

Mover has given a clear exposition as to how we are competent to bring about this desired result; So I do not wish to take the time of the House especially as there are many other speakers.

With regard to the principle of divorce, it is in my opinion a very much debated point. It is a thing which really agitates a large number of people in the Hindu society. Whether it be sacramental marriage or any other form of marriage, I do not wish to see that there should be under any circumstances an indissoluble tie of marriage. Instead of giving unfettered discretion to people. I would request the honourable the Mover to consider this point, namely, that a time-limit may be imposed—say five years or three years, whichever is approved by this House—within which the married people may be able to round off their angularities, having time to study each other, and if in spite of it they are badly off, it may be necessary that the marriage tie will have to be snapped.

Pandit Lakshmi Kanta Maitra : Marriage on probation, you mean ?

Shri H. Siddaveerappa : Not marriage on probation, but before anybody can have the benefit or advantage or whatever you call it of divorce, a particular period should be prescribed within which no married couple may be allowed divorce.

Shri L. Krishnaswami Bharathi: That is the English law. They have three years there.

Shri H. Siddaveerappa : Let us consider the experience in the Western countries; for instance, let us take America. We have the experience of a famous divorce court judge, Lindsay. Whenever anyone went to him for a divorce, he used to tell: "You people will live together for one or two months and then come to me again. Even in spite of it, if you feel that you must get yourself divorced then you may apply." He says that invariably his experience as a judge is that whenever people try to separate each other, it is because that they have not tried to understand each other. If there was occasion to judge each other, there may not be recourse to this extreme form of separation. Therefore, I suggest that some such period should be prescribed in regard to divorce.

Regarding the theory of fragmentation of property, we find that agricultural land is not at all affected by this measure. It is a good thing in itself.

Ch. Ranbir Singh (East Punjab : General): It is affected, in Centrally Administered Areas.

Shri H. Siddaveerappa : No, it is not. Only the Centrally Administered Area is affected, which is a very small area. So far as this agricultural land is concerned, I think the time has come when we should undertake agrarian reform in the interests of our own agriculture and our own existence so far as food is concerned. Not only that, with regard to inheritance the time has come when we shall have to have some such thing as the law of primogeniture. In view of the fact that 90 per cent, of the people of this country are living in the villages and their property is mostly agricultural, and in view of the fact that this property of the 90 per cent, of the people is taken away from the operation of this Act, I believe the theory of fragmentation does not stand to logic or reasoning.

With regard to custom, some of my friends submitted that custom ever rides law, therefore any custom having the sanction of law should be accepted. I think many of us, who have experience as lawyers, can easily see how custom conveniently comes in handy to take away the effect of any benevolent law. I may give one instance. There is a provision in the Indian Penal Code under which if any girl is dedicated for an immoral purpose it is an offence. The marks of dedication are the tying of some heeds round the neck of the girl. Now the ingenuity of a lawyer was able to invent the custom of tying of beads and apply that custom even in cases where the dedication was done for immoral purposes. Apart from this, we also know how on account of custom litigation sets in and how enormous amounts are spent in it, at least it was so in the previous regime. People used to spend enormous amounts in getting a decision on any particular point and squander money over judges distinguishing between two different judgments. Today this Bill is so simple, so lucid, that without recourse to any lawyer, any man can for about four annas ascertain what his position is with regard to law.

Pandit Lakshmi Kanta Maitra : He can manage everything with four annas, you mean ?

Shri H. Siddaveerappa : It is quite possible. A day will come. We will have to try for that also. As a matter of fact, we have been seeing how these judicial decisions affect some of the property rights and other things. A judge comes to one decision and that will be law for some time. Tomorrow they may find out some other law,

some text or *smriti* or some such old document, and we will be told that this law is overruled, with the result that nothing is settled in Hindu law. As a matter of fact, we have been seeing under the British regime, for the last 150 years, there have been so many decisions after decisions, any number of them and still they say nothing is settled in Hindu law. I want to ask when we will have a settled form of law wherein the ordinary man can understand what exactly is his position. As a matter of fact, when a creditor wants to give some money, he has to satisfy who are his heirs, who have shares and all that, with the result that on an agricultural land on which he can give Rs. 1,000 loan, he gives only Rs. 500 or so. Therefore, taken from any angle of view, I believe this is a very healthy measure, so I give my wholehearted support to it.

Mr. Chairman : The debate will continue tomorrow after Question Hour.

*HINDU CODE—*contd.*

† **Shrimati G. Durgabai** (Madras: General): It is with great pleasure that I rise to support the motion made by the Honourable Minister of Law. I also feel that I should express my deep debt of gratitude to Sir, B. N. Rau and his colleagues on the Committee who have bestowed great labour on the report which forms the basis of this Bill.

The Bill to codify the Hindu law when it goes on the State Book will be a great landmark in the social history of this country. Before I go in greater detail into the main provisions of this Bill I would like to stress one point. Honourable Members are aware of the fact that the provisions of this Bill are of a permissive or enabling nature. They impose no sort of obligation or compulsion on the orthodox section of the Hindus. Their only effect is to give the growing and clamant body of Hindus, men and women, the freedom to live a life which they wish to live without in any way affecting or infringing their liberty to adhere to the old ways.

I wish to confine my remarks only to one or two main objections that have been raised against the bill. The first objection is against the attempt at codification itself. It is urged that many of the principles of the Hindu Law are now well-settled, and as it would unsettle the settled law, a code is not called for at all. The other objection is that far from preserving the principles of Hindu Law which have been handed down from generation to generation an attempt at codification would tend to introduce principles which are quite alien to Hindu

12 NOON society. It has been said that the Legislature has no right to alter the law of *smritis*, *shrutis* and sages of great repute. An other charge against the Hindu Code Bill is that it seeks to introduce changes of a revolutionary character and therefore, it will destroy the law laid down by *smritis* and *Dharma*. My answer to all these objections is that it is just because many of the principles of the Hindu Law are now well settled, that an attempt to set down all these principles into a systematised and easily understood code should be made.

