

### THE HINDU ADOPTIONS AND MAINTENANCE BILL, 1956

MR. DEPUTY CHAIRMAN: Out of seven hours we have already taken one hour and 27 minutes. There are five hours and 33 minutes for all stages to be completed. Hon. Members will please be short and try to finish it within the time allotted.

Shri Rajagopal Naidu.

SHRI P. S. RAJAGOPAL NAIDU (Madras): Mr. Deputy Chairman, Sir, my grievance about this Bill is that instead of doing away with adoptions completely, they have enlarged the scope of adoptions in this Bill. Previously it was only a male Hindu and in his absence his widow with his previous consent who could adopt a son but now we find that a provision has been made that even unmarried women can adopt; not only that but a provision has been made by which even girls could be adopted. In that respect this Bill instead of being progressive is retrogressive. I ask this question: is there any religion where adoption is provided? Does Christianity provide for adoption? Does Islam provide for adoption? When that is the case why, instead of completely wiping off this adoption once for all from the Hindu Code, has any such provision been made now and why should it be enlarged in scope? Sir, what is the motive in a person adopting a child? Is it religious or is it secular? There can be no second opinion that the object in a childless man adopting a child is only for religious purposes. One adopts a child, according to our *shastras* only for the purpose of continuing the ancestry for the purpose of offering *pinda* and all that. But, Sir, how many people adopt children only for that purpose? Is there any such religious sentiment or motive while adoptions are being made in our country? We find that adoptions are made in our country amongst Hindus only for the purpose of diverting the line of succession. I have come across several cases where after the death of the husband, after a number of years, 20 years or even 25 years, the widows begin to adopt

only for the purpose of seeing that the property does not go to the reversioner to her husband. When that is the motive, why should we not try to make a provision for adoptions when the actual motive for which it is meant, namely, the religious motive, is not there? When it is being pursued only for secular purposes, why should we now in this twentieth century try to perpetuate a sort of secular motive in this matter of adoptions?

Sir, coming to the provisions of this Bill, the most important clauses of the Bill are clause 7 and clause 11. While dealing with clause 7 my friend Mr. Bisht. had pointed out that the consent should be in writing. If that is not there, it will lead to a lot of litigation.

Then, Sir, I am opposed to any provision being made for a daughter to be taken in adoption. I had already given my reason as to why a daughter should be taken in adoption, unless it be that the purpose in making a provision for a daughter also to be taken in adoption is only secular and not religious. If it is religious, as I have already said, it is only the son that can perform the *pinda* and not the daughter.

DR. W. S. BARLINGAY (Bombay) : A daughter's son can.

SHRI P. S. RAJAGOPAL NAIDU: I am glad it has been pointed out. He is called *bhinna gotra sapinda* and he also can perform *pinda*. When a daughter cannot perform the religious duties, why should such a provision be made in the law? Sir, it is true that in the good old days there was a sort of custom in the South of a daughter also being taken in adoption. The Maine's Hindu Law also, I think, has said that in the South there was a custom like that. And there is still a custom like that in Ceylon amongst the Tamils; there is a custom like that amongst the Tamils also in Malaya. The Tamils who have migrated to Ceylon, Malaya and other places still follow the custom of a daughter being taken in adoption but

it has completely vanished in the South several centuries ago. Why should we try to revive that system? It only shows that we are now departing from the religious motive and moving to a purely secular motive. It is only for that simple reason that I oppose a daughter being taken in adoption.

Then, Sir, I fail to see why if a person has more than one wife the consent of all the wives is necessary for a male Hindu to take a child in adoption. It will be really a Herculean task for the husband to bring all the wives together and to get a common boy to be taken in adoption. Of course, I do not go to the extent of Mr. Bisht who said that no consent at all of the wife need be necessary in this case. I feel that consent is absolutely necessary; not merely verbal consent but also the consent should be in writing and it may even be registered. But let the consent be only from one wife and not from all the wives.

