

Shri L. Krishnaswami Bharathi: We protest the use of the word 'incestuous'. It is very wrong to condemn outright a system which is prevailing in large parts of the country. It is a reflection on a whole province.

Mr. Chairman : Order, order.

Pandit Lakshmi Kanta Maitra : Therefore, I cannot but raise my voice of protest against such a system, because I believe that marriage between first cousins is not conducive to the well being of society from the biological and engenic points of view and is opposed to the notions of Hindu Law.

L. Krishnaswami Bharathi: No, no.

Pandit Lakshmi Kanta Maitra: Thus, not only from the point of view of society, but also for the peace and purity of family life, I want that this should be condemned. It is immoral and outrageous. . Sir, my honourable sister, Durgabai, said quite rightly, that monogamy should not be opposed. I do not know of any honourable Member in this House who really does not want monogamy. Monogamy everyone of us want, not for our mere likes ; circumstances have forced us to accept this monogamous marriage. It is a fact. Polygamy has passed away completely from the upper classes of this country not by legislation. That is my main contention. If you want to eradicate a social evil you should work up from within, not from above. If my honourable friends look to the history of this country, they will find my position amply proved. We all know the miseries and sufferings of Hindu widows. There are so many cases of child and young widows which break our hearts or at any rate it ought to break our hearts. In fact, in the past generation, the late Pandit Vidyasagar of hallowed memory was so much moved by it that he got passed the Hindu Widow Remarriage Act. But the country was not prepared for it and what was the result ? The Act virtually became a dead letter and has remained so till now. That is bound to be the fate of all social legislation which have not originated from a demand from within the society.

I was telling the house that polygamy has virtually disappeared from the country for a variety of reasons such as a growing sense of responsibility in conjugal life, Growing consciousness among womanhood and above all the interplay of all manner of forces, most important of which is economic, which makes it impossible to indulge in the luxury of having many wives at the same time. Therefore, I

say, there is no necessity for any legislation for it. It has automatically died out; the custom has fallen into disuse. It may be argued that there are some strata of society where it prevails. There also I want to sound a note of warning. You cannot stop it by force or compulsion. You have got to create public opinion and when these unfortunate brethren of ours come to realise the evils of this system they will discard it. If, on the other hand, without bringing up their standard, without creating a consciousness in them by education and public opinion you try to thrust your legislation down their throats, I would request you to realise the effect that it will have on them. Just as my honourable sister was telling us they will say : This is our society ; it is such a cast-iron mould and they would not allow us to have another wife. We will go to another form of society, embrace another religion where this is permissible. Any sociologist, any man interested in social reform will have to pay heed to that as well. The fear is not altogether an unfounded one. Anyway I feel that if you codified the Hindu law, all that should have been done was to prescribe the essentials of marriage, the requirements on the part of the contracting parties, their ages, their mental and physical capacity, prohibited degrees of relationship and things like that. Those who believe in social ceremonies and functions, may go through the form of ceremonial marriage but the essentials of marriage should not be allowed to vary between civil marriage and sacramental marriage. If there is a demand in the country for inter-caste marriages I will not stand in its way. If people want to marry outside their castes, let them by all means invoke the provisions of the Civil Marriage Act of 1874. There is nothing at present to stand in the way of people who are anxious to marry outside their castes. If there are *bona fide* attachments among intercaste boys and girls, it is not that we want to stop or prevent them. They have got the facilities open to them even under the existing law, the law to which I referred earlier. You can change that law. You can repeal or modify certain provisions so that people marrying under that Act will have their children governed not by the Indian Succession Act as at present but by the Hindu Law. I have no objection to that but I fail to understand why in a Hindu Code side by side with the sacramental marriage you are allowing civil marriage. This must be completely taken out of the Code which should have nothing to do with it. There may be a separate civil marriage law for all.

Sir, I personally feel that if you insist on having the question of divorce in it, then you will have to face the music of it everywhere

in the country and unless as public men you have your ears stuffed with cotton, as most public men among us have, you will have to pay very very dearly for it. In any case, as a Hindu, I emphatically protest against the introduction of this heterodox concept of divorce into the scheme of Hindu marriage.

Now let us come to the question of inheritance. There has also been an innovation in this regard though I do not want to go into very great details. But there also I would like to tell my honourable sister, Shrimati Durgabai, that we are firm believers in the judgement of the Hindu law-givers of old : we are firm believers in the equality of the sexes, though not in the sense in which she talks or her friends talk. Equality must be in the sense of equality of opportunity. You cannot make physically man and woman the same. Equality must therefore have some other meaning. There is no feeling of inferiority attached to women, there is no discrimination with regard to the education of daughters or their marriage. Our shastras have provided :

“Kanyapyevam Palaniya, Shikshaniyatigatant Deya Boraya Vidusha, Dhana Ratna Samanvita.”

It means that the daughter also should be educated in the same way as boys, and in the fullness of time, given over in marriage to a proper groom with dowry including rich jewellery. And in my society, in the Hindu society it is enjoined :

“Yatra naryastu Pujoyante, Ramante Tatra Devata.”

It means that Gods bless the households where women are honoured. Women folk has been accorded such a high and exalted place in Hindu society. I do not deny that there may be hard cases: there are hard cases, where women are not treated in the way they ought to be. But if you have fallen off the ideal of your sages, your saints, your lawgivers or your leaders, they are not to blame for they have not let you down. The blame attaches to us. If you cannot approximate to the ideals of Mahatma Gandhi in your conduct but preach them in season and out of season or take his name in everything but not follow in his footsteps, the fault is not Mahatmaji's, the fault is ours. Similarly you cannot impugn your Hindu Shastras or law-givers. They have set the standards quite high and it is for you to act up to them. Notwithstanding our best efforts it is not possible to eliminate every case of injustice or hardship. Human institutions are imperfect. No human ingenuity can devise any procedure, any machinery or any agency by which all possibilities of social injustice can be completely eliminated. Let us be frank about that and let us try to realise that.