Hindu Law as it exists today is rigid without being certain. Many judicial decisions and precedents have outlived their usefulness. As an English writer puts it, the case law on the subject has become a luxuriant jungle where it is not possible to see the wood for the

* C.A. (Leg.) D., Vol. II, Part II, 1st March 1949, pp.591-1030.

†*Ibid.* pp. 991-95.

trees. There are frequently conflicting decisions of various High Courts given from time to time. Even the decisions of the Privy Council on some of the intricate questions of law are widely felt to be out of accord both with ancient authority and also modern spirit. A uniform and unified law will prove a boon to Hindu Society, because it would save considerable time of law students and also practitioners, who have otherwise to take a considerable number of years to get to acquire a full grasp of the law. Even the ordinary citizen will also be able to read the code and say to himself, "Within this cover is the whole basis of my rights, privileges and obligations." A code will also minimise the time and labour of Judges and it would also induce the speedy administration of justice. To be without a code is, in my opinion, to be without justice.

The objection that it has introduced changes of a revolutionary character is mainly voiced by vested interests. The subordination of some of the present interests to secure the future interests of the country is always a thing to be welcomed. As a matter of fact, this Code does not really go far enough in that direction and that is my opinion.

The bulk of the agricultural property is excluded from the operation of this code. Therefore, it is urged that your object to have a uniform law is frustrated. Why attempt a Code at all if this object is defeated? My answer to that objection is this. What is aimed by this code is to have a uniform law for all Hindus, but not a uniform law necessarily for all kinds of property. In the interest of agriculture itself, if not for anything else, separate laws and special laws will be enacted by appropriate legislatures which may include a special law of succession which is quite different from the law of succession applying to other forms of property. .

Now, I come to what I consider as the main objection, that is, the giving of a share to the daughter. This was opposed on many grounds that it would lead to disintegration and fragmentation of property, besides introducing a foreign element in the shape of the son-in-law. And also it is objected to on the ground that the simultaneous heirship of a daughter with a son would simply shatter the Hindu society. Also it is said that if the daughter takes away a share the love of her brothers is lost. It is also said that sons in many families would simply be ruined under the double burden of marriage expenses and also a share to the daughter. May I ask what sort of affection it is of the brothers if only it would involve putting a little more strain on their own self-interest? May I also ask if no share is given to the daughter the sons' love will be greater?

With regard to fragmentation I fail to understand how this question be raised, as it has already been said that agricultural property is excluded from the purview of this Bill. This point was raised by one of the honourable members of this House and we are all aware that the bulk of agricultural property is excluded from the operation of this code. It would only apply to urban and movable property. What they mean, I feel, by fragmentation is diminution of the share which they will get if the daughter is also given a share, the daughter being of the same flesh and blood should there be so much uproar, I ask, if a share is sought to be given to her?

With regard to the introduction of a stranger into the family my answer is that the property which the daughter takes from her father, if necessary by legislation may be made to form as part of her separate property. The evil or the good resulting from the legal provision depends also on the particular individual i.e., son -in-law concerned. I do not want to say much about this.

It should be noted that the daughter, as do the sons, demands a share, if need, be only after the death of the father and there is absolutely no question of her demanding a partition when the father is alive. Therefore I do not see why some honourable members should object to this. As the Law Minister has already dealt with the matter, the *smritis* themselves have recognised the share of the daughter to her father's property and therefore there is nothing revolutionary about this and the attempt to exclude the daughter on the ground that she does not contribute to the spiritual benefits of the father or her ancestors is, I say, unjust and unfair.

In this connection the argument is put forward, why not the daughter take a share in her husband's property and not come to ask for a share in her father's property? This appears to be a compromising formula. I may say straightaway that this compromise formula is not or will not be acceptable to women. We say that we should be recognised on a basis of equality. This code proposes to abolish the distinction that exists on the basis of sex and that should be removed. The daughter should be recognised as an heir and should enjoy her property in her full right as a daughter and as an heir to the father. As regards the question of disintegration I have already dealt with the matter. The evil could be met by different ways. Fragmentation can be stopped and consolidation could be secured by special laws. If the property goes down to a certain extent that could be sold and

the shares could be adjusted. There are different ways how this problem could be tackled and the argument on that score could not be advanced that the daughter should not get a share. Hence the Select Committee has recommended, based on this principle of equality that she should be given an equal share with the son. I appeal to the honourable members of the House to support the recommendation made practically unanimously by the Select Committee in this regard

Shri H. V. Kamath (C. P. and Berar: General): Dr. Ambedkar was not in sympathy with that.

Shrimati G. Durgabai: Therefore when it is said that the daughter takes a share both from the father and from the husband and the husband takes nothing, how about this? The Select Committee has recommended that the man also can inherit the wife's property in the same way as the wife inherits the husband's property and also the son will be given a share equal to that of the daughter's in the mother's property just as the daughter claims a share in her father's property. Therefore, there should be no difficulty even in this regard for those who oppose this Bill on these grounds there is one answer given. I do not want to quote because the time is limited and other members are anxious to speak (*Honourable Members* : Go on. Take your time) Mr. V. V. Srinivasa Iyengar pointed out in this connection that those who oppose this legislation on religious grounds labour under a misunderstanding that Hindu law has remained static from the time of Manu. That is not the position.