With regard to clause 8, I have to point out that this Bill has departed from the original Hindu Code Bill of 1948 in making a provision for an unmarried female Hindu also to adopt. Of course, a provision was there in the draft Hindu Code for an unmarried female Hindu to adopt but it was subject to certain conditions, namely, that the unmarried woman should always remain unmarried, should always remain a spinster and that was a very reasonable proviso made in the old Bill. But I do not know why the Select Committee has departed from that provision.

Then clause 10 deals with persons who may be adopted. Then I find in condition (iii) that the customs and usages are to be recognised. What we want is uniformity, uniformity in adoption throughout the country. Of course, it is a salutary provision that a married person should not be taken in adoption. It is a very healthy provision but why should we recognise customs? Simply because there is some sort of a custom in Punjab that

even a married person could be taken in adoption, should we introduce that proviso here? Why should we recognise such a sort of custom? We should do away with all these customs in the country. We should provide a uniform code and there should be one law throughout the country so far as Hindus are concerned. It has been provided in the Constitution that there should be a uniform civil code throughout the country and while making a beginning, so far as Hindus are concerned, let there be uniformity and let no such customs or usages be recognised so far as adoption is concerned.

Again, we find in condition (iv) that a person who has completed the age of 15 years is not eligible for adoption. I do not dispute about the age, it may be 15 years or it may be even 18 years. But my grievance about the whole thing is that here we again come to the recognition of customs and usages. That means even if a man is 60 or 70 years, if the custom or usage says these people can be taken in adoption and we are to accept that, where is the uniformity? So, in my opinion these customs should not be recognised and we should provide that only an unmarried person can be taken in adoption and that only a person who has not completed the age of 15 years should be taken in adoption.

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Then, Sir, coming to clause II. I find a very important deviation that has been made in the Bill. Clause 11 deals with other conditions for a valid adoption. The first condition for a valid adoption as provided is :—

"if the adoption is of a son, the adoptive father or mother by whom the adoption is made must not have a Hindu son. . ."

I quite agree with that principle. I have no grievance about that. But suppose the adoptive father or the adoptive mother has the son of a predeceased son alive or a son of a predeceased son of a pre-deceased son

[Shri P. S. Rajagopal Naidu.]

is alive, why should the adoptive father or mother be permitted to take a boy in adoption? Suppose the adoptive father or mother had a natural son and if that son had died leaving another son and if that son is alive, why should the adoptive father or mother be permitted to take a boy in adoption? I fail to see. Suppose the son's son is alive, we are making an adoptive father or mother to take a boy in adoption. I do not see anything which is more serious in this Bill. One has to give a very serious thought to this proviso in Bill and amend it in this manner, namely, if the adoption is of a son, the adoptive father or mother by whom the adoption is made must not have a Hindu son, or a son's son or a son's son's son (whether by legitimate blood relationship or by adoption) living at the time of adoption.

Sir, again, coming to condition (ii).

MR. DEPUTY CHAIRMAN: Only fifteen minutes are allowed normally for each Member. You have already taken fourteen minutes.

SHRI P. S. RAJAGOPAL NAIDU: I will complete in ten minutes. Now, coming to the other condition in the same clause, it says :—

"if the adoption is of a daughter, the adoptive father or mother by whom the adoption is made must not have any Hindu daughter...\*".

If the adoptive father or mother had a daughter and that daughter is dead leaving another daughter or leaving a granddaughter or a grandson, I fail to see why the adoptive father or mother should be empowered to take a girl in adoption. It seems to be highly absurd.

Again, while dealing with the same clause, I have got this objection, namely, why should the adoptive father or mother be empowered to adopt a boy or a girl, for instance, a boy if a girl is there or a girl if a boy is there? There is certainly some reason if the adoptive father or mother has no child at all. They can |

adopt a girl or they can adopt a boy. Suppose they have a boy, why should permission be given to adopt a girl? Suppose there is a girl already born to them, why should they be permitted to adopt a boy? This House will have to consider this very seriously.