My honourable friend said in connection with the management of property that she knows of women who are better managers of property ... ,

The Honourable Shri N. V. Gadgil (Minister of Works, Mines and Power): Of men also !

Pandit Lakshmi Kanta Maitra : Exactly, of men also. I do not think there is any single married man in this House who will dispute that proposition. In the household she is the ruler: she is all in all. The tallest of us. The Law Minister or his honourable colleague will have to crouch before her however much he may thunder here. There you are ruled not by the rod, but by a strange sort of a whip, a soft, sweet silken cord made up of filaments of love which takes off all harshness and roughness, and menfolk have cheerfully submitted to her rule. She is the queen of the household. Many married people, I think most married people, would frankly admit that.

Shri L. Krishnaswami Bharathi: That is how we have cheated them.

Pandit Lakshmi Kanta Maitra: We are now going to cheat them by this Code. Do you think the greatest justice will be done to them if you simply give them right to property. Mr. Chairman, according to the Hindu notions, a girl has a distinct position, a role entirely different from that of a son. Any honourable member who has read Sanskrit literature or has any knowledge of it—I cannot make any presumption either way, whether most people know it or no one knows it . . .

An Honourable Member: The Law Member knows it.

Pandit Lakshmi Kanta Maitra : He may know it, he is a scholar. Well, in *Sakuntala* of our immortal poet, after the marriage of Sakuntala and her departure to her husband's place, there occurs a *Sloka* which is classical and which gives you in a nutshell how the Hindu lawgivers and the Hindu society look upon their girlhood. Immediately after Sakuntala left the hermitage for her husband's place, sage Kanwa said, "Today I feel relieved" :

*"Artho Hi Kanya Parakiya Eva Tarn Adya Sampreshya Pratigrahita.
Jati mamayang Bishadah Prakamam Pratyarpit Nyasa Ivantaratma."*

"This my heart, my inner self today has been relieved of a heavy burden and I get that inner pleasure of relief." What was that burden? A daughter in the family is like a trust deposit of somebody else's

money and just as one feels relieved as soon as that trust or deposit is made over to his rightful owner. So do I feel today having made over Sakuntala to her husband. (*Interruption*) Not in these days of law of limitation but I am talking of those days. "Nyasa", means a deposit, trust. If my honourable friend Dr. Kamath wants further interpretation, I am perfectly willing to give that outside the Chamber.

Shri H. V. Kamath : But I am not a doctor ?

Pandit Lakshmi Kanta Maitra: More than a doctor: you are doctor, philosopher, lawyer, and legislator. I have great respect for you ; you are a nice chap and above all a great patriot.

Sir, that is the conception of girls. So, if the Hindu law-givers did not give them a right of ownership equal to that of the son in the family, it was not because of any aversion, not because of any dislike but because of the simple reason that the girl is made for her husband's family; she is not to become a part and parcel of the family where she is born. That is the whole thing. And therefore no question of injustice or inequality arises. I do not know of any school of Hindu law prevalent in any part of the country where a daughter has been given a distinct share equal to that of the son in the property of her father.

Shri A. Karunakaran Menon (Madras : General): It exists in Malabar.

Pandit Lakshmi Kanta Maitra : I am glad that in the South they have got so many things.

Sreematty Annie Mascarene (Travancore State): In Travancore too, sons and daughters share equally.

Pandit Lakshmi Kanta Maitra : I am grateful for this information but all such information emerges from the South ; and if my friends from the South . . .

Shrimati Hansa Mehta (Bombay : General): Are they not Hindus in the South ?

Pandit Lakshmi Kanta Maitra: Yes, but if they are proud of all that in the South, let them not deny us our legitimate right to feel proud of our manners and customs in the North and North-east. That is my humble submission to them. I do not like this type of argument. Because some order of succession, some order of inheritance prevalent in Bombay or some other part has been found suitable there, therefore it must be bodily transplanted into Bengal and elsewhere

regardless of all considerations whether it is a plant which can grow and thrive in that particular soil. If a particular institution has been found to work very satisfactorily in the South, it must be allowed to work there ; But if it is not found suitable for the soil of the North or the soil of the East or the soil of the West, I do not see any reason or justification for forcibly transplanting it there.

In fact my one very serious objection to the Hindu Code is this: for this craze for theoretical uniformity you ignore completely variety; you have got these things in this part and those things in that part: that itself shows that in this vast country of ours, peculiar social manners and customs have developed according to the needs of particular places or areas. They must be left undisturbed. In clause 7, however, the Bill provides an overriding power by which all usages, immemorial customs which have the sanction of law should be scrapped. I think it is clause 7.

An Honourable Member: It is clause 4.

Pandit Lakshmi Kanta Maitra : I will take it on my friend's authority. Sir, this in my opinion, is highly objectionable. Clear Proof of usage out-weighs the written text of Law. This is a well established dictum.

There are diversities of customs and manners because of the diverse needs of the people that compose this vast continent. And therefore:

Veda vibhinna Smritayah vibhinna,

Nasau munir Yasya matam Na Bhinnam.

Dharmasya Tattwam Nihitam Guhayam. ,

Mahajano yena Gatah Sa Pantha

An Honourable Member: Let us all be *mahajans*.

Pandit Lakshmi Kanta Maitra: *Mahajan* does not mean a money-lender.

