisions also, I am perfectly prepared and I have got full notes about the changes and how they affect us—but I would be taking up the time or the House in such a manner as to deprive the other members of their opportunity.

Honourable Members : You may go on.

Pandit Thakur Das Bhargava : There are many other considerations which go to show that this provision in clause (2) is not well founded either from the point of view of consanguinity or religious efficacy and even from the point of view of natural affection and love.

Next, I come to the succession of the female. After the Hindu Code Bill comes into vogue, the lady succeeds to the property of the father as well as to the property of the husband. Suppose the lady dies leaving husband and children, it is clear that the husband has been given the right and the children also succeed. So far so good. Then, when the husband and the children are not there, who succeeds ? The father and mother of the lady. These people—there are lakhs like them—who do not even want to touch water from the house of the daughter, will get the property. *(Shri L. Krishnaswami Bharati:* "Why" You cannot understand this ; it is my difficulty. You cannot realise this. May I submit, Sir, that as soon as the father gives away the daughter to the son-in-law, the father never goes to the house of the daughter, never takes his food in her house and never even drinks water in her house, so that the purity is maintained that no daughter may be

given in marriage for mere consideration or any other material gain. That is the basis. There are many people who would not even go to the village where the daughter is married. We must recognise facts as they are; it is no use saying that they do not know. It is quite possible that they do not know. It will happen that the father-in-law would get property bequeathed by the lady. That will be an intolerable position. Supposing a lady does not leave a husband and children and neither a father nor a mother, what happens ? This is a crucial point. The property has been inherited by the lady from the father. The property, in the absence of husband, children, father or mother will not go to the son of her father. Let me put position clearly. The property belongs to A's family, The property will not go to A's family, the brother of the woman, the real brother made of the same flesh and blood, but the property will go to hundreds of people of the husband's family of the list that you have given here. Since the woman is dead, leaving no husband and children, father and mother, in that case, the property is not inherited by her brother or brother's son or others, but it goes to the family of the husband. Why is it so. Because your Select Committee have not been able to shake themselves from the considerations which have been influencing the entire community for a very long time. (*Shri L. Krishnaswami Bharati:* "What is the present position ?") We are not concerned with that. You know the present position very well. It is *stridhana* ; it is not inherited by the daughter ; the position is different. I was submitting, the property of one family is not inherited by the brother of the lady, but it goes to other people. This is a position which I cannot understand. But, you must realise that this is the position. You may remedy it; I beg of you to remedy it. This is a question on which you will be well advised to review. This is one of the points which I submit for your consideration. I will leave this question of succession at this ; there are many other considerations which could be placed before you.

Then, I come to the power of disposal. I quite understand the very great hardships when there were restricted rights in regard to women's property. So far as the joint family is concerned, it is sought to be crushed under this Bill. The joint family is mouldering away ; it is crumbling. From a very long time, certain circumstances have so arranged the fate of the joint Hindu family that it cannot survive. Sir, I do not want to shed tears over its going away. The Income-tax Act is the greatest monster in killing this joint Hindu family. I know that

the joint Hindu family cannot stay for long. But, so far as this Bill is concerned, if it says that in future they will be tenants in common. I have no quarrel. This was given in the other Bill and this is also given in this Bill. I am too much of a realist to cry that my sacred ancient joint Hindu family goes away. There were days when there was great use for the joint family. Now we are turning back to co operative forming, co-operative holding of properties, etc. At the same time, we are providing social insurance, etc. We are doing all these things in such a manner that we are reverting back to the principles on which the old joint Hindu family was doing. That is beside the mark ; so far as the law goes, so far as the general circumstances of the country go, so far as this joint family is concerned., I do not think that it must be said

The Honourable Shri Jagjivan Ram (Minister of Labour): It is a lost cause.

Pandit Thakur Das Bhargava : Whatever you may say, Sir, there is no question of cause here. I do not like the idea that legislation should kill the joint Hindu family.

In regard to marriage, Sir, I have to submit a few considerations more. It is a very difficult matter.

An Honourable Member: That has been dealt with before.

Pandit Thakur Das Bhargava : I have placed some considerations before.

An Honourable Member : This is second marriage.

Pandit Thakur Das Bhargava : I find myself in very good company when I make .....

The Honourable Shri Jagjivan Ram : You are with the Law Minister himself.

Pandit Thakur Das Bhargava : Shrimati Ammu Swamindhan, Mr. Shiva Rao and Shrimati Renuka Ray wrote as follows :

"Regarding claus 6 of Part II of the Code on 'Forms of Hindu Marriage we would point out that there are, in certain parts of the country, long-standing customs or usages which recognise as valid marriages which would not come under the category if either sacramental or civil marriages in accordance with the provisions of this Part. We would therefore suggest a proviso at the end of clause 6 to confer validity on such marriages."

What is this ? I understand that the trouble is the same in that part of India from which Mr. Bharati comes.

Shri L. Krishnaswami Bharati : Luckily I do not come from that part. I come from Tamilnad and they come from Malabar.

Pandit Thakur Das Bhargava : So far as the question of adoption is concerned I find a similar thing in this dissenting note. So it is not the Punjab alone. It is also in other parts in which the rules of marriage and divorce and adoption are different from the orthodox rules and all of them should be protected, and I am very glad that these dissenting members represented their constituencies too well in making the observation.