This takes me on to another subject and that is about the status of women with reference to the holding of an estate absolutely and not in life, the Bill seeks to remove this disqualification attached to woman's estate and it gives her the right to hold property absolutely and not for life only. The main argument in favour of limiting the estate in the case of women is that they are incapable of managing it and also that they are likely to be duped or exploited. Also it is said that they are illiterate and they do not understand the principles of management and hence there will be a strong inducement to designing male relatives to take away her right. My answer to all this is this. The House is aware that the daughter has an absolute estate in Bombay today. Therefore, on that ground I do not think they are exposed to any risk. The other argument is that we have score of instances where women have proved better managers than men. Also there is one more argument. No doubt I agree that women are

illiterate but may I ask you how many men are literate? Three out of four men continue to be illiterate today (*An honourable Member*: 'Nine out of ten'.) Therefore, the relative advantage enjoyed by men is confined only to one in four of the male population (*An honourable Members*: 'they are the sons of their mothers.'). and it should also be remembered that the percentage of literacy among women is rising very much faster today than it is among men (*Shri H. V. Kamath* : 'Question.'). With regard to the quantum of her share I have already stated the position of the Select Committee. We have recommended an equal share to the daughter. I appeal to you that you should be generous enough to endorse the recommendation made by the Select Committee without any hesitation on your part. I will now come to another subject, namely monogamy. However much I wish to speak on this subject, I do not do it because of the limited time at my disposal. Not only that, but this has been dealt with amply by the honourable the Law Minister and also by several other speakers. Many arguments have been put forward on economic and social and other grounds; even religion and spiritualism have been sought in aid to support their arguments. But feelings were expressed in a very light hearted manner: if only a man is healthy and wealthy, why not he marry and marry again! Also, that if the rule of monogamy is enforced many Hindus will become Muslims in order to secure the benefits of polygamy! I need not answer this question because I have found one lady witness very ably and effectively answering till this point. She said that if the rule of monogamy is not enforced, it may be that women will become Christians in order to secure the benefits of monogamy, but neither of them I think is serious.

Shri B. Das (Orissa : General): Do you think a Christian woman is happier than a Hindu woman?

Shrimati G. Durgabai: As the honourable the Law Minister has already stated, the force of world opinion and the practices prevailing in the whole world are there and they are in favour of monogamy. Therefore, I need not deal with this matter any more.

Neither have I time nor is it desirable for me to take the other aspects of the Bill because there are other Members who will deal with the questions like marriage and divorce; but I only wish to say something on co-parcenary. The distinction between *Mitakshara* and *Dayabhaga* came as a result of the different interpretations put by the commentators and other interpreters. Fundamentally, the basis of

joint family is there common to both. The right by birth and the principle of survivorship is a distinctive feature of *Mitakshara*. The *Dayabhaga* system has in actual experience proved very satisfactory and the Bill therefore, seeks to replace the *Mitakshara* system of inheritance by *Dayabhaga*. It is said the greater prosperity of the people in Bengal and their increasing commercial enterprise is due to a large extent to the *Dayabhaga* system. I am told that the commercial enterprise of Nattukottai Cheitiyars in Madras is largely due to their ideas of legal relations of the members of their families which approximate more to those of partnership than is the case in Brahmin joint families.

Much has been said on this subject, therefore, I do not want to labour this point. I feel that the opposition is more due to their love for this ancient institution, but those who oppose it I think oppose it because they forget the fact that Hindu Law and *Dharma* on these matters remain static and no changes have been made. Various judicial decisions have made changes from time to time into this system and the institution has been simply shorn of its characteristics. This point has been very ably answered by a very great lawyer like S. Srinivasa Ayyangar, who said that under the Hindu Law, as authoritatively interpreted by the Privy Council, the unity is broken by any member at any time by a unilateral declaration of his intention to separate from the family. This is quite sufficient to answer that charge against the breaking of the coparcenary or the replacement of the *Mitakshara* by *Dayabhaga*.

I do not want to take more time of the House. Many things have happened since the achievement of freedom and India has been participating in international conferences and pleading for human rights and also for equal treatment of Indians in foreign countries. It will be a great misfortune if at this juncture we fail to enact a Hindu Code within our own borders, in which there will be no discrimination and where there will be equality for men and women to move, to develop and to contribute to the re-building of our India. Our constitution is in the making, we have already passed the Chapter on fundamental rights, and recognised the principle of equality of everyone before law. We have also passed the provision enabling ourselves to have a uniform civil code. Therefore, I make this appeal to you. Let us not be wanting or halting in having a Code of Hindu Law for ourselves which will prove a great boon to our own society in the way in which I have already stated.

* **Pandit Lakshmi Kanta Maitra** (West Bengal: General): Sir, I am thankful to you for giving me this opportunity to put in a few words what I feel regarding the motion before the House, namely the consideration of the Hindu code. I know I am in a position of great disadvantage inasmuch as I could not be present when the Motion was debated during the first two days, as I had to be away from this place. I had, in the few moments I could snatch in the midst of my preoccupations, noticed Press reports that my honourable friend the Law Minister, Dr. Ambedkar had made a magnificent speech in support of his motion. Also, that an equally powerful speech—I am not making any comparison. I rely on reports, though there is a divergence of opinion even among the reporters that an equally powerful speech was made on the other side by Pandit Thakur Das Bhargava.

I listened with considerable attention to the four speeches that have been made in favour of the motion and the one against it. As the debate was going on yesterday, I could see the mood of the House— sometimes hilarious, but when a Member sought to differ from the main provisions of the bill, all manner of gibes and ironical cheers greeted him all through. (*Honourable Members*: 'No, no') I am glad it is not so. Well, I think it will give me some encouragement because most members know—I think every single member knows—which way I will speak. I do not know how I came to attain this sort of notoriety—I could not say, fame—that I do not support the provisions of this Bill. I will make no secret of it, (*An Honourable Member*: Why should you?) because I will speak out my convictions. I know what a delicate task it is for me to be addressing this House, constituted as it is and in the mood in which I find it. I know that I may have to rue the temerity which I have shown by taking courage in both hands to say what I feel. It is rather helpful that immediately before I address this House. I have had the opportunity of listening to my honourable sister, Shrimati Durgabai, who has made a closely reasoned speech in support of this Bill.