That is the most unkindest cut of all. That indicates the depth to which society has fallen. We cannot think except in terms of rupee or dollar or shilling or pence. Mahajan has been variously interpreted : as great men; or majority of men. Take it in whatever sense you like. ,

Veda khila Sadachar Swashya cha Priyamatmana,

Yasmin Deshe Yadachara

I do not want to weary this House with a lot of other quotations but this is such a subject that I cannot altogether avoid it if I am to convince honourable Members of the justice of my contention

based on Hindu shastras. I have to make myself clear before the House. It may reject what I say ; it does not matter; but I represent a constituency—not a purely territorial one—but the constituency of a vast body of men and women who believe in Hinduism and Hindu Society governed by the injunctions of Hindu sages of old. Sir, I represent for the time being the views of that constituency. It is true that I have been returned to this Constituent Assembly by indirect election—with four or five votes only, but I may assure the House that I have fought some of the most contested elections in the country from some of the most important constituencies. Immediately before coming to this Constituent Assembly I was representing the city of Calcutta in the Central Legislature. Before that, I was representing the Presidency Division composed of several districts with lakhs and lakhs of people, and the Presidency Division is admitted to be one of the most cultured divisions in India. I know the people. I know their pulse. My native town is a famous seat of ancient classical learning. It is my district Nadia, in Bengal, that gave the new schools of *Smritis*, *Tantras*, *Nyaya*, *Baishnava* Philosophy etc. I am not digressing but I shall be failing in my duty to the inheritors of this great culture if I did not try to place before the House their views and ideas with regard to these matters of the Hindu Code. I owe it to myself and to my community to give my views so that judgement may not go against us by default. Any way, Let me hurry on.

I have shown you the place, the honour, which our *Shastras* have given to our women. The famous queen Indumali was dead and King Ajah was bemoaning her death thus :

*Grihini Sachiva Mittah Sakhi Priya Shishya Lalita Kalavidhan,
Karmia Bimalkhena Mritywui Harata vade King Na Ma Hritam*

“Oh ruthless God of Death ! What have you not taken away from me? What mischief have you not done to me ? By one blow, you have taken away one, who was my *Grihini*—you know what *Grihini* means, the queen of the house—who was my *Sachiva*—*Sachiva* means Minister. She was my minister. Not only was she the queen of my family but my minister, my bosom friend in privacy and my devoted playmate in love.”

That, Sir, is the position which our womenfolk used to occupy in our society. Therefore, it cannot be said that out of sheer greed, grouse, animosity or jealousy or whatever you call it, the womenfolk has been relegated to a position of interiority. If she has not been given a distinct

status in respect of inheritance co-equal with the son, it is because she is meant for some other family than her father's and that the property is to be settled with the persons who will keep up the family, who will maintain the lineage and preserve the sanctity of the family traditions, manners and customs and who will continue the practices and the ceremonies of the family. As soon as a girl is married she becomes integrated into another family ; and according to the Hindu conception the status of a wife in the husband's family is a most respectable status—far more respectable than the status of the girl in her own father's house. I will again quote Kalidas' Shakuntala. When Queen Shakuntala could not be recognised by King Dushyanta, who said: " I do not remember to have married you." Thereupon Shakuntala was exhorted by the Rishi to remain in her husband's House even as a maid as that was a more honourable position than to be in her father's place.

The Honourable Shri N. V. Gadgil: That is how men behave !

Shri M. Tirumala Rao (Madras : General): He was suffering from loss of memory.

Pandit Lakshini Kanta Maitra : No, he was not suffering from loss of memory. It was because King Dushanata was under a curse by which he was to forget everything connected with his marriage; not that he was guilty of a deliberate moral lapse. Amazing ignorance !

Shri B. N. Munavalli (Bombay States): What an excuse !

Pandit Lakshini Kanta Maitra : I am not the author of Shakuntala. Call it an excuse or whatever you like, I do not mind. But I quoted Shakuntala because its author Kalidas is a world Poet commanding respect all over the world : and notwithstanding all your disparagement of Shakuntala, it will remain the ideal literary master-piece of the world for all time. There ought to be some limit to which disparagement of our national institutions, culture and traditions can be tolerated. Mr. Chairman, I am reminded of a very famous passage in Plato— I cannot recall his words exactly now—but he said, in effect: "Anybody who is false to his nation's traditions, to his glorious heritage and culture is a traitor and is a person who should be given capital punishment". I do not understand the patriotism of those, the nationalism of those, who have nothing but contempt and jeer for anything that is their ancient culture and heritage.

Shri H. V. Kamath : You have misunderstood. Nobody is against our ancient cultures.

Pandit Lakshmi Kanta Maitra : We might differ on many matters in connection with this Code, but nobody's purpose will be served—neither mine, nor yours—by trying to belittle our great ancient sages. They are not coming here for applause. They do not care for your radio propaganda and newspaper Hashes. They did what they considered to be in the best interests of the Community. If today you are going to make a daughter co-equal with the son in regard to inheritance, I am afraid a good deal of complications would arise. When the girl knows that she is getting a share in her father's property, when her brothers know that their sister is a co-sharer and as such the property will pass off to some other family with her marriage, whose interest would it be to marry off the girl? I want to know.

Shri H. V. Kamath : Her own.

Pandit Lakshmi Kanta Maitra : My honourable friend says it will be the girl's own interest to marry as quickly as possible. I feel, Sir, that such a girl will find many a pitfall lying about her way.

Shrimati G. Durgabai: You distrust her ?

Pandit Lakshmi Kanta Maitra : Not a question of distrust. The Hindu sages have provided that marriages should be negotiated in the best interests of the pair by the guardians of the pair.

Shrimati Renuka Ray : What did Shakuntala do ?

Pandit Lakshmi Kanta Maitra: I know that Shakuntala did not marry that way, but my friend and sister's interruption reminds me of a story. A man had the Mahabharata and the Ramayana recited in his house for six months. Thereafter he asked his daughter. "You have heard the story. What is the lesson you derive ?" "Well," replied the daughter, "from the Mahabharata I learn that I can have five husbands as Draupadi had five husbands." From the whole of the Mahabharata this is all that she learnt. Enquired about the lesson she derived from the Ramayana the daughter in law replied, "It is very clear. As soon as my husband dies I can be married to my husband's brother." "You know what happened after Ravana died, his widow Mandodari married his brother Bibhisana." Sir, according to Hindu Law there have been several systems of marriage. There was the Gandharva form of marriage for which we have not provided here, though we have the provisions in the Code for Civil Marriage to cover all manner of such cases. So, I say that in an ordinary Hindu house-hold, under this codified Hindu Law, you are going to bring about a change in the relationship between the various members. Is this going to make for the sweetness of relationship or peace in home life?

Babu Ramnarayan Singh : By no means.