I was speaking of sacramental marriages. So far as the non-sacramental marriage is concerned I have not said a word about it. I want that to be protected. In regard to sacramental marriages, the havoc played by the Committee is inexplicable. I do not understand for once how the civil marriage should be included in this chapter. If it is a civil marriage, it is a subject for the civil code. We have the Act of 1872. It is a very defective Act and I have submitted a Bill to put it right, and the Bill which I moved a few days back in this House for validating the marriage of all others, that would protect us much more than the inclusion of this civil code here. I am in favour of a civil code for the whole of India and I want the rules to be the same for all. It is our duty to do so but why should we include the civil marriage here ? If it is to take away the evil effects of that law, then the other course is open. What happens in this civil code and the new kind of marriage which is neither sacramental nor civil but a registered sacramental marriage in which though the marriage takes place by virtue of sacrament, yet if it is originally incestuous, then you go to a registering officer and you get it validated ?

Shrimati G. Durgabai: It is only optional !

Pandit Thakur Das Bhargava : I have replied, it may be optional but does it conclude the matter ? The Hindu Code says that there are five conditions when the marriage takes place otherwise the marriage will not be permitted. The words are “conditions relating to sactramental marriage”. That means in fundamental matters, as soon as one of the provisions is contravened, you allow the law to secure you to get away from the effects of that flaw. As regards the prohibition of the sapinda relationship, I beg to submit the difficulty is that the uniformity of law which we aim at is very difficult to secure in a country like India. It has been said that bringing about such a uniformity will be miraculous. I congratulate Dr. Ambedkar in working out that miracle and I am for this miracle being worked out. But when there are legal difficulties in local matters in which the conflict from the

present position to the position that we want to see enacted is very great and very violent. I would ask of the House to so arrange matters that this conflict is avoided.

Now, Sir, I come from a place in the Punjab where there are villages upon villages having the same gotra and they believe that they are descended from the same common ancestor. You know this sapinda relationship which restricts the line of ascent and descent to three or five is not sufficient so far as those people are concerned. I do not want to say that you broaden it further. At the same time this will be unacceptable and a thing with which we could never reconcile ourselves, if you ask us to allow a marriage of sapindas. This is an impossible position so far as we are concerned, and if you allow this then you are really cutting at the very root of our social system as is enjoyed in the Punjab for a very long time. This is my feeling also for the whole of India. Of course, I do not speak for the rest of India because there are certain gentlemen who question it. My view is that in the whole of India the position should be the same. Well, I am not dogmatic about it, but this is a very wrong rule that we are enacting and that the requirements of section 7, that marrying couple should not be sapindas should be waived in so far as registered sacramental marriages are concerned. So far as the Sarda Act went, a marriage once celebrated according to the Hindu Law and our notions, was always indissoluble. We are making a break from this rule in so far as we are providing for disrupting marriage by codes or customs. Otherwise when rule 3 has been abrogated, you can convict a man and send him to jail. I have submitted to the House through a Bill that where a person not of proper age is married, instead of a fine he should be imprisoned and the law should not be vested with the discretion that he should be allowed to go free. The whole country was against the Sarda Act and the present provision shows that if Rule 3 is followed, then the marriage will become avoidable. This is going against principles which we have not accepted for more than 20 years.

So far as the main provisions in the Hindu Code are concerned, I have dealt with them in brief with a view to bring them to the notice of the House and since my feeling is that the Bill is not to going to be throttled out, I will deal with those matters when the clause to clause stage is reached.

To sum up, I want to say that so far as this House is concerned, it will be well advised in either sending this Bill out for circulation,

because in that case nothing will be lost—as a matter of fact much will be gained: public opinion will be consulted and the public will feel that they are being ignored. As a matter of fact many amendments have been made even after it has come from the Select Committee : even before the Select Committee the people in general did not know anything about it. In spite of all that has been said, I am convinced that people know about it. Dr. Ambedkar referred us to the two gentlemen who drafted this report and said that they were very good people and not such people as could be regarded as very much advanced in their views. I have got with me so many opinions of high court judges and more opinions are pouring in every day. All these people are against it. I did not want to read them out from the evidence that is printed in the report of the Hindu Law Committee. I would with your permission refer you to page 13 of this report, where there is the evidence of a lady, Miss Subrul, Principal, Fateh Chand College for Women. She said:

"The unmarried daughter, one who is not fit for marriage, or one who has made up her mind not to marry should get the same share as the son and she should also be subject to the same obligations as the son. A married daughter should not have any share in the property. If an unmarried daughter marries, her share should go back to her brothers."

When the Committee was in Lahore to record the evidence, it is said in the report.

"As a matter of fact in the Punjab where I was presiding over the meeting of this committee some 500 women entered the Commercial Museum Hall, Lahore, where the meeting was held said with folded hands 'Do not bring son-in-law into the family and ruin our business."