I must apologise to my sister for not being able to agree with her in the theories which she has so confidently assumed as being almost accepted by all. She finished her speech with a peroration, appealing to the House to give effect to the principle in the Draft constitution

* C.A. (Leg.) D., Vol. II, Part II 1st March 1949, pp. 995-1015.

providing for equality for all in the eye of the law. Yes, we have done that. She also reminded us that we have already passed, as one of the Directive Principles of the Constitution that there should be a uniform Civil Code for the whole of this country. I am glad she gave me the starting point of my speech today. When this subject was debated a couple of months ago in another place and when it was thrashed out elsewhere informally, I registered a vehement protest against this provision, as I felt, that it was nothing but an outcome of shibboleths and slogans—a uniform Civil Code for a country inhabited by 32 to 34 crores of people professing all manner of faiths : Hinduism, Sikhism, Jainism, Buddhism, Christianity ; and last but not the least, Islam! I tabled amendments that the personal law should be secure and that this was an encroachment by the Slate on the personal law of a person which the Slate had no right to make.

Maulana Hasrat Mohani (U. P. : Muslim): Hear, hear.

Shrimati Renuka Ray (West Bengal: General): That is the reason why you should support this Hindu Code.

Pandit Lakshmi Kanta Maitra : The honourable sister in front of me says that it is the reason why I should support the Hindu Code. May I say that that is the very reason why I am going to oppose the Hindu Code—one of the main reasons. You must be logical. I can understand the feelings of my sisters. Do not think that I am a hater of women, that I am a misogynist, or that I have no feeling for women. (*An Honourable Member:* 'He is a married man ') Yes I am a married man. I have a humble wife—married according to Hindu shastric rites,—a simple, unsophisticated lady, bred up and nurtured in the ideals of our Hindu homes. (*The Honourable Dr. B. R. Ambedkar:* 'What a pity') It is a pity ! May be, but I have not much of love or liken for the lavender, lipstick and vanity bag—variety of that sex. I am happy, and I am sure out of every hundred Hindu homes, 98 have got these types of wives and are quite happy. (*An Honourable Member:* 'Why 98 ? 99.9 per cent, are so') I am glad, a friend says it is 99.9 per cent, recurring. That enforces my argument. So I can tell my honourable friend Dr. Ambedkar that I have not felt the necessity for the drastic changes that he has sought to introduce in this Bill. (*The Honourable Dr. B. R. Ambedkar:* 'Neither did I feel any'.) My honourable friend says he also did not feel the necessity. If he did not really feel any necessity for these sweeping changes, then do I take it that it was due to his megalomania that we have got this Hindu Code

Bill ? I have very great admiration for my honourable friend Dr. Ambedkar, with whom I had the privilege to work for a number of years before this Assembly. I respect him. I know the performance he has been daily putting in connection with the Constitution Act, (*Honourable Members*: 'Hear, hear') I appreciate him. I admire him. But I will never appreciate what he has been doing in connection with this Social Legislation which is sure to disrupt the Hindu society by the revolutionary changes which very few of us can now realise. (*Honourable Members*: 'No revolution. No, no') Yes, I am glad it is "No no." If this Bill is passed into law.....

Babu Ramnarayan Singh (Bihar: General): No.

Pandit Lakshmi Kanta Maitra: What no ?

Babu Ramnarayan Singh : It would not be passed into law.

Pandit Lakshmi Kanta Maitra: I see. If this Bill is passed into law as it is I will then see who is a better prophet—myself or those who say "No, no."

Shri L. Krishnaswami Bharathi (Madras : General): You wait and see.

Pandit Lakshmi Kanta Maitra : Well, wait and see. Posterity will judge, and I do not think you will have to wait till posterity. You will have to wait only till the next General Election to see what the country has to say about you and your work.

Maulana Hasrat Mohani: Hear, hear. Well done.

Pandit Lakshmi Kanta Maitra: Sir, the first point raised by my sister Shrimati Durgabai was that having passed that Directive principle, you should not now object to the Hindu Code. When that Directive Principle was accepted by the House. I thought that the snake had been killed—the Hindu Code Bill,—but I now see that the snake was only scotched ; it has reared its head again and will in time spread out its fangs of venom. If you are true to your Directive Principles, if you mean to act on them, then why bring the Hindu Code Bill. Bring a Universal Civil Code applicable to Hindus, to Christians, (*Shri L Krishnaswami Bharati*: 'Will you support it ?') to Parsis, to Sikhs, to Jains, to Buddliists, to Muslims. You dare not touch the Muslims but you know that Hindu society today is in such a bad way that you can venture to do anything with it. Only a few ultra-modern persons, who are vocal, but have no real support in the country, are interested in this Bill. (*Interruption*).

Mr. Deputy Speaker: Let him proceed.

Pandit Lakshmi Kanta Maitra : Millions of dumb people, ignorant but not the less intelligent or sensible simply because they do not have the collegiate education, or are not members of the legislatures think that such a radical change in their personal law is not called for. They are not to be ignored.

Shrimati Renuka Ray : Then do not draw up the Constitution.

Pandit Lakshmi Kanta Maitra : I therefore feel that there is no sincerity in the acceptance of the principles of one uniform Civil Code for the whole country; or else, how could you, within two months of it, come out with this Hindu Code Bill which seeks to govern only the Hindus, Sikhs, Jains and Buddhists?

Shrimati Renuka Ray : Hindu Code came much before.

Pandit Lakshmi Kanta Maitra: You have omitted Christians, Muslims, Parsis.

Maulana Hasarat Mohani: Muslims will never accept any interference in their personal law.

Pandit Lakshmi Kanta Maitra : You need not have reminded me. I know that. I perfectly appreciate the proposition of my honourable friend Maulana Hasrat Mohani. But all the same. I think this is a fundamental departure from the accepted principles in the Constitution.