DR. W. S. BARLINGAY: Why not a daughter's daughter? Why not a daughter's son also?

SHRI P. S. RAJAGOPAL NAIDU : I am glad Mr. Barlingay has said that. Suppose he has a son's son, or son's son's son. Suppose he has a daughter's daughter, or daughter's daughter's daughter, or daughter's son, or daughter's son's daughter or daughter's, daughter's son alive. Why should such a provision be made in this Bill ?

Again, in condition (vi) it is said: —

"the child to be adopted must be actually given and taken in adoption by the parents or guardian....."

The performance of *datta homam* is not necessary. It is true. But with a view to putting an end to litigation, instead of providing merely for this 'giving and taking'—something which is not specific—a provision should be got stamped that at least after some time a document should be made and it should be registered. Otherwise, the adoption should not be recognized.

Sir, I will take only two or three minutes more. My hon. friend, Mr. Bisht, while dealing with maintenance of wife said that if the husband had any other wife living, clause No. 18 provided that the wife could live separately and demand maintenance: That provision is already there in the Hindu Married Women's Right to Separate Residence and Maintenance Act, 1946. It is already there and what we are now trying to do is to repeal that Act and to make a specific provision in this Bill.

SHRI P. N. SAPRU (Uttar Pradesh): That is the usual separation. This is apart from the usual separation. This is an additional right which has been granted.

MR. DEPUTY CHAIRMAN: It is time.

SHRI P. S. RAJAGOPAL NAIDU: Then, Sir, I come to my last point, in this matter time is against me and the Deputy Chairman is reminding me, and I should wind up. With regard to clause 27 of the Bill, I find that no charge is made for a dependant's claim for maintenance. If no charge is made for maintenance, what will happen is that with a view to defeating the maintenance claim, a person will try to alienate the property. So, the old principle that the maintenance holders should have a certain charge on the property should be there. Without that charge, very many people will try to defeat the claims of the maintenance holders.

SHRIMATI YASHODA REDDY (Andhra Pradesh): Mr. Deputy Chairman, this Bill seeks to amend and codify the law of adoptions under the Hindu Code. This law of adoption is peculiar to our Hindu system, which is not found in any other law. This adoption is a legal fiction under which, in the absence of an *auras* or a natural son, the married couple are allowed to adopt another person as a son and for all practical purposes he will be treated as a son. This desire for male issue came down from the Vedic days where it has been written that a man has no place in heaven if he has no male issue. This son who is called *putra* is supposed to deliver the person from the hell called *path*. There are two motives for adoption, one, the religious motive to pray for the deceased soul, for *pindas*, and the other, secular motive to regulate inheritance. In olden days the religious motive was prominent; but now we find it is not the religious motive but the secular motive that is very predominant. The salient features of the law of adoption, as it stands today, are that a man who has no son can adopt only a male person and he can adopt only one person at a time and the wife cannot adopt without the consent of the husband or the consent of kinsmen. In the matter of adop-

tion not only the formal giving and taking is necessary but also the religious ceremony of *dattahomam* is necessary in some cases. And once a person is adopted from the natural family, he ceases to have all his rights and liabilities and he obtains the rights and liabilities of the adopted son.

Now, Sir, in various parts of the country there are various interpretations of this law. I am very glad that now this Bill tries to codify and give a uniform law and I need not say much about the importance of such a measure. Most of the salient features of the present law have been kept and a few important changes have been made. The first and foremost is that a girl can also be adopted. It is a very welcome change as far as I am concerned; though many Members have opposed it I do welcome it because I am a woman. Of course, the most important motive, *viz.*, the religious motive, goes into insignificance and the secular motive comes in. Just now my hon. friend was saying that women adopted after twenty years of widowhood. It is not for religious motive, it is for the secular motive, the religious idea is only an eyewash. Every person adopts for secular motive whether you like to confess it or not. Now that we say that a girl can be adopted, when a person wants to have a girl, why should you deny that right to him? After all when a woman has been given absolute right—I suppose this is the most proper method—I am very glad that a girl has been allowed to be adopted.