In regard to business if you kindly consider what effect this will have on the business people you will simply be scandalised, A prosperous business conducted by a father and his sons is going on. The father dies and the business is run by the joint efforts of all and then the son-in-law gets in. What will happen to the business ? It will go to dogs. I would refer the House to page 139 of the report. It is wrong to say that all the ladies are in favour. Thousands of enlightened ladies did not favour this, not because they did not want the daughter to be given any rights. I reiterate that so far as I am concerned as also those persons who think in the same way as myself, we do not want to see that the daughter is not given the full right or that women are not given their full right. We want women to rise to the same stature as man and to have the same rights. I am one with Dr. Ambedkar. I am like him a progressive conservative. I like

that expression very much. I do not belong to the advanced school of thought. This Bill is not either revolutionary or radical, as Dr. Ambedkar said. This Bill deals with certain matters but the Bill has to be improved. Today there is in the Hindu society some sort of introspection and it is able to see that there has been decay. It is our duty to see that the dilapidation is repaired in the words of Dr. Ambedkar, I therefore submit that from this point of view let no body run away with the thought that we do not want to do justice to our sisters and daughters. If our sisters and daughters carry an impression like this they are entirely mistaken. I know about your good self, Sir. You are also in favour of the view that their rights should be secured. I therefore submit that this should not be looked at from this point of view. I want this Bill to be circulated and it may be taken up after the next elections when we have a more representative House. I do not maintain that this House is not fully competent or sovereign. If the House persists in proceeding with this measure there is no wrong in it but I would like to see that this Bill is considered and that justice is done to every interest concerned. At the same time what I do want as a lawyer and as a member of this House is that this Bill should be considered again by the Select Committee, even if it be for two hours, so as to remove all these defects and to legalise the original Bill being considered clause by clause and then this very Bill may be substituted if the Select Committee so pleases. I maintain that it is absolutely wrong to say that the original Bill was considered in the way in which the law required it to be considered or that the amendments were moved or accepted in the usual manner as is done in every Select Committee. This was not done. We should be quite cautious that we do not allow the thing to be done in a way which is fundamentally wrong. I would beg of Dr. Ambedkar to consider the question if he is satisfied that my objection is right. I would beg of him kindly to consider the point of view of the poor Punjab people who had no representation on the Hindu Law Committee.

Honourable Members: What about Dr. Bakshi Tek Chand ?

Pandit Thakur Das Bhargava : If you speak of Dr. Tek Chand who was on this Select Committee I will be very glad if you will give his due. If he had not written this dissenting note where would you have been ? If you accept him as a man whose views ought to be respected then go by his views. This is my submission. I am only a mouthpiece or a loudspeaker of what Dr. Bakshi Tek Chand

has written. He has said in his note that you should allow nomination of an heir, that you allow divorce to take place in the same manner in which it is taking place today and he has also mentioned about non-sacramental marriages. In all these points when you take his name I beg of you kindly to follow him in what he has said in his dissenting note.

Mr. Deputy Speaker: Shrimati Renuka Ray.

Mr. Naziruddin Ahmad: Sir, my grievance is not being heard.

Mr. Deputy Speaker: The honourable Member's grievance will not go unheard.

Mr. Naziruddin Ahmad : May I submit that I had certain points and I would like to have got the advantage of those points being made and the replies given to them.

Mr. Deputy Speaker: The honourable Member will have the advantage of his observations going unchallenged.

Mr. Naziruddin Ahmad: I do not like it, Sir.

Mr. Deputy Speaker: I have already ruled that the honourable Member will not have his turn now. I have called Shrimati Renuka Ray.

* **Shrimati Renuka Ray :** The Bill that is under the consideration of this House now, or rather the principles embodied in it, have been on the anvil of this legislature since 1943 and the insistent demands for these changes that are embodied in this Bill have been before the country for a very much longer time. It was more than 100 years ago that Raja Ram Mohan Roy wrote a treatise called "The Rights of Females to inherit property and their rights of marriage", and this matter was first brought to public attention. Since 1931 and 1932 there has been an insistent demand throughout the country, and at that time the need for the removal of legal disabilities of women and the need for a uniform and comprehensive code of legislation was made manifest in this country. Due to the fact that on the anvil of the legislature there were a number of Bills dealing with this subject, due to the fact that piecemeal legislation was leading to anamolies in law and because of this insistent demand, the Government of that day was forced and compelled to appoint the Hindu Law Committee better known as the Rau Committee on Hindu Law. It was as a result of the report of this Committee that the two Bills on intestate succession and marriage were introduced in 1943. At that time the opposition that has now again reared its head also came to the forefront. The

*C.A. (Leg.) D., Vol. II, Part II, 25th February 1949, pp. 925-29.