When my honourable friend Shrimati Durgabai said that codification is justified. She tried to prove that an irresistible case had been made out for codification. With all respect to my sister Shrimati Durgabai I submit I stand unconvinced. I can understand the necessity for codification when the law is in a state of flux or that there is much diversity of opinion, or a good deal of vagueness or uncertainty about it. Codification should in such a case be undertaken by the best legal brains in the country silting together to give shape to the various principles of law which are more or less in a confusing or uncertain state. Is that the case with regard to Hindu law in this country ?

Shri Krishna Chandra Sharma (U. P.: General); It is.

Pandit Lakshmi Kanta Maitra : I accept your statement but I feel deep regret for the colossal ignorance you have exhibited. Hindu law, if my honourable friend is a lawyer and holds that view, he has not practised. He will please excuse this friendly retort. I can stand interruptions. If you interrupt me you will be only adding ginger to my speech. After the advent of the British to this country, the Hindu

law got gradually crystallised. They did not dare to touch the personal law of the people of the country.

Babu Ramnarayan Singh: They brought in limited estate for women.

Pandit Lakshmi Kanta Maitra : I am coming to that straightaway. If I forget to reply to that point, kindly remind me. Hindu Law is such a vast subject that I can talk for hours on it, if the Chair permits me to do so. I assure you, Sir, I am not going to do that.

I protest in the first place against the manner in which this Bill has been sought to be smuggled into this House and through this House. It is an extraordinary procedure, Mr. Deputy Speaker.

Shrimati Renuka Ray : I object, Mr. Deputy-Speaker, to this insult to the House.

Pandit Lakshmi Kanta Maitra : It is not a point of order,

Shrimati Renuka Ray : This is a point of order, Sir. I object to the remarks made against the house.

Pandit Lakshmi Kanta Maitra: ‘Smuggling’ I have never understood to be an unparliamentary word. If the honourable member thinks that there is any stigma attaching to it. I would use another word in substitution thereof. I would say that the haste with this Bill sought to be passed in the House is extraordinary. Is that also an unparliamentary word ? If so, give a parliamentary expression for that. You cannot find a substitute for it. (*An Honourable Member:* ‘Commendable speed’). It is a most extraordinary procedure that has been adopted in this House. I have some little experience of parliamentary activity in this House. I have never known an occasion when a Bill of this importance and magnitude has been sought to be passed in the way it is done now.

Shri Brajeshwar Prasad (Bihar : General): It will never be passed. (*Interruption*).

Pandit Lakshmi Kanta Maitra: I like interruptions but I could not catch what he said. If the honourable-members think that by constantly interrupting me in this way the effectiveness of my speech will be marred they are mistaken.

The Bill was introduced on the last day of the last Budget session.

Babu Ramnarayan Singh : Last hour.

Pandit Lakshmi Kanta Maitra : You know very well how a Bill of this importance and magnitude, a Bill which seeks to regulate the life and conduct of Hindu society was introduced on the last day of

the last session ; how at the end of the day's work we sat beyond 5 o'clock for two hours and the honourable the Minister for Law was allowed to make a speech committing it to a Select Committee, only three or four speakers, under a rigid time limit were allowed to speak and at 7 O'clock after a short session the motion was carried. Thereafter what happened ? It went to the Select Committee. The Select Committee reported on it and on the motion for consideration of that report points of order were raised in this House. I am not going to enter into the merits of those vital points of order. They were disposed of. So great was the impatience that in the last session the honourable the Law Minister wanted to simply say that the Bill be taken into consideration and there was no speech. It was somehow got into the agenda. Very well it was done. Points of order were ruled out and it was found that it was within the competence of the House to go on with the measure as reported by the Select Committee. Now look at the way in which it is being dealt with now. In the short indulgence between the Railway Budget and the General Budget this is sought to be pushed through. There is no seriousness about it. Nobody feels its importance. The country at large is bewildered by the way in which we are dealing with a piece of legislation of this far reaching importance. If you attach real importance to it, if you really mean business, if you want that something should be done by way of revising the Hindu law as it is today, this is certainly not the way to do it. Keep the Bill for a special session. For small Banking Bills and the like you are devoting days and days. That being the case, do you mean to say that a Bill which seeks to regulate the life and conduct of the Hindu community should be dealt with in the haphazard way in which it is sought to be done ? I enter my emphatic protest against the way in which this important legislation is being considered. You know how at 3 o'clock yesterday there was the Supplementary Demand for Railways and later in the day the General Budget came in. I wish to submit, Mr. Deputy Speaker that I have not been accustomed to this kind of procedure with regard to Bills of this nature. I ask the old Members of the Legislature to recall a single precedent for this.

Babu Ramnarayan Singh : There is none.

Pandit Lakshmi Kanta Maitra : Sir, the question is, is there any real necessity for codification. I see absolutely none, because, as my learned friend Shrimati Dorgabai said, the Hindu law is well settled and it has held the field for about hundred years. The ancient Hindu

law, when the britishers came here, was interpreted with the help of Indian Pandits. They used to call them Judge Pandits who ransacked all the *Smrities* and *Dharma Shastras* and interpreted the law. This process continued till they succeeded in evolving from the rest mass of *Smrities* and *Nibhandhanas* and usages, a system of judicial principles constituting the Hindu Law which now hold the field.

Sir, it is well known that the Hindu Law has the oldest pedigree of all the known systems of jurisprudence in the world.

Dr. Mono Mohan Das (West Bengal: General): It is unjust.