Pandit Lakshmi Kanta Maitra : There is not going to be that sweet relationship between brothers and sisters and sisters' husbands that now exists, because after a girl is married, she will have her husband or her son or somebody else in her father-in-law's house to control the property of her father's family and there is bound to be bitterness, bad blood and jealously litigation and all the rest of it. Ultimately the family will break up. Are we going to enact a Code which will facilitate the breaking up of our households ? Will the *summum bonum* of Social life be reached when every single family is broken up and domestic peace driven away? It is for you to consider whether this should be done. I feel that these things are bound to happen.

Sir, a girl may be educated. But after her marriage when she goes to her father-in-law's house, she is being guided and dictated in all matters either by her husband or by some relation of his and it will not be in her interest to endow her with a share in her father's property by legislation here. You will say you will pass another legislation to prevent her from being dictated in respect of the property she has got from her father. If you are going to endlessly legislate in that way, in order that you may have the intellectual satisfaction of having a Hindu Code, I would leave you alone. I therefore, think that this is a revolutionary change and this should not be introduced. This does not mean that I am against making provision for girls. By all means make provision for them. Make any provision for unmarried girls. Make her marriage and her education the first charge on her father's property. Make it absolute charge on that property so that on her marriage when she will be absorbed in the family of her husband, she will be divested of her interest in her father's property. But that is not what you are doing. You talk of equality of sex, justice and fairness but are allowing the girl the right to inherit not only her father's property equally with the son, but also to share her husband's property or father-in-law's property. This is equality with a vengeance. The girl should not get property from both sides. This will also lead to further fragmentation of property.

Shrimati G. Durgabai: The boy will get a share of his mother's property ?

Pandit Lakshmi Kanta Maitra : A daughter whether married, unmarried or widowed will get her mother's property. Let my

honourable friend read the Hindu Law. Even as it is under the Hindu Law, all categories of daughters are entitled to *Streedhana* property.

Shrimati G. Durgabai: No, no, no, no.

Pandit Lakshmi Kanta Maitra : I say, yes, yes, yes, yes. Thus the daughter is provided according to the present Hindu Law. I cannot go on correcting the misapprehensions of others. The Hindu law is there. The members of the legal profession know it. I need not labour the point I believe, that there is sure to be more fragmentation. This will inevitably lead to increased testamentary disposition and consequent litigation and ultimate ruination.

An Honourable Member: Already there is fragmentation.

Pandit Lakshmi Kanta Maitra : Yes, but two wrongs do not make one right. Because there is fragmentation already, is no argument for making provision for further fragmentation in the shape of more shares to property.

Sir, in this field of inheritance, another innovation has been introduced and I think that is the most devastating of all changes.

Shri B. Das : That is not the principle of the Bill. You can drop it.

Pandit Lakshmi Kanta Maitra : What is the principle of the Bill? Shri B. Das ; I am referring to partition and that is not the main principle.

Pandit Lakshmi Kanta Maitra : The system of inheritance is the backbone of the Bill. Under this Bill you are going to scrap the Mitakshara law. Make no mistake about it. The right to property by birth and survivorship, which is the basic foundation of Mitakshara law, is going to be swept away. This Mitakshara system of law has been governing the country for hundreds of years till there was evolved in Bengal the *Dayabhaga* law founded on the principle of natural justice and affection. Many of my friends who are supporters of the Bill have told me that I should be the last person to oppose it inasmuch as it introduces the principle of inheritance enunciated in the *Dayabhaga* law of my province. My reply to them was that that was no satisfaction to me. I do not want even if the well-meaning Social Reformers in India wants that that system should be adopted. Even if a superman or dictator comes and tells me: 'Look here, the law of inheritance in Bengal should be made applicable to all India', I would be the first man to raise my voice of protest against it. The

old system has stood the test of time. The change might suit my province, but not all India. I do not want that this *Mitakshara* law of inheritance should be scrapped in favour of one which is neither the *Mitakshara* law of inheritance nor the *Dayabhaga* law. It is a hybrid mixture of both which is conducive to the welfare of none, tending to bring about the disintegration and downfall of Hindu society as it will completely unsettle a well settled order of things.

I think I have exhausted the patience of the House and must bring my speech to a close. (*Honourable Members* : 'No, no') I have dealt with inheritance, I have dealt with marriage. I feel that those two branches of Hindu law which are sought to be drastically amended should get fuller consideration. But it will be a tragedy for India, for the Hindu society, if in the name of reform, you uproot the Hindus from their safe and ancient moorings which have protected them from the stress and storm of centuries. Let me again repeat that our Shastras, besides making elaborate provisions for all matters of social life, left a wide field to well-established local customs and usages. They have been very salutary in their effect, as stabilizing forces in society. If we ignore them and make a fetish of codification we will cast Hindu Law into a mould absolutely inflexible, rigid and cast iron; we will be importing into it unnecessarily a character which never belong to it. We will be transforming it into something, which will never be able to adjust itself to the needs of times, as it has been in the past.

Sir, before I conclude, I will touch on the argument which has been advanced here also, but which has been very lightly brushed aside by those who do not like it. It has been argued—and I believe perfectly rightly—that this Legislature is not competent to deal with it.

Shri L. Krishnaswami Bharathi: Legally incompetent ?