substance of the opposition was the same as it is now but the approach was a very different one. The approach was naturally different because it was made to an alien government. The approach was made on the lines that they were the loyalists who were the ardent supporters of the Government, that it was the Congress, which was agitating, that was behind this demand which the women of India had brought forward and that the Government should not give any credence to it. I am not making statements without foundation. It is true that the nationalist press of this country did not give that opposition much chance. Yet the opposition did bring out many pamphlets wildely abusing our national leaders, not even sparing our belovd leader Mahatma Gandhi. There was a weekly paper produced called 'Hindu' in which these Bills were attacked and they were attacked on the basis that the national leaders of this country were behind it and it was due to their advice and under their influence that this was being done. Coupled with this factor, when the Government found that the women of this country were not willing to agree to those machinations which wanted to further divide and bring discord among them, when they realized that women were against separate electorates and that they stood behind those who were in the vanguard of the freedom movement of this country, then there was not much hope that a legislation of this type to improve the lot of women and to give them their rights would go through with the alien Government in power. It was then that we realized that it was necessary to wait till a national Government came in. Later the Government appointed the Hindu Law Committee, and the Bills were re-circulated. This Committee as the House knows, presented its Report after touring the country, taking the opinions of thousands of individuals and organisations in 1946 after the Intrim Government came in. I will not recapitulate the subsequent steps when this Bill was reintroduced after 1947 in the present Legislature as these are well known to the Members of this House. But I merely want to point out that the opposition which is in substance the same, in character the same, has a new approach. I would like to know who are they who were opposed to the Congress in those days to say today to the Congress 'You will lose your elections if the Hindu Code Bill goes through.' I would like to ask them when they were deliberately against the movement for freedom—when they neither supported it nor symalhised with it—when it was in spite of them that the Congress won the elections and the country's freedom, who are they today to tell the Congress that they will not win the elections. If anyone of them comes into the legislatures of the country today it is by the grace of the Congress and so it shall be tomorrow also.

This opposition that has reared its head and which is similar in character as before, has resorted to many devices. It has resorted to various types of tactics. The House is aware of the fact that the Governor-General's name was used and this was found to be a fraud. Only two or three days ago in a newspaper in Calcutta I saw the name of Shyama Prasad Mookerjee after that of two or three other well-known oppositionists and I was a bit surprised until I saw in small brackets the words "(of Uttarapara)". Sir, it was obviously intended to mislead, and if questioned they would have pointed out "of Uttarparah" These are the devices, these are the tactices that are being used by the opposition. As you know, we do not question those who have genuine differences of opinion. But this type of tactics that are employed today.....

Mr. Naziruddin Ahmad: On a point of information, is it not Dr. Syama Prasad Mookherjee ?

Shrimati Renuka Ray : No. It was not the Minister of the Central Cabinet. I do not know which Shyama Prasad Mookherjee he is.

Mr. Naziruddin Ahmad : I thought the description was "Dr. Shyama Prasad Mookherjee, President of the Hindu Mahasabha".

Shrimati Renuka Ray : That is not so. It was "of Uttarapara". Such are the tactics adopted by them that even Mr. Naziruddin Ahmad is taken in by them. The orthodox opposition has found its greatest champion from amongst the members of a community which recognizes the daughter's rights of inheritance. It is extremely surprising that the honourable Mr. Naziruddin Ahmad would deny to his Hindu sisters the rights that his own women have.

I would further say that there are some people who have asked "How is it that telegrams, circulars, and posters are being displayed by the opposition all over—at least in Delhi—and that M.C.A's are being flooded with wires ; and how is it that those who are in support of the measure do not do the same?" Sir, those who support this Code are also representatives of social welfare organisations; they are people who work for the good of this country. Today when there is a national emergency in regard to any funds that they have, they would not consider it right and proper that they should use such funds in sending wires and letters when they can be used for the rehabilitation of refugees. One wire to M.C.A's in this House costs Rs. 165. With that money for three months a refugee woman can be given vocational training for rehabilitation. Do you want that these wires should be sent

to you ? I think it would be wholly wrong for such a procedure to be adopted. If we have not issued posters and circulars and wires it does not mean that the demand for the changes does not continue to exist. I will not go into great detail on the provisions of the bill after the brilliant and masterly analysis of the Honourable Law Minister. It is quite unnecessary. Unity is something we desire in this country, and a uniform and comprehensive Code of law for Hindus who are the majority in the country is surely a necessity in that case.

Turning to monogamy I would like to ask, is there any one in this House or in the country who would contemplate with equanimity the fate for his own sister or his own daughter of being the first wife of a man who has married again. It is true that polygamy is not very customary : It is on the whole rare in the country. But in recent years we have seen that polygamy has become more frequent, and to the eternal shame of Indian womanhood. There have been women who have knowingly and willingly agreed to become the second wives of such men. I do not think that I need elaborate the point that law must come forward to redress the grievances and the miserable plight of the women who are first wives of such men.

Turning to inter-caste marriage and *sagotra* marriage, when in the Fundamental Rights of our Constitution we say that all discrimination on account of caste and sex and other such things should go, surely inter-caste marriage which is a permissible measure will be only the very first step towards it.

Mr. Deputy Speaker: Caste can go; how can sex go ?

Shrimati Renuka Ray : I said 'discrimination on account of caste and sex'.

Mr. Deputy Speaker: The honourable Member may go on.

Shrimati Renuka Ray : Turning to the divorce provision in this Code, I concede that these are restricted conditions. The home is the nucleus of society and I do believe that the primary reason for marriage is that it is for the protection of children and as such divorces should not be allowed on flimsy grounds, but for genuine cases of hardship we have to provide. Since 1943, when the Marriage Bill was first introduced, I have had scores of letters and scores of people have come to me with their daughters who have shown to me how grave and how terrible is the hardship which the women do suffer. Unless there is such a provision, both for men and women, it will not meet geneuine requirements.