The second important change is that previously a widow could not adopt without the implied or the explicit permission of the husband or her kinsmen. Now that bar has been taken off, and even this is a very welcome measure, and I feel that a widow's discretion is anyway better than a kinsman's discretion, and if a husband has not given implied or [express permission, she should be allowed to adopt according to her whims and fancies.

[Shrimati Yashoda Reddy.]

The third innovation is that a spinster or an unmarried woman is allowed to adopt. I do not know whether this is a very welcome change. The fundamental basis of adoption lies on the legal fiction that a married couple, if they do not have a child, should adopt a child to satisfy the religious and secular motives. Adoption by an unmarried woman is not only against Hindu law but it is against the law of nature. But, after the passing of the Succession Act where a woman is given absolute right to own property, she must have somebody to pass on that property, and in that context I suppose the power given for a spinster to adopt seems proper. Otherwise, personally, I do not think that it is a very welcome introduction.

The last welcome change which I would like to mention is the legal presumption under clause 16. The only difficulty in the working of our adoption system under the Hindu law was under this legal presumption. If there is a registered document, unless it is proved otherwise, the adoption will be held valid. In the working of our law there were many frivolous and vexatious litigations because this factor of adoption was not proved, but by this legal presumption I feel that this is avoided, and when there is a document, the adoption is upheld till it is proved otherwise.

Now, Sir, I may be permitted to say a few critical words about this Bill. Clause 10 (iv) lays down: "he or she has not completed the age of fifteen years, unless there is a custom or usage applicable to the parties which permits persons who have completed the age of fifteen years being taken in adoption". I feel, Sir that this is rather arbitrary. There should not be any age limit. The other pre-requisite conditions which are laid down under clause 10, viz. "he or she is a Hindu: he or she has not already been adopted; he or she has not been married, unless there is a custom or usage applicable to the parties which permits persons who are married being taken in adoption" should suffice, and I feel no age limit should be kept

Then, Sir, clause 13 says "Subject to any agreement to the contrary, an adoption does not deprive the adoptive father or mother of the power to dispose of his or her property by transfer *inter vivos* or by will". Here Sir, I feel that this clause is very unjust. When a person is adopted he loses all his rights in his original family and he comes to the adoptive family. If after some time the adoptive father or mother feels like disposing of his or her property, what would then happen to the adopted child? There must be some guarantee—there must be some safeguard, there must be something for this person who has been adopted in this family to protect his interest. According to clause 8, a widow or spinster is given power to adopt so long as the widow does not remarry or the spinster remains unmarried. In other words, the power of adoption given to these two persons could be exercised by them so long as the widows remain without remarrying and the spinsters remain unmarried. The moment the widow remarries or the spinster marries, what happens to the adopted child? Clause 14(4) says, 'where a widow or an unmarried woman adopts a child, any husband whom she marries subsequently shall be deemed to be the step-father of the adopted child'. So, after the marriage the adopted child is degraded into a stepchild. Now, Sir the mother or father has an absolute right of disposing property. Sir, if this spinster gets married what happens to this adopted child? So, I feel that some sort of guarantee must be given to this adopted child, and the absolute power over the property should be curtailed if this spinster marries or the widow remarries after adopting the child; there must be some provision which should prevent this.

Another lacuna I find in this Bill is this. There is nothing said about the after-born sons or daughters in the family. If a young couple get children after an adoption has been made, there is no provision here for that. I do not know what will happen to these children and what will be

their status in the family. Prior to the passing of the Succession Act there is a special provision in the Hindu law for these after-born children in the adoptive family, but such a provision is conspicuously absent in this Bill, and in my opinion a provision should be inserted in this Bill regarding the after-born children in the adoptive family.