Pandit Lakshmi Kanta Maitra : Yes, the Hindu law is unjust ! Hindu society is unjust! Hindus are unjust! It is not possible for anybody to reply to an interruption that the Hindu law is unjust. It took only three words to compose that interruption. I do not know if I have the capacity to reply to a sweeping charge like that made in three words 'It is unjust', Whether a system is good or bad, it is for the society to judge ; it is not for disappointed or disgraunted persons to judge. But I may say that the one surest proof of its soundness is that it has been able to stand the test of centuries. No system which is intrinsically bad, unsound or unjust can endure for a long time. Hindu law and the Hindu social system governed by it have been able to withstand the shocks and revolutions which have swept over the country during the ages past. Historic cataclysms have swept off the feet of ancient civilisation of countries like Greece, Rome, Assyria, Babylonia—which have all crumbled down—whereas Hindu culture or community, which cannot date its origin, still continues to function with all the vigor and vitality, and I am sure, Providence will allow it to function, till we set about to undermine its very foundations, by legislating in these reckless and light-hearted ways. If there was anything essentially weak in the foundations of Hinduism it would not have been able to survive the upheavals that overwhelmed it throughout its long and chequered history. This country has been subjected to foreign rule for over a thousand years. History will tell you how she has shown her wonderful adaptability, reflection will reveal to you that the Hindu law has had in it the germs of flexibility and adaptability which have enabled it to adjust itself at all times to the changing needs and to meet the challenges of the times.

Shrimati G. Durgabai: Hear, hear.

Shrimati Renuka Ray: There is a change now. (*Interruption*).

Pandit Lakshmi Kanta Maitra: I am glad that I get a spate of interruption, which gives me breathing time. Please do that singly. Mr. Deputy

Speaker, I am not so big a fool as to hope that many will be convinced by what I say, but I do hope that someone of us at least, may give some little thought to what I say. I earnestly plead that Hinduism, the Hindu Law; the Hindu culture have got immemorial traditions, age-long-moorings, which it would not perhaps be wise for us to sweep away by one stroke of the pen. I make this appeal to my friends to the right and to the left. Sir, I am apprehensive till it is just what the present Hindu Code Bill is going to do for us. I do not find anything Hindu about it. It can be more properly called an 'un-Hindu' or 'Anti-Hindu' Code.

Mr. Nazruddin Ahmad (West Bengal: Muslim): Muslim Code.

Pandit Lakshmi Kanta Maitra: Whatever else it may be, it is not a Hindu Code. It does not breathe the spirit of Hinduism : it reeks of un-Hindu ideas : a spirit of supreme contempt for anything Hindu permutes the whole Bill from the beginning to end.

Shri H. V. Kamath : What is the Hindu spirit ?

Pandit Lakshmi Kanta Maitra : Sir, do you call that Hinduism ? You please think over your system of marriage and inheritance which form the cornerstones of Hindu system or Hindu society ; are you going to undermine it in the way in which you are going to do ? That is the question that you will have to answer not only to us here but to our countrymen outside and to the posterity.

Sir, I do feel that if we codify the law in the way it is sought to be done, as a simple intellectual pastime, codification for the sake of codification, I will plead with my honourable friends that it is unwise to do that. It is not necessary. No need for it has been felt by anybody. Look at the opinions of the judges of the different High Courts and the District Courts. They are the people who have to administer the Hindu law. Has the Government got a vast volume of opinion embodying the demands from the judiciary that Hindu law require codification and that also in the way in which it is sought to be done ? No. Has there been such a general demand from the people who have to guide themselves, guide their lives and conduct by the provisions of this law ? Have they demanded it ? Has there been that kind of demand ? My honourable friend to the right says : No. It is perfectly correct.

Shri L. Krishnaswami Bharathi: He supports you.

Pandit Lakshmi Kanta Maitra: My honourable friend says : he supports me. He supports truth. The country will be taken by surprise

at what we are doing. Let us not lay the flattering unction to our souls that we are doing a wise thing. I know I cannot deceive myself in the way in which you are doing. Even if it were wise, I would not have thought it necessary to attempt that codification, because of the reasons I have given. You cannot give any uniformity to it whatsoever; and if Hinduism is anything, it is because of its fundamental unity in the midst of diversity. That constitutes the essence of Hinduism. Hindu law and Hindu culture. In a vast country like this you cannot expect a uniformity standardized sort of life ignoring the natural variety. If you did it, it is no wonder that you would come to grief. You may not realize it just now, but realization would come when the time comes. After all even after this codification, is it going to serve your end ? I say : no. The honourable member from Mysore yesterday made a speech. He said, now the work has been made so simple that by buying a publication worth four annas or six annas you could know exactly what the Hindu law stood for. So many friends shout 'quite right' 'quite right', but do these enthusiasts realize that even the sponsor of the Bill does not pretend that he is going to codify the whole law of the Hindus ? In the preamble he makes a modest claim, not that kind of preposterous claim ; He says :

"Whereas it is expedient to amend and codify *certain branches of the Hindu law now in force in the Province of India.*" Therefore what is proposed to be done is to codify certain branches, such as the law of marriage, law of inheritance and law of adoption. Broadly speaking these are the main things.

Shri L. Krishnaswami Bharathi: What is left.

Pandit Lakshmi Kanta Maitra : My honourable friend asks what is left in the Hindu Law. Does my honourable friend think that this is all that the Hindu Law stands for ? These three branches cover the entire field of Hindu life and activity in this country? I can only sympathise with his ignorance. What about joint family property, partition, joint family business, religious and charitable trusts, gifts, transfer *inter vivos*, and other things ? They constitute a much vaster field which is left uncovered.

Shri L. Krishnaswami Bharathi: Wills is also referred to.