Pandit Lakshmi Kanta Maitra: Yes. I feel that it is not competent. In any case, if you take shelter behind legal formation, I will tell you, morally you have absolutely no justification for passing this Code. I know this objection was raised not only from people like us, but by people very highly placed in the political life of this country, by people with high political stature ; for instance, by a man of the eminence and standing of the Honourable Dr. Rajendra Prasad, the President of the Indian Constituent Assembly, the sovereign body by which in season and out of season, we are all swearing. I want to know whether or not his views deserve our best consideration. Personally, I have very great respect for him. He is not only the uncrowned

monarch of Bihar, but he is one of the undisputed leaders of India. Dr. Rajendra Prasad has given the clearest possible indication. He knows not only the people of Bihar but Bengal as well and also other provinces. He sat up his practice in Calcutta and upto the middle of his life he lived in Calcutta. It is not for nothing that he gave the warning that the Constituent Assembly constituted as it is to-day, ought not to discuss a legislative measure of this nature. I can speak for myself. I cannot speak for others. I honestly feel that I have absolutely no right, legal or moral to be a party to any measure, any legislation, which is not absolutely necessary for the day to day administration. I was returned to the Constituent Assembly with four votes only. I can honestly declare here and now that when I sought all those four votes from the Members of the West Bengal Legislative Assembly, I never promised them that I would give them the right of divorce. Neither did they ask for it. I declare that I never promised them that I was going to scrap up the law of inheritance. I never told them that I was going to the Constituent Assembly to create a fresh Portfolio and a Ministry of Marriage, because I feel that such an institution will be necessary here in the Central Government, if this Bill goes through. Look at the formalities that have been provided here. So, personally speaking, I feel that I have no right to give my assent or dissent to this. I can only tell the House that I am not competent, because I had no specific mandate from my Constituency to do it. When I came in through the General Elections there were clear issues before the Country such as the attainment of the freedom of the country and all the rest of it; and the last time we came here, we were enjoined only to draw the Constitution of India. Therefore, it might gratify our vanity that we as members of the sovereign legislature of the land are competent to enact such a legislation but the claim is shorn of all moral content whatever. Nothing would have been lost if we had deferred the consideration of this Bill to some future date after the next General Elections. I emphatically maintain, Mr. Chairman, that the time chosen for its passage through this House has been most importune. After the attainment of independence, problems after problems have been confronting the National Government. Have we been able to solve them ? We have not. Are we in the country very popular ? By 'we' I mean 'all' including that side. No. Frankly, because we raised expectations which we have not been able to fulfil. That may be due to a variety of causes over which we have had no control; that may be due to an interplay of forces, which took us unawares, absolutely unprepared. But throughout the country you find

simmering discontent. As a matter of fact, I do not feel inclined to disclose my identity as a member of the Legislature, of the Constituent Assembly, when I travel in a railway compartment, because the moment they come to know that, they start vigorously criticising us.

Shri B. L. Sondhi (East Punjab: General): Then go by air.

Pandit Lakshmi Kanta Maitra : I have started going by air. Quite true. There also I fare no better. I am not joking. I really feel that the country has become sick of us, disappointed of us because of our failure to do anything real for the common man. Hitherto there had been the Kashmir question. There is the question of commodity prices. Yesterday we had a brilliant performance with the unfortunate—enhancement of post-card rate and the price of cloth.

Mr. Chairman : The honourable Member may confine himself to the Bill.

Pandit Lakshmi Kanta Maitra : I am only saying that the rise in prices of commodities, labour strikes, the Communist menace, refugee problem etc. have been too much for the government. Is this the time for us to go on with this luxury of Social reform legislation, and a very highly controversial legislation at that ? It is sure to give rise to the bitterest acrimony; and as a matter of fact, it has already brought about a lot of acrimonious controversy. I believe honourable members have been already Hooded with literature (*Interruption*). Of course, from the Anti-Hindu Committee, and similar societies and associations from Calcutta and elsewhere. I have got protests from the Women's Association in Poona, I have got protests from Women's Association in Bengal, the members of which come from the highest aristocracy in the land. I have not known of any Bar Association in Bengal which has not protested against this. I have not known any Bar Associations which have supported this Bill. I have in my possession perhaps the whole literature that has been circulated so far in connection with this Bill. I have classified it and the dead weight of opinion is against it, qualitatively and quantitatively. I again say that the time is not opportune. At a time when, according to our Prime Minister's appeal we should close our ranks, put our heads together, devote all our time and energy and work in amity and concord so that we may solve the problems of the land, we should not give another cause for disruption, another cause for discord or grouse or discontent in the country. I do feel nothing is to be lost if we shelve this Bill for the time being. If that is not done, then, of course, I promise that I will have to oppose this Bill at every stage. I oppose this Bill, because I feel that it is a wholly unwarranted measure and that there has been

no demand in the country for a legislation of this kind. I oppose it because I feel that in all social legislations we must go slow and that we cannot bring about large scale social reform by legislation alone. The reforms will have to come from within by force of public opinion which has to be created inside the society. Thirdly, I oppose because of the most irregular manner in which this Bill is sought to be passed in this House. I oppose because I feel that I am not morally competent to discuss this Bill and pass it in the Legislature as it is constituted at present. I oppose this Bill because I feel that it has brought in radical changes in the concept of marriage, in the scheme of Hindu Law including the law of inheritance and succession. I oppose it because I feel that it will create endless and needless complications including such things as Civil Marriage Register, Sacramental Marriage Register, Marriage Notice Book, Director General of Marriages, Registrar Generals of Marriages, Ministry of Marriages, and so on and so forth. I oppose it on the further ground that it would give rise to bitterness, disunion and discord in our families leading to the disintegration of society. I oppose it on the further ground that it is undemocratic inasmuch as a vast body of opinion in the country is against it. In view of all these, I feel I am morally called upon to oppose this Bill with all the force at my command.

With these few words, yes, these are few words in view of the enormity of the legislation, In view of the gravity of the issues involved ; these are few words in view of the opposition it has roused and the repercussion it will have on the society. Anybody who really wants society to be protected against this menace coming from the legislature cannot but be articulate and discursive; he has to devote time to the full and dispassionate consideration of things ; he must give his humble bit of advice of caution to the legislators so that they may not drive us along the wrong path and that the society may not slip down the declivity into ruin.

* **The Honourable Shri N. V. Gadgil:** I have been somewhat provoked to participate in the discussion on a Bill which undoubtedly is revolutionary. I have heard with the greatest respect the speech of my honourable friend with whom I had the honour to work in this House for more than ten years. If there is anything which distinguishes him most, it is his earnestness which is only equalled by his great eloquence. I entirely agree with him that in matters of social reform one must go slow. On that point, I have not the slightest doubt. But this Bill has proceeded so slow that some of us have rightly

*C.A. (Leg.) D., Vol. II, Part II, 1st March 1949, pp. 1015-20.

complained that it has not been passed much earlier. As far as I know, this Bill or at least the main provisions of this Bill have been before the house or its predecessor and before the country including the members of the Bar for nearly eight years. It cannot be said by any stretch of imagination that this Bill has taken either this House or the country by surprise.