Lastly, Sir, clause 17(1) which prevents a person from taking any reward for adoption—this I feel is very unnecessary.

But for these remarks. I most heartily welcome this Bill.

DR. W. S. BARLINGAY: Mr. Deputy Chairman. Sir, I must begin by congratulating the hon. Minister for Legal Affairs for bringing this important Bill before this House. And I would, if you would permit me, express these congratulations in a Sanskrit verse

समाजं हिन्दूनां सुचतुरविधेयैः स्वरचितैः।  
नयन् रुद्धिश्चान्तं सदयहृदयो जागृतिपथम्॥  
विजेता वादे वाक्कलह विषये संसदि पुनः।  
समुद्धर्त्ता स्त्रीणां स जयति हरिः पाटसकरः॥

SHRI V. K. DHAGE (Bombay): What does that mean?

DR. W. S. BARLINGAY: That only amounts to congratulations and nothing else.

SHRI V. K. DHAGE: Such a long thing in Sanskrit means only this much !

DR. W. S. BARLINGAY : Well, I will translate it if you wish. Shri Hari Pataskar who has raised the status of Hindu women.....

SHRI B. B. SHARMA (Uttar Pra- I desh): Not 'raised' for *uddharaka*.

MR. DEPUTY CHAIRMAN: Order, order.

DR. W. S. BARLINGAY: If you will allow me to go on, I shall be very grateful. The translation is this:

"All praise to Shri Hari Pataskar who has raised the status of Hindu women in this country. He has, by means of legislation which he himself has conceived, removed the darkness from which the Hindu society has been suffering so long. And in this he has succeeded even in this stormy Parliament. He, therefore, deserves aU congratulations."

Then the second point that I wish to make is that there is nothing in this Bill which is contrary to Hindu religion. It is true that there is an innovation in this Bill, namely, that while under the the old Hindu law only a male could be adopted, under the present provisions, a female also can be adopted. It was suggested yesterday by an hon. Member of this House that there was something contrary to religion in this. Now I submit that he was not distinguishing between two very different things—something not being in accordance with the Hindu law and something being contrary to the Hindu law. Obviously, this is something added on to the Hindu law. But it will be wrong to say that it is contrary to the Hindu law.

The third thing which I wish to point out and which is a very good feature of this Bill is that, although according to the old Hindu law, the adopted child had to be of the same caste as that of the adoptive father, now, under the present Bill, that has been done away with. That is to say, it is not now necessary that a child which has been adopted must be of the same caste as that of the father. That is a very important thing which many people have forgotten. But then in this connection, I wish to come to clause 10 of the Bill immediately. There, the age-limit prescribed is 15 years. Clause 10 reads: "No person shall be capable of being taken in adoption unless the following conditions are fulfilled, namely :— (iv) he or she has not completed the age of fifteen years....." Now, Sir, in my humble opinion, there is no logic, as Shri Bisht rightly pointed out yesterday, behind this age-limit. I do not see why the law could not

{Dr. W. S. Barlingay.]

be made much simpler, by simply saying that only a minor could be adopted. And we know now the age of a minor, that is 18 years. If he is above 18 years, we would simply say that he or she could not be adopted and that would make the law very much simpler. Whosoever is being adopted ought not to be above eighteen years of age.

DR. RADHA KUMUD MOOKERJEE (Nominated): But what should be the age of the person who adopts?

MR. DEPUTY CHAIRMAN: Please do not have side-talks.

DR. W. S. BARLINGAY : What does it matter ? Normally unless . . .

*{Interruptions.}*

MR. DEPUTY CHAIRMAN: Please go on, Dr. Barlingay.

DR. W. S. BARLINGAY: But, Sir, when I have said all this, I still feel that this Bill is after all not a very progressive one. And in this, I entirely agree with the observations of my learned friend, Shri Naidu. I, for one, feel that even this whole system of adoption should go. We do not want to have any more adoptions at all so far as the Hindu society is concerned. After all, there are people who do not have sons and if it is said that they will not be entitled to any *pinda* or anything, well, all that I can say is that—and I must be very frank about it and I hope I do not offend anybody—I feel that all this is complete superstition and nothing else, and the sooner we get rid of these ideas the better.