Pandit Lakshmi Kanta Maitra : A mere reference to Wills does not mean that it has received a full and comprehensive treatment. In any case, I am grateful to Dr. Ambedkar. He is modest; he never claims to have brought forward an exhaustive Code. If my honourable friends

on my right think this is all the Hindu Code, they are out Ambedkaring Ambedkar. Sir, even if this Hindu Code is adopted in the form in which it has been brought before us, it will rail of its purpose for another reason also. My honourable sister Durgabai and my honourable friend from Mysore said yesterday, well, why do you worry about this : this will not lead to fragmentation of agricultural property. I do not know whether they realised that they were furnishing one of the strongest arguments for rejecting this Bill. Unconsciously, my sister and brother have furnished one of the strangest arguments for the rejection of the Bill outright. You are going to regulate the disposition of property. It is now generally accepted that 90 per cent. of the immoveable property in this country is in the villages, in the provinces, leaving aside the Centrally administered areas. Therefore, they would be out of the purview of this Code. To house or other immovable property inside the Centrally administered areas, directly under the Government of India, this Code will apply. Then, how is this claim satisfied that this Code applies to all the Hindus in all provinces ? Thus is a very strong argument for throwing out the Bill; throwing out on the ground that it fails in its objective. Besides the three categories I have mentioned, there are so many things which have yet to be covered. The argument would be that provincial agricultural land is purely a provincial subject according to the Constitution Act; so also are religious and charitable trust properties, so also joint family property, and partition, self acquisitions, etc. When this vast field would lie uncovered. I ask the House seriously whether they are really satisfied with the claim of those who think that this is going to be an exhaustive Code or an all embracing Code and that it provides the panacea for all the social and economic ills to which Hindu flesh is heir to. Do they really believe that the 139 sections will be the vitamin tablets which will go to vitalise the whole Hindu society ? You may hold that view ; the House may hold that view; I do not hold that view. On the other hand, I think this is premature, absolutely premature. Even if the Hindu Code be passed into law, it could not come into force all until the provincial Governments pass similar legislation in their own provinces for devolution of agricultural land. Every single province will have to do it before this Act could come into force in all the provinces. I am not now talking of the states ; I am talking of the provinces. Besides, it is not inconceivable that the provinces may be taking different decisions. It is not for the Central Government to force the Provincial Governments to legislate on a particular line of succession, a particular line of devolution of agricultural property according to its dictates. Then

provincial autonomy will fail to the ground and I am certain that the provincial Ministries will not touch such a proposal from the Centre even with a pair of tongs if such direction went counter to their own views.

Mr. Deputy Speaker: May I state for the information of the House that there are as many as 37 members—I have received chits, letters and so on from them—who are all anxious—most of them, if not all—to put forward their view points on this Bill. I would therefore suggest, however interesting the speech of the honourable member might be, that the points that have been raised on one side in support of the Bill may kindly be answered by others. Thus, all the points would be threshed out and this will contribute to the richness of the debate as well. Dr. Ambedkar has given a clear analysis of the Code with arguments. Of course, the House would like to know how those points are wrong and how they are met on the other side. Therefore, greater attention may be paid to that and also regard may be had to the number of speakers that are in the waiting list.

Shri H. V. Kamath : May I request you, Sir, to consider, in view of the vital importance of this Bill, that two or three days time is hardly adequate and that at least a week or two should be allotted for general discussion ?

Pandit Lakshmi Kanta Maitra : With great respect to the views which were expressed by you, Sir, if I have given the impression that I was filibustering, I am sorry. I may tell you, Sir, that this Bill is of such great importance that it would be utterly unfair to the House if you ask us to conclude this general discussion thus. Because, in the first stage, we had not the slightest opportunity to make a speech ; this is the stage after gating us committed to the principle of the Bill, in which we have to see how best we can serve our country, even within the limited sphere. If there are 36 speakers, there is the clearest possible indication that the Bill has now attracted serious attention and they want to give their viewpoints. Therefore, there is no particular sanctity to the period that is laid down for debates of this kind.

If we do not conclude the discussion today, certainly more days must be found for further discussion of this. This honourable the Law Minister is very zealous about it; he can give another additional session for this ; if not, even in this session four or five additional days could be found. The matter must be thoroughly debated. I hope the House will not accept closure; nor do I think that a closure will be moved

by the Chief Whip and a motion of this kind cannot be closed by whipping without ascertaining that there has been a full and sufficient debate.

Shri H. V. Kamath : Another point. May I request you, Sir, that the provincial MLAs who are not present here also be invited to come and participate in the discussion ?

Mr. Deputy Speaker: We will now adjourn

Pandit Lakshmi Kanta Maitra : I have not yet finished, Sir, I take it I may resume after Lunch.

Mr. Deputy Speaker : Yes. We will now adjourn for Lunch.

The Assembly then adjourned for Lunch till Half Past Two of the Clock,

The Assembly re-assembled after Lunch at Half Past Two of the Clock, Shri S.V. Krishnamoorthy Rao (one of the Panel of Chairmen) in the Chair.

Pandit Lakshmi Kanta Maitra : Before the House adjourned for the recess, I was trying to explain to it how this Code was bound to fail of its purpose in some of the material particulars. I explained that there was no necessity for codification as the Hindu law in all its aspects was not only well established but well understood by the people who were governed by it. I also explained that those who are to administer this Act—I mean the Judges, the judiciary of the land, including the highest—have never demanded that the law should be codified, and I also explained that the scope of the Bill was very very limited, and that besides providing for marriage, adoption and inheritance there was a water field which was left uncovered. While referring to the agricultural land, I may also point out to the House that according to the series of judicial decisions in this country, the question of land involves and embraces, a vast variety of interests and subjects, from the landlord of the topmost grade down to the tiller of the soil, the man behind the plough: and if the Provincial Governments of the different countries were to regulate the distribution of their property in different ways other than that indicated by the Central Act there was bound to be confusion worse confounded.