Sir, let me dilate for a moment when I speak on this point, because the opposition about which I spoke have been going round telling many women who do not understand law or the provisions of a Code, that their own women were trying to bring in laws by which they will be divorced. They do not realise that it is only a permissive measure, that it is only the aggrieved person who can claim divorce, and for whom alimony is provided. These things are not mentioned. At hundreds of public meetings these matters were brought to me

4 P. M. and I had to explain the point, and I think the women Members of this Assembly can also say the same thing.

Turning to the joint Mitakshara family, I do not think there is any need for me to add one word to what the honourable the Law Minister has said on the subject. It has been fully amplified by him.

So far as the daughter's right of ineritance is concerned, it is the focus of the opposition. It is only natural because that alone proves that it is not bigotry so much, not blind prejudice so much, but it is the vested interests that are up in arms. The honourable the Law Minister has already spoken on this point, but I should like to say one or two more things. The economic status of a woman can only be established by the recognition of the daughter's right to inheritance. It was a point that was brought up by my honourable Friend Sheth Govind Das yesterday. He said—I do not know how far he believed in it—he said. "Why should we have inheritance ?" Certainly, I do agree that a time will come and must come—if we want and believe in equality of opportunity for all, if we believe that disparity of wealth shall go—a time must come when inherited property must go out. But until such time, if there is a difference between the daughter and the son, then that difference means a difference in the status. It is the daughter's status that has to be recognised; she as a daughter, as a woman, is a natural heir. It is not merely from the theoretical point of view that I mention this. We are dealing with intestate succession and it is far more natural that a father will not disinherit his daughter, than a father-in-law would, in spite of what my honourable friend Pandit Bhargava said. A woman's rights in the joint family, which in years gone by may have served a very useful purpose, have not under the existing conditions been so sure in recent years. My honourable Friend Sucheta Kripalani made a point yesterday which I would like to endorse. Those women or men who are social workers know that an analysis of the inmates of rescue homes in this country will go to prove how many of these women are those who have been

turned out of the joint family. Without having the training to earn their own living, turned out of their homes, these women have been forced to live a life of shame. That is a question which the Hindu society must face. I am sure those who propounded the Hindu laws would never have contemplated such a state of affairs.

Women are the mothers of the race. No race can advance till its women can be responsible mothers and conscious citizens. There has been a good deal of propaganda done about educated women. A handful of educated women, it is said, want this Hindu Code or want this very halting and mild measure of reform. Sir, so far as women are concerned, it must be a handful because after all the educated element of this country is 15 per cent and the women who are educated are about 3 or 4 per cent even now. So, so far as the women are concerned it must be a handful, but behind them are, not today only but from decades past, the large mass of enlightened and progressive men who stand behind them. It is not the women of this country who alone are responsible for the fact that there is no suffragette movement, no feminist movement in this country—it is because their champions have been enlightened men, for decades past. Today the same state of affairs exists and I am sure that the majority in this House are also behind us. It is not a demand from the educated women of this country but a demand from all those who want that India shall progress. For, without women becoming conscious citizens taking the rightful place in society, it is not possible for us to progress.

Sir, it is well-known that slaves have resisted when the Shackles of their slavery were removed. It is a fact serfs have objected to freedom. What is more, coming to our own country, it was held by the British that it was only the wretched Congress agitators who wanted freedom but that the mass of the people were quite willing to remain in the pathetic contentment of thraldom. If you speak today of pathetic contentment amongst the women, it is true, it is perfectly true that many women are not yet conscious. But is that a reason that you will not awaken them, that you will not make them conscious, that they should not become equal with men in the joint enterprise that is before us today of building a new India in an atmosphere of freedom ? I ask, is there anyone who feels that it is possible to go ahead without the women of this country ?

Before I conclude, I will say a word or two about what my honourable Friend Pandit Thakur Das Bhargava has said : I must say that I could not quite follow him. This morning he called into question

the competency of the Legislature, and in the afternoon just before he sat down he said that he.....

Pandit Thakur Das Bhargava : I never questioned the competence of this Legislature.

Shrimati Renuka Ray: So, I suppose what he said last is what goes. He spoke a good deal about the eleven notes of dissent. But as he knows and as the House knows, many of these notes of dissent were on minor issues and such notes of dissent are usually attached to all Bills and it does not mean therefore that a Bill should be recirculated. This morning Pandit Bhargava said that two wrongs do not make a right when he said that this Constituent Assembly obviously is not fitted to draw up the Constitution of India. I wonder, considering that it is such a wrong thing, how he remains in that wrong Assembly. I am not going to contradict him or speak again on all that he has said this afternoon, because I think it was very ably answered before he ever spoke by the Honourable the Law Minister and Pandit Bhargava contradicted some of them himself.

There is one last point that I would like to make. The cry has been raised that Hindu society is in danger because of this mild, halting measure of reform. I too think that Hindu society is in danger. It is in very grave danger—danger from those who would bind and fetter it; danger from those who would not allow out-worn customs to be changed but would allow them to choke up the life-blood of our society. If those who today appear to be so concerned about Hindu society would give a little thought, they would agree with what the Honourable the Law Minister said, namely, that you must repair if you want to survive. I do not know who has given a prerogative to some people to stand up for Hindu society. I do not consider those who wish to bind and fetter Hindu law which has been changing with changing times throughout the centuries to be the exponents of Hindu society and Hindu law and those who wish to improve it and bring it back once again to the culture and heritage of our forefathers as people against it. I think it is those who would bind and better it who are not the friends but the enemies of Hindu society. If Hindu society is to regain all that it has lost during the many years and the many centuries of decadence when Hindus were slaves, it has to come in line with the atmosphere of freedom that prevails in this country today. Men and women have to come forward equally to work for the country and there cannot be equality if there is no equality in the social laws

of this country. Therefore, I plead that those who today are opposing this Code should give it a little more thought. If they do not, it may be that Hindu society and Hindu law may be left behind, for the march onwards must go on and India is not going to go back to slavery or domination by others.