SHRI KISHEN CHAND (Andhra Pradesh): I submit, Sir, to say that it is all superstition is wrong. It is a reflection on the Hindu religion. It is unnecessary.

DR. W. S. BARLINGAY: I have already said that I do not want to offend anybody. I am saying that this is my opinion. I am also saying that

I may be entirely wrong in this. But this is my opinion and I am entitled to voice my opinion.

SHRI KISHEN CHAND: But speak about other religions and see what they say.

DR. W. S. BARLINGAY: I have said on the floor of this House that many of the beliefs which are contained in other religions are also equally superstitious. As a matter of fact, there is no religion on earth which does not contain an element of superstition in it and the sooner we get rid of these elements, the better for us all.

Now, Sir, what I say is that adoption has not got any rational basis at all and the sooner we get rid of this idea of adoption, the better it is for us. If it is a question of disposal of property, well, there is nothing to prevent anybody giving away any bit of his property to anybody else, whether the other person is a male or a female. There is nothing in law to prevent anybody from keeping either a male child or a female child in his own home and bringing him or her up as his own son or daughter. There is nothing to prevent it. Suppose we do not have this law, well, things will go on. Then what is the idea of having this law of adoption at all? I do not see that there is any need for this sort of law at all. I, for one, if I were to make any changes in the Hindu law, would say that the Hindu law of adoption should go straightaway. It ought to be done away with completely—

Then, there is one other feature of this Bill to which I should like to draw your attention. We have been pleading in this House—I now refer to maintenance—that men and women in our society should be treated equally. I do not find that this Bill is based on that principle. A Hindu wife is entitled to maintenance from the husband. I do not see why the same logic should not apply in the case, of the husband, when, for instance, he is an invalid. It was stated by one of

the lady Members here yesterday that Hindu women are very generous. I grant all that.

SHRI B. K. P. SINHA (Bihar): I would refuse to be maintained by my wife.

SHRI AKBAR ALI KHAN (Andhra Pradesh): Be chivalrous.

DR. W. S. BARLINGAY: He has not yet become an invalid. His reply only shows that his mind is perfectly at rest, healthy and vigorous. He does not want, I am glad, any maintenance from his wife. Nor do I.

SHRI N. R. MALKANI (Nominated): His mind is too 'malish'.

SHRI B. K. P. SINHA: It is disgraceful. My mind revolts against it.

DR. W. S. BARLINGAY: There may be cases where a Hindu wife may be in very good financial circumstances, while the husband may be maimed or may be suffering from ill health or some disease. Now, I do not see any reason on earth why such a person should not get maintenance from his wife. We must have equality all round, and if a Hindu wife is entitled to maintenance from her husband in the circumstances mentioned in the Bill—and I think all these circumstances are proper circumstances—I do not see why the same logic should not apply to the husband also.

SHRI AKBAR ALI KHAN: What is the opinion of the ladies?

DR. SHRIMATI SEETA PARMANAND (Madhya Pradesh): We agree.

DR. W. S. BARLINGAY: Then I come to clause 11. I feel that the point which has been raised by Mr. Naidu has got to be expanded a good deal. He pointed out that if, for instance, there was a son's son, why should a person be permitted to adopt another son, simply because his own son was dead at that time? Now, I should like to go a little further. Sup-

pose there is a daughter's son. The same logic should apply. After all, we are not now making any distinction between a son and a daughter. A daughter's son has virtually the same sort of relationship to the person concerned as the son's son. Between a son's son and a daughter's son, so far as the adopting person is concerned, the conditions are exactly the same. Therefore, I am in perfect agreement with Mr. Naidu, but I only want to extend the point that he has already raised.