Then, Sir, I would like to mention that the Code has not only tried digesting the existing Hindu law within its limited sphere, but in that process of collating and digesting, a number of things have been

introduced ; a number of subjects, particularly in the matter of marriage and inheritance, which go diametrically against the established notions of the Hindus. Therefore, it is not merely a case of digesting, collating: not also merely a question of amending—because amending is a very mild expression: it does a good deal more than that. It introduces innovations, far-reaching changes, not only in the law of marriage but also in the law of inheritance. Sir, I wish I could explain to the House the full implications of the changes involved. But I am physically unequal to the task. I will try rapidly to explain how I look at these changes.

The two categories of changes which in my opinion and also in the opinion of the vast majority of my countrymen are very radical and sweeping, are those that relate to marriage and inheritance. Sir, my, honourable friend has no doubt provided for sacramental marriage in his Code. I do not know if in this country, up to the moment the Bill was drafted and given the shape it has now had, people really demanded of the Government of the land to prescribe a procedure by which marriages in this country are to be contracted. I think it is nobody's case that prior to the introduction of this Bill, people had not been marrying or there was a good deal of difficulty in getting ourselves married. But how the question of marriage would be improved I do not know. My fundamental objection to these marriages is, that while on the one hand it characterises one form of marriage as sacramental marriage, inside this sacramental cover there has been introduced a number of things which cannot conceivably be called sacramental or sacred ceremonial marriage. Look at the prohibited degrees. Look at the character of the parties. It can easily be an inter-caste marriage, a marriage outside caste, marriage of *sagotras*, and at the same time it would be sacramental marriage. It is rather curious, Sir, that while a sacramental form of marriage is being prescribed, along side with it there is a civil marriage. I do not know how it finds a place in the Hindu code itself. However, they provided an entirely different thing but a most objectionable thing is that while in the sacramental form of marriage one particular class of prohibited degree is put in, in the civil marriage an entirely different category is put; the ambit of the prohibited degree is narrowed down, so much so that the marriage in many cases becomes purely incestuous marriage. I do not understand, Sir, what necessity was there for this unless we by this measure, want to give direct encouragement to all manner of moral looseness and

lawlessness, which unfortunately is invading the youth of this country. Are we here going to give this the *imprimatur* of our sanction ? That is the question I would ask my honourable friend very seriously to consider and answer, not in a spirit of banter or levity but with all the seriousness that a difficult social problem demands.

I feel that the basic conception of Hindu marriage has suffered the rudest possible shock by introduction into it of the matter of divorce which is so repugnant to Hindu notions of marriage. Hindu marriage as ought to be known to every one who professes himself to be a Hindu, who honestly takes pride in calling himself a Hindu, as I myself do, is a sacrament and not a civil contract and as such it will not be difficult for him to admit that divorce is absolutely foreign to its concept. Union by marriage, according to the Hindu Shastras is sacred and absolutely indissoluble (*Interruption*). If you want me to cut short my speech you will kindly interrupt me only on important matters. I am not afraid of interruptions—I know how to answer them, I can answer them in my own way. But if you keep on interrupting me, my speech will be unduly long and you also may not feel happy over the replies I will give.

Babu Ramnarayan Singh : It ought to be so.

Pandit Lakshmi Kanta Maitra : The institution of divorce in this country, or in any country for the matter of that, has not been found to promote the well-being of the community for whose benefit it exists. As an humble student of sociology, I have had occasions to read reports of matrimonial courts. An honourable Member referred to Judge Lindsay and I believe he also had in view the “Revolt of the Youth”. I do not know whether my honourable friend realised that he unconsciously provided one of the stronger arguments for opposing this form of marriage when he referred to that great Judge. I want honourable members carefully to consider, if within the family circle we should permit matrimonial alliances to spring up between a person and his mother’s brother’s daughter or his father’s sister’s daughter, as has, been provided in this Hindu Code.

Shri H. V. Kamath : It is common.

Pandit Lakshmi Kanta Maitra : It may be common in South India, but South India is not the whole of India. My whole point is that if there is a particular form of practice in a particular part of the country, you should not go out of your way to see that it is provided for the whole country.

I come from a province which is not in the South. It is a backward province, educationally, culturally—call whatever you like that benighted backward province of Bengal. I know of the domestic conditions of the families inhabiting there. Go to any Hindu household in Bengal you will find that besides the sons, daughters, and other natural heirs, all manner of relations, sisters' sons, nephews, nieces, maternal uncles' sons, uncles' daughters, all knit together and maintained in the joint family system. They are all regulated and restrained by moral and religious influences. You will find it in almost every household.

The Honourable Dr. B. R. Ambedkar (Minister of Law) : What is the difficulty ?

Pandit Lakshmi Kanta Maitra: I shall tell you where the difficulty is. There is no difficulty for those who have no family of their own. The difficulty happens in this way. For dividing trouble here I shall illustrate with reference to myself. If in my family my sons, daughters, father's sisters' daughters and sons, mother's daughter's sons and daughters etc. sister's daughters were to live together and if one of my sons contracts intimacy with his first cousin even when he is a minor or an adolescent, knowing human nature being what it is, do you eliminate the possibility of this attachment growing up and culminating in marriage ? If you do, you are poor students of history, poor students of sociology and poor students of psychology. After all, the call of human flesh is there and no legislation, however omnipotent can root out this natural and powerful impulse in mankind. If you sanction matrimonial unions between blood relations—between closest relations in the household, I shudder to think what would happen to society ? The Honourable Dr. B. R. Ambedkar: Nothing.

Pandit Lakshmi Kanta Maitra : Nothing of course, if you do not care for society ; nothing, of course, if you believe in a kind of society only where there are only social butterflies sucking honey here and there and making merry ; but I am for a society which has attained or will attain for India the position which is her own, the position for which she is respected all the world over. If you throw away all these things, if you put up a sort of Vademecum, a Hindu Code, where you find all sorts of marriages, between first cousins and blood-relations sanctioned, if you legalise all these incestuous marriages the society will be a sink of moral degradation.