* **Shri V. S. Sarwate** (Madhya Bharat): I would offer my congratulations to Dr. Ambedkar for his learned and lucid exposition of the Bill, becoming as it was to a professor and an advocate that he is.

As regards the several provisions of the Bill, one would necessarily find himself in agreement with some and in disagreement with others. This is not the occasion to dilate much either on the points of agreement or on the points of difference. I would, in the general discussion, confine myself to certain broad principles and I would try to show that in these principles the Bill goes in a fundamentally opposite direction to the notions which have all along, in my humble opinion, been lying behind Hindu law.

There has been a considerable section of Hindu society against this measure. It cannot be denied ; it cannot be concealed. Some may say that it is a cry of "Religion in danger" ; it is sentimental; it is reasonless. All the same, those who are bent upon making legislation which vitally affects a society of more than 20 crores would do well to pause, ponder and consider its substance. They should consider what is there in the Bill which makes so many people—intelligent, educated people—to be against the Bill.

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

I submit that there are two reasons for this. The first point that I would refer to is the change in the nature of the joint property. I would submit that the co-parcenary aspect of the joint property has certain very noble ideas behind it. The co-parcenary means that there is a community of interest, as every member of the House knows. It means that every individual has the fullest right of enjoyment but he has no individual share nor the right to alienate the property. The whole trend of modern society, the progress of thought of the society, in my opinion, is in this direction. We may condemn Communists, but Communism in its pure form, pruned of certain things, is bound to come and would come. What does Communism mean in this aspect ? As I understand it, it means "From each man according to his ability

* C.A. (Leg.) D., Vol. II, Part II, 25th February 1949, pp. 929-34.

and to each man according to his necessity". In other words, a man is to enjoy the property in his hands to the minimum. He has to divert himself of individuality. He is never to consider that he has an exclusive individual interest in the property. If this is the basic understanding and if the world of progressive thought is moving towards this direction. I believe it would be admitted that it would be wrong to go into an opposite direction. Every effort should be made to promote such an idea and to promote such institutions as foster this idea. Dr. Ambedkar in his speech showed at length the attempts which have been made so far by the *Smritikars* and others to fritter away this idea of co-parcenership. Assuming that this is so, the effort now should have been in the opposite direction—not to complete the process of frittering but to restore the co-parcenary property.

Shri L. Krishnaswami Bharati : Impossible.

Shri V. S. Sarwate : Impossible ? Yes, everything that is not attempted is avoided by saying it is "impossible."

Nothing is impossible in this world if you try. Now therefore I submit that the idea behind the co-parcenary property system is admitted. Each individual member or co-parcener has to enjoy in full the common property, though he has no exclusive individual interest in it and he cannot alienate his interest in it. So when you attempt to deal with it, this co-parcenary you should take the idea as a whole. The idea of the joint property, as conceived by *Mitakshara,* seems to be this : that there is right of survivorship, and that each family is a unit and not an individual. It means also that the family continues though the individuals in it pass away and whether one is a male or a female one has a right of equal enjoyment. There is equality of sex in this sense. Therefore it follows that whatever is the property of the family has to go to those persons who constitute the family. Therefore if a daughter does not constitute the family, if she is the member of another family, she would necessarily not enjoy any right in that family. It is not neglect or unfairness or want of affection for a daughter. The very idea of a joint family is this : that whosoever is the member, whether widow, male or female, as long as he or she continues to be member of the family, he or she enjoys the property of the family which nobody has a right to alienate. I would have welcomed a provision to the effect that there would he no partition of joint family property and that no person or individual of the joint family has any right to alienate the family property. That would have

been very welcome and in the right direction. That would have been according to the idea which is fundamentally behind the joint family system. It is the family which is taken as a unit of society and not an individual. Conceived from this point of view, no sister of mine need think that she has been ill treated, because she and her brother enjoy equal rights in this respect. I would therefore submit for the consideration of the Honourable Dr. Ambedkar that in such a vast country like India, nothing would be lost if there are separate experiments on social units. If it is wanted that a individual should be a unit, let that experiment be tried somewhere. If the joint family should be the unit of society let that experiment also be continued in some places. We are a sufficiently large country to have different experiments in society. Let both continue and let the persons choose the law or system they want to follow. So, instead of having one codified uniform law for the 20 crores of India, nothing would be lost if we have more than one system prevailing in this country.