I well remember in 1945, at the time of the general elections, I was opposed by certain groups precisely because I stood for social reform, because I stood for the codification of the Hindu Law. The very fact that I was elected and I am still here is an indication that I carry the views of my constituency.

A point has been made by my honourable friend Pandit Maitra that this House is not competent to pass a legislation of this character. I think this objection I have heard so often in the course of the last fifteen years that every time when a social reform Bill was before the House, the same objection was raised. With what result, everybody knows. If this House is competent to pass the Constitution for free India, I fail to see how it is not competent to pass this legislation. As if to reinforce the agreement with a personal appeal, my honourable friend Pandit Maitra referred to the views expressed by Honourable Dr. Rajendra Prasad. I have, and, in fact, every person in this House has, every respect for Honourable Dr. Rajendra Prasad. Yet, there is a duty which every member of this House owes to his conscience and to his constituency and to this great country in which he lives above everything, not merely as a legislator, but as a person who visualises the reconstruction of Hindu society and he would be failing in his duty if he were to take into consideration only the personal views of one eminent person or another eminent person. When I say this, I say it in no spirit of disrespect, but because I feel duty is higher than any respect for any individual.

The main point is, has the time not come for the codification of the Hindu law ; has the time not come for the introduction of certain reforms in the system of marriage, adoption, inheritance and all other things which go to constitute what is generally known as the Hindu Law. The sources of Hindu Law are so many. I do not want to dilate on this and I do not want to take much time of the House. But there is a clear case established that there must be some uniformity, some definitions about the interpretation of the law. If the law is not clear, if the law is not uniform, the stability of society suffers. If we have different interpretations of a particular text by half a dozen High Courts, I think the time has come when all this must be put an end to.

Further, my honourable friend suggested that we are attempting to destroy Hindu Society. My own feeling is that, here are about 290 persons who are in close contact with Hindu Society ; here we can come together, ventilate our views and come to some agreement and adjustment and pass a legislation calculated to secure the further progress of Hindu Society. When Manu, Parashara and Yagnyavalkya wrote their *smritis*, they had not the benefit, I should say, of any legislature. They were undoubtedly great men ; but I do not think that the race of great men died with them. On my left, I find a person so great in scholarship and character that it would not be wrong on my part to compare him with some of the old Rishis and law givers. If today, in addition to his own wisdom and learning, he requisitions the help and co-operation of all the 290 persons, I think his hands are strengthened and his views ought to appeal to us.

The main point, as I said was, has the time come for certain reforms and has the time come for the codification of Hindu Law ? If the time has come, it makes no difference whether one man promulgates a Code and the country accepts it, or whether it is accepted by the process of discussion in a democratic manner and the country accepts it. The main point is to judge it without passion, without prejudice and without entering into any extremist considerations. We have in this House to judge it purely on merits and not on sentimental grounds.

After all, what is it that is in this Code ? Except for the question of inheritance, there is nothing to which we have not listened so often and to which we have not agreed substantially. My own view is that there are two important things on which the controversy is centered, One is marriage; the other is ending of the co-parcenary in Hindu Law. So far as marriage is concerned, there is nothing revolutionary in this. In these days, when everything is pointing towards State control more and more, and when we are talking of nationalization, I think the only sphere for private enterprise is marriage.

Mr. Naziruddin Ahmad : Let that also be nationalised !

The Honourable Shri N. V. Gadgil : Now in this Bill a golden mean is struck. The entry and exit in this sphere is so regulated that a modern man coming from the West would certainly laugh at our backwardness. He would say if marriage is a matter which is calculated to secure the highest happiness for both, then one of the grounds for divorce must be incompatibility of temperament. Have you gone up to that ? The grounds in the Bill are very narrow. In fact, I say that

this is a very moderate measure. You do not expect a wife to carry on with a lunatic, a leper etc. and there is nothing in this Bill which runs contrary to the provisions of Smritis or which is inconsistent with the genius of Hindu society and culture. Most of us know the *Smriti*.

नष्टे मृते प्रब्रजित, क्लीबेच पतिते पतो । पतिः अन्यत् तु नारीणाम् विधीयते ।

These are the grounds given in the ancient text and if something approximating to that is not available today in Hindu society, it is because we have become stagnant and all these dynamic urges for progress have ceased to operate. After all who, and to what extent of Hindu society will this effect? Speaking for my own province, 95 per cent. have already some sort of divorce, not as a matter of law, but as a matter of custom. It is only the two or three per cent. of people of the upper classes who are opposed to it. But taking a fair view, the educated section is completely for it.

On the one hand I agree that divorce must not be made very cheap and that incompatibility of temperament should not be one of the grounds. But at the same time, marriage should not be considered a life sentence, if it virtually comes to that. After all, just as marriage has an individual aspect, it has also a social aspect. If the two spouses do not agree, then the bickering and the bitterness and the lack of harmony is not confined merely to the precincts of the family but it has wider application and effect, and society and the general atmosphere round-about also suffer. If it is the desire of any law giver that whatever piece of legislation he wants to get through it must have the capacity of securing the results contemplated then we have to judge whether what has been all along with us has really given us the result we have asked for. It is a matter for introspection. If today we are providing some way out from wedlock in order to make people, who are readily not happy to get out of it, we are only doing what I think is our social duty.

So far as marriage is concerned, I fail to see how we can object to marriages between persons belonging to different castes. In the year 1949, it would be a sad commentary on our progressive outlook if a single person should stand up here and say—well, marriages between persons belonging to different castes should not be legalised. In free India, I think there is only one caste, the caste of free men : and one religion and that religion of humanity. (*Shri H. V. Kamath*, 'And free women !'). This reform has been before this country so long that

those who feel that this means dissolution of Hindu society, are enemies of progress ; such a Hindu society in my opinion ought to be dissolved. What is this that a man should be called untouchable because he is born in a particular caste. I have never seen a boy born with a broom : I have never seen a boy born in a Brahmin family with a *Yagnopavita*, nor a boy born in a Marwari family with a *Taraju*.

जन्मना जायते शूद्रः । संस्कारात् द्विजोच्चते विद्यया याति विप्रतन्त्रं त्रोभिः श्रीतयोच्चतो चवे ।

All are born *Shudras* and after *Sanskara* a man attains higher status and when he has gone through the different stages of learning and accomplishment he becomes a *Shrotriya*, Here is the real spirit of Hinduism, not the spirit which is evinced by some of our old Sanantanic friends here and outside. If the object of this great country, as has been often given out to be is to make a classless society, then we must see to it that proper institution, both social and political are evolved and enlarged. I therefore consider that whatever recommendations are made in this Code as regards marriage are not only absolutely necessary, but they do not go far enough. But as I agree with my honourable friend, Pandit Maitra, that in social matters we ought to be slow, I am willing to accept this position for the time being.

The most controversial part of the whole thing is the elimination of the coparcenary from Hindu society. Something was said of public opinion. Something was said of the press and the bar. In my own province there is an association called the 'Dharma Nirnaya Mandal', In this Mandal are to be found Mahamahopadyaya Tarkatirth Vidyavachaspati men of high learning and scholarship. Very recently they have passed a resolution and expressed views on the proposed Hindu Code :—

"The Dharma Nirnaya Mandal takes this opportunity, when the Hindu Code is on the anvil for consideration in the present session of the Assembly, to express its appreciation of the general liberalizing influence which is brought to bear in the framework of the present code. The Mandal sees this influence clearly in the removal of—

- (a) distinction regarding joint ancestral and self-acquired property;
- (b) different treatment of sons and daughters ;
- (c) technical difficulties in the interpretation of Women's Estate; and
- (d) distinctions between *Mitakshara* and *Dayabhaya* rules of inheritance.

The Mandal believes that the above reforms will go a great deal to minimise court litigations and foster national spirit and engender a feeling of oneness by this one Hindu Code being made to apply to all Hindus in the whole of India. The Mandal notes this as the first attempt ever made in this direction within historical memory.

This is the reason, why in spite of several differences in minor details, the Mandal heartily supports the present measure as it is."

Babu Ramnarayan Singh : What people do they represent ?

The Honourable Dr. B. R. Ambedkar: They are most learned and orthodox men.

The Honourable Shri N. V. Gadgil: But enlightened orthodox.

Now, I come to the question of joint Hindu family. The house will no doubt agree with me that a progressive society ought to change

4 P.M. with the change in times and that it should evolve appropriate institutions both of property and of laws. The time has now

come to assess dispassionately the merits of the joint family system, both as an institution to secure family happiness and as an institution of property. Even today, if somebody gives me convincing arguments about the benefits of the joint Hindu family, I am prepared to hear him, for I am not dogmatic—I feel that truth is the real thing, not prestige for ones own views.

Now, taking the first point, has the joint family system secured happiness for the individual members of the family ? I am not speaking what the daughters-in-law feel when they have to live in a big family. What I have seen and heard definitely goes to show that so far as happiness and harmony are concerned, this institution has ceased to be of any use or value. After all there is nothing new in this. If out of 32 crores of Hindus nearly 5 crores are already governed by *Dayabhaga* and if that system has worked well, at least one cannot say that it is absolutely bad and that we must even think of it. (*An honourable Member:* It is absolutely new.) That it is new there is no doubt. But what is the society that we are visualising for the future ? It is of a patriarchal type ? What is exactly the nature of the society you want to reconstruct ? As I understand, that society is going to be one in which there will be equality of status and equality of opportunity because those are the two phrases we have incorporated in the Preamble of the Draft Constitution. I think with that Preamble the joint family property system is not consistent.

The real trouble seems to me to be—after having listened to the speeches of various members—what is being given to daughters. But as an institution of property the joint family system must go, because it concentrates wealth. People will ask me, “Well, has it or has it not done something good?” I at once agree that it has done some good, but so far as property aspect is concerned, so far as social credit aspect is concerned, other alternatives have already come into existence, such as co-operative societies and the joint stock companies. Therefore, there is no need of this institution so far as the creation of social credit is concerned. As a mechanism for business other

alternatives have come into existence and by experience we have found that they give better results. Therefore, we are not destroying anything without putting something in its place; we are not leaving the whole society in a sort of vacuum as it were. What has outlived its usefulness is being liquidated so that new India will go ahead with greater speed and may attain greater progress.

Now, the real trouble as I said is about some share being given to the daughter: whether it should be half or whether it should be something less are details which can be discussed later on. But one point is certain and that is that the daughter must get some share. In free India if you are only going to say that—

यत्र नार्यस्तु पूज्यन्ते रमन्ते तत्र देवता

and then say that she should either go to a court of law or ask for maintenance, I say it is not fair.

My own feeling is that some difficulties may arise at the beginning; when new institutions come, when new thoughts generate; society does take some time to adjust itself. The question is not whether these difficulties are great or small: the relevant question is whether the new arrangement proposed is good or bad. If you are convinced that it is good, naturally there will be some difficulty in adjustment. We must not mind the difficulty at all.

It has been suggested that as soon as the marriage is over the bridegroom will start trouble, by suing or otherwise, for the share which his wife has got from her parents. It would be welcome to lawyers. Well, when we are trying to nationalise as much as possible, what little will be left will not be of great consequence, that people would go to the court for a small share of it. In times to come there will be little left both for the boy and the girl. Even if it leads to litigation, does it mean that we should not do justice? Because a good tiling may be abused by a few, does it mean that it should be denied to all? It is for the House to decide. It is high time that the general talk of equality of sex must be followed by equality of ownership of property. If we do not do that we will have to face the charge of hypocrisy.