I may in this connection refer to one of the observations made by Dr. Ambedkar. I admire him for his erudition. I heard him with respect, because in the cause of his arguments he never descended to have a fling at somebody. His attacks were heavy, but they were straight and level. But, in the course of his remarks the other day, in the course of his otherwise lucid speech, he said that he did not know why the Brahmans of old were engaged in comprising so many as 137 *Smritis* and enquired whether they had no better engagement. I believe when the Honourable Minister said this, his historical perspective left him for a moment. I may remind him that these 137 *Smritis* were not written simultaneously. They were written in a period covering more than 250 years at the least. Thus on the average it took them about 20 years to write each *Smriti*. That means one for every generation. But here what happens is that during the space of one year the Honourable Doctor prepares more *Smritis* than one. So he need not have indulged in that unedifying observation. It was also very unnecessary for the development of his argument.

Sir, I was dealing with joint family property. I submit that the basic principle of joint family property is this : that it allows restricted enjoyment.

Sir, the question is often asked, what is Hindu culture; what is Hindu religion as such ? Where angels fear to trend it is difficult for others like me to rush. All the same one has sometimes to make

provisional attempts and I shall make that attempt. I think, as far as the present topic is concerned, the fundamental points which the Hindus have kept before themselves are that there should be restraint on enjoyment all along. Not encouragement of enjoyment but restraint on enjoyment was their rule and according to them, for the community of interest, the individual should lose himself.

Now, applying this principle of restraint, I submit that the whole Chapter on Marriage has to be recast. In this respect it has been stated that because ninety per cent, of the people by custom have this right of divorce, what are you going to do ? It is asked, are you going to impose this custom of ninety per cent, on the remaining ten percent ? I submit an argument of this sort is a very good piece of rhetoric, but not of logic. What we have to consider and what the Honourable Doctor has to consider is not what is the custom, but what is good and what is beneficial. We have to consider what ought to be there. That has been the criterion all along and that should be the criterion. There will otherwise be anomaly. For instance, among ninety per cent. of the people there is the custom of drinking. We are certainly not for the matter of that prohibiting prohibition. It cannot be denied that there is the custom of drinking.

The Honourable Dr. B. R. Ambedkar: It is not a custom.

Shri V. S. Sarwate : All right, you may think so. I am at liberty to express the thinking in that way. (*An honourable Member*;: "There are not ninety per cent, drunkards.") It is one think to call it a custom in the community and another thing to call them drunkards. That is the difference. It is no argument to say that a certain custom is there and therefore it should be continued by law. The argument should be whether it is beneficial and if we consider from this point of view, and if a certain section of the Hindu community says that marriage is indissoluble, why force them and say that there shall be a dissolution, if the parties so choose ? Argument may be advanced, that there is in this Bill no necessity, there is no compulsion, but there is an option. The option is always there. The option to a drunkard is he may or he may not go to the drinking shop. There is always the option, but he does go all the same when there is a drinking shop and a drinking shop has therefore to be closed by law. If it is to apply to a certain portion of the society, I would have welcomed it. In law of marriage, there should be monogamy. I admit it. I would go further and say that if you consider that from the point of view of restraint, there

should be no second marriage either of the women or of the men. That would have been a welcome provision, but instead of that we are going to the other extreme and providing that every marriage should be, if so chosen, liable to be dissolved. This is not desirable to my mind. No doubt Divorce was allowed by ancient Hindus at a certain point of time. It was prohibited later on whatever may have been the historical condition first. The reason appears to me is this that the unity of the family was to be kept intact. They wanted that the marriage once performed should not be dissolved so that no other woman should come in ; and that the woman who was in the family should not go away and another should not come in. That contingency should be avoided as far as possible. To my mind this was one of the reasons why a marriage was not allowed to be dissolve. Therefore, my suggestion is this: Let there be two parts in the section of' marriage. Those who want that their marriages should be dissolved, let them marry according to civil marriage and let there be free dissolution of marriage for them according to the provisions which you make here. Let the other part be there, which may be sacramental, and in that part let there be no dissolution of marriage. This would, I think, satisfy both the parties. My humble submission is this: Why should dissolution be forced ?

Shri Mahavir Tyagi : In that case they will have to decide for separation before they marry.

Shri V. S. Sarwate: I believe my honourable friend has misunderstood me totally. What I say is that those males and females who want that their marriages should not be dissolved should marry according to the sacramental rights and those who wish that their marriages should in future be dissolved let them marry according to civil marriage.

Mr. Tajamul Husain : Does my honourable friend mean that there should be divorce before the marriage ?

Shri V. S. Sarwate: Civil marriage does not mean divorce. It neither means separation nor divorce. When I say civil marriage, it means marriage; it cannot mean divorce.

Shri Mahavir Tyagi : It does not mean even marriage.

Mr. Chairman : Order, order. Let the honourable member proceed with his speech.

Shri V. S. Sarwate : My submission, Sir, is this : Let us get clear in our minds whether we are going to force certain things which certain

sections of the people do not want ? I go further and say when you once admit that sacramental marriages are sacramental, then let religion be the test for providing the conditions for such a marriage. If religion allows child-marriage and marriages of minors, let it be allowed. It is a contradiction in terms first" to say that a marriage should be according to religion and then to add that it shall be according to religion and also according to what is provided in this Bill. That is contradiction in terms. Either allow sacramental marriages or do not allow sacramental marriages, if you do not like that. In that case, say that all marriages will be civil. If you say sacramental marriage is to be allowed, then the marriage has to be performed according to the sacraments. This is my humble contention and in so far as the provisions of section 7 of the Bill are concerned, they are not according to sacraments. There are certain other things added to sacrament. That should be strictly according to the religion, if religion is to be allowed. This is the second thing which I bring to your notice and this can be very easily done. This would satisfy and may to a great extent remove the causes of dis-satisfaction which at present exist. Dealing with principles only, my simple suggestion is this, that in this very Act there should be provision which should allow society, and the joint family in co-parcenery form to continue. Nothing would be lost thereby. In this country there are Muslims, there are Christians, there are Parsis—Parsis are a very small community—and still if they are allowed to have their own law of succession etc. what would be lost if a certain larger section is allowed to have co-parcenery, if they so chose. If this principle is once accepted then changes can be made in the whole draft according to that principle.

My further submission is that the Bill may be re-circulated for opinion. Here I do not touch on the ruling which has been already given by the Chair. The question that then arose was whether for purposes of the rules publication was sufficient and the ruling was that it was sufficient. That does not however preclude me from raising the point whether it is desirable that the Bill should be re-circulated. My submission is that it has been lost sight of that the Bill if passed would be automatically applicable to States whatever Dr. Ambedkar may say to the contrary. My humble opinion is that it would apply to all those territories of states which have merged in the provinces and all those areas which have agreed that the Centre would have the power to legislate for them.

Shri Sita Ram S. Jajoo (Madhya Bharat): What is the objection if it applies to Indian States as well ?

Shri V. S. Sarwate : What I am saying is that it should apply. I am in favour of it. I do not understand, why honourable members without allowing me to speak, go on anticipating me and pass certain remarks. I was submitting that the Bill should apply to the Indian States. I was only submitting that if it is to so apply and that is very much my wish, then there arises a fundamental right, which you ought in justice grant to every large area which is to be governed by your bill, to express its opinion. This Bill was not published in these large areas and therefore the peoples there were not in a position to give to the Bill that serious consideration which they would otherwise have given. Now when they know that the Bill would apply to them, and the Bill is published they would be in a position to express their reaction. It is a fundamental right of every person to be given an opportunity to express his opinion regarding any legislation which is going to effect him. It is further the duty of every representative of theirs to ascertain their views before he gives his vote here. Therefore, both from the point of view of the representatives of the States and from the point of view of the people of the States, it is only just that some time should be allowed to them to give their opinion. Therefore, I suggest a *via media,* that if in any case this Bill is not going to be finished in this session, if that be the contingency, which I think it may be, the honourable the mover of the Bill may consider whether it would not be desirable to take this up in a special session later on ; the time that may intervene, namely two or three or four months would be quite sufficient to get the reactions of those people. I think this would be just and would also be in accordance with the spirit of the publication provisions. I appeal to the House to see whether justice does not require this. It should not be presumed that the last word has said been on the Code. It may be that the humblest of the humble may come forward with suggestions which may be useful to the learned Doctor. If opportunity is thus given, it would both satisfy the ends of justice and may be useful also.

With this appeal, I have finished, Sir.

Shri H. V. Kamath : Mr Chairman.....

Shri B. Das (Orissa: General): On a point of order, Sir, can a bachelor, who has not married and has not begotten a son too offer *pind* to his forefathers, make, a speech on this Bill and contribute to the discussion ?

Mr. Chairman : There is no point of order in this, as long as he is a Hindu, he can speak.

* **Shri H. V. Kamath :** I shall also answer the point of order. Sir, rising, as I do, after two lawyer friends and a woman friend, I fear I am labouring under a handicap. I have neither the legal argument of my honourable friends Pandit Thakur Das Bhargava and Mr. Sarwate, nor the sweet reasonableness of my honourable friend Shrimati Renuka Ray. As far as the lawyers are concerned. I am sure that my honourable friend the Law Minister will take care of them and will reply to the arguments that they have raised in the course of their speeches today. As regards Shrimati Renuka Ray, I am broadly in agreement with her and so there is no need for me to take up any of her arguments with a view to counter them.

My honourable friend Mr. B. Das raised a point of order when I stood up. That very point of order, I think, goes in my favour. I feel that my only claim to speak on this measure before the House is that because I have neither a wife nor children nor property worth the name, I can bring to bear a dispassionate mind to bear on this subject, unswayed by emotions of the heart. Most of the provisions of this Bill relate to marriage and property, adoption and succession, provisions regarding matters which could be summed up in two words of most of our philosophers, namely, *kamini* and *kanchan.* Not having been so far encumbered with either, I hope I will have your indulgence and the indulgence of the House in making a few remarks on this Bill in a more or less disinterested manner, not uninterested, but disinterested manner.

This century, the 20th Century after Christ has, as we all know witnessed the emergence of women upon the stage of history, in Asia, as well as in Europe and America. India and our Hindu society have been no exception to this world movement. Fatefully interlocked with all the revolutionary upheavals which in our own time have been ripping open and transforming old societies inherited from the nineteenth century and its long past are the relations between men and women. Our age has been marked by the dynamism of women who, with men, have set the world on fire. (*An honourable Member:* "But you are an exception.") and have also helped to frame plans for the world's reconstruction. Breathes there, I ask, a man with soul

*C.A. (Leg.) D., Vol. II, Part II, 25th February .1949, pp. 934-36.