My honourable friend Pandit Lakshmi Kanta Maitra has prophesied all sorts of trouble for the great Hindu society. Such prophets have always been there in the past and they have always proved false. I have not the slightest doubt that Hindu society has got such a flexible nature that it has absorbed various cultures and if it has lived through

the ages successfully it is because those who guide the affairs of the society had in time suggested changes suitable to the times. That is the reason why it has survived till now. Here is an attempt to bring the law in line with public opinion. What the law does is that it consolidates the public opinion but public opinion being dynamic by its very nature it goes ahead every now and then. It is like a horizon which recedes the nearer one goes to it. Modern society by its very nature progresses very quickly. Therefore, we have to adjust public opinion and the law of the land. There are other means by which it can be done, like legal fiction or equity but the best and the honest way is to do it by a piece of legislation. I think here is an attempt in that direction. Although I agree that it is revolutionary, it is a planned revolution and therefore it is going to be a success.

***Mr. Naziruddin Ahmad :** I have but a short time at my disposal. (*Dr. B. R. Ambedkar:* Why? You have your own time.) I mean comparatively short time for the enormous subject which I have to deal with and I hope the House will give the subject that amount of thought and attention which I have given to it (*An honourable Member:* What have you to do with it ?) At the very outset I am asked what I have to do with it. I say I have every thing to do with it. Two very enormous changes have taken place in the country. One is that we have decided to shed our communal character and the other is that we have decided to impose upon ourselves the benefits of joint electorates. Can any honourable gentleman in this House deny the right of a Muslim to 'think in the same way as a large part of the Hindus think? After all we have to live with Hindus. In West Bengal they form 80 per cent and we have to live with them and think with them. Come with me to West Bengal. Pandit Maitra put the case of the opposition in Bengal very mildly when he said that there is serious opposition to this Bill

Shrimati Renuka Ray : There is equally and more serious support.

Mr. Naziruddin Ahmad : Come with me to West Bengal. I am not speaking on behalf of the orthodox section. With regard to that aspect of this legislation I have nothing to do. I have certain serious questions to raise before the House which have not been raised up till now. The objection in Bengal is so serious that if anybody undertakes a journey to ascertain public opinion—(*Interruption*) I mean intelligent and advanced public opinion—if anyone will go there, if anyone will make a journey from town to town in West Bengal, he

* C.A. (Leg.) IX. Vol. II. Part II, 1st March 1949, pp. 1020-30.

will be faced with opposition to the Bill from the most intelligent section, the most enlightened section (*An honourable Member*: Which the Honourable Member has not done). I believe the interruption is not based upon a thorough consideration of the subject. I submit that it will be agreed that the members of the bar are not very conservative people

Shri L. Krishnaswami Bharathi: Most of them are orthodox and conservative.

Mr. Naziruddin Ahmad : They are not perhaps the orthodox section. . . .

Shrimati Renuka Ray : What about the opinion of Mr. Atul Gupta recognised as one of the most eminent lawyers and chosen by Congress for the Partition Committee?

Shri Krishna Chandra Sharma : Does the lawyer line on precedents !

Mr. Naziruddin Ahmad : In spite of these interruptions I submit they are not the orthodox sections. You go to any bar library and you will find that this Bill is opposed tooth and nail. . . .

Shri L. Krishnaswami Bharathi : Because their occupation will be gone.

Mr. Naziruddin Ahmad : I do not agree that you eliminate the profession of the bar by this Bill. You are introducing complications which you can not think of. On the other hand, I submit that the lawyers in a different capacity, in a professional capacity, will thank this House for introducing this controversial measure. Four judges of the Calcutta High Court, four advanced Hindu judges of the Calcutta High Court—one of whom now adorns the Federal Court Mr. B. K. Mookerji have said—that the law is already well settled, the law is well known. The law may be different here and there but that is due to various reasons into which I need not now go. The law is well known.

Shri A. Karunakara Menon : If the law is so settled why Law reports every week?

Mr. Naziruddin Ahmad : It is because I feel that my honourable friend does not realise the subtleties which underlie the law. In fact precedents are necessary. You cannot cover any possible case in anticipation by legislation. So precedents are necessary. They illuminate difficulties and they are helpful in deciding cases in future. The moment mankind gives up precedents, specially in the domain of law,

they will cease to be intelligent animals. That is why I submit that lawyers who are not orthodox people are opposed to this piece of legislation, not because it will deprive them of their food

Shrimati Renuka Ray : What happens when limited estate for women goes out in regard to litigation in Bengal?

Mr. Naziruddin Ahmad : I only hope that my honourable sister Shrimati Renuka Ray did represent the ladies of Bengal. (*An Honourable Members*: She does.) She is only one star in the whole of West Bengal. I will cite at least a dozen stars in opposition who are equally well known as Shrimati Renuka Ray. She is only one guiding star leading the case of the Hindus. . . .

Shri R. K. Sidhva (C. P. and Berar: General): The only star.

Shrimati Renuka Ray : There are hundreds of women who have gone to Noakhali and other places. There are many guiding stars in Bengal: these women social workers are all leading stars, but they all support the Hindu Code.

Mr. Naziruddin Ahmad : I submit that my honourable sister has not the experience of litigation. He has not lived in the law. If he had lived it he would have seen the enormous possibilities. . . .

Honourable Members : Say 'she'.

Mr. Naziruddin Ahmad : for a good thriving business. There is no difference between he and she. According to the latest standards 'he' includes 'she'.

I submit ladies should no longer be called "she", but they should be called "he".

The lawyers are against this measure. Their family system will be seriously disturbed. They are very much averse to the Bill. (*An honourable Member*. 'Are they afraid about their profession?') No, they will get more cases. I assure the house on behalf of the lawyers to which profession I have the honour to belong that for their personal interests they should all welcome it. (*Shri L. Krishnaswami Bharathi*: You are mistaken). I am not mistaken, I have lived in the law much longer than my honourable friend has done. I have taken part in litigation. The divorce provisions will introduce endless litigation and will lead to endless complications and endless difficulties for many families and more misery for women than men.

Coming straight to a very important point, I have to submit before the House a very serious state of affairs in connection with this Bill.