Then I want to raise another point. Suppose there is a son. In that case, why should a person want to adopt a daughter? We are dealing with Hindu law and the purpose of adopting a son under the Hindu law is that the son would give *pinda* to the person concerned after his death. A daughter is not entitled to give *pinda* by herself, and moreover the person concerned has a son. When he has a son already, why should that person be entitled to adopt a daughter? I do not see any logic behind this. I therefore, think and very respectfully think that the entire provisions of this Bill have got to be rethought; more thought has got to be bestowed on the various provisions of this Bill. Perhaps it would be better if this Bill is circulated for eliciting public opinion thereon, but with all this, I would say that, if we pass the Bill as it is, there is no great harm done to Hindu society.

PANDIT S. S. N. TANKHA (Uttar Pradesh): Mr. Deputy Chairman, Sir, I am glad to support this Bill as it has taken the women in Indian society a long way towards the realisation of equality of status with men. As we know, Sir, the other Acts like the Hindu Marriage Act, etc., which we have passed during the last one year have gone a long way in raising the status of Hindu women, which formerly was very low down at the bottom. By the measure before us now, two significant changes have been brought about. The first of them is that both men and women can now adopt under the Bill, whereas formerly only men could adopt and women could



[Pandit S. S. N. Tankha.]

only adopt where they had obtained the permission of the husband. By the grant of this right to women to adopt their status has now been further raised in the eyes of the world.

The second significant change brought about by this Bill is that while formerly under the old Hindu law, only sons could be adopted, now under this Bill the right to adopt a daughter has also been conferred. This additional right also raises the status of women, and it places them on a par with men.

In view of these two significant changes, it has to be admitted that the Bill has been framed on the right lines and the position of Hindu women in Indian society will hereafter be considerably raised in the estimation of the world. But there is one thing which I have not been able to understand and that is as to why married women have not been allowed to adopt. Just as men have been given the right to adopt with the permission of the wife, in the same manner I think it would have been proper if women had been given the right to adopt with the consent of the husband. We know Sir, that now after the passing of the Hindu Succession Act, women in the Hindu society will be having separate property of their own and, therefore, if it is the legitimate wish of the women to pass on that property of theirs to an adopted son, I don't see any reason why they should be stopped from doing it. Not only should they be not stopped from doing it but, on the contrary, I think that if the property is theirs and they wish to pass it on after them to the child whom they wish to adopt and if the husband has no particular objection to it, this right should be given to the women. It may be said that if you give the right to the women and say that she can adopt with the consent of the husband, then whether, the adoption is made by the husband, or the wife, makes no difference but I think that it is this little difference between the two which will go to raise the status of the Hindu women in Indian society, because in one CJ

it will be the women who will be adopting the child and in the other it will be the husband. The husband has the right, of course, to adopt already, but I submit Sir, that the wife should also have been given the right to adopt and that it would be in the fitness of things that this right be conferred upon the women also. My friend, Shri. Bisht, yesterday questioned the propriety of clause 7 of this Bill whereby the consent of the wife or wives has been provided for. He thinks that such a stipulation in the Bill nullifies the right of adoption because the consent of the wife or wives will never be forthcoming or will be forthcoming after great difficulties. It is undoubtedly true that difficulties can and may arise at times and there may be some difficulties in certain cases where adoption may not be possible because of the fact that the wife or anyone of the wives refuses to give the consent, but I think that this restriction has been rightly kept because if this provision had not been kept, it would have meant that the husband could adopt a child even though the wife was unwilling to have that child and that would not only have been not desirable from the point of view of the husband and the wife, but also from the point of view of the child to be adopted, because after all, the child which the husband is going to adopt is to be looked after and is to be nursed and educated by the wife who being in charge of the household, will be the real person who will bring up that child. Therefore, the consent of the wife is absolutely necessary as has been provided for in the Bill. If this had not been provided for, I think the rightful place of women in the Hindu household would have been denied to her under the Act.

Regarding clause 8 I have already submitted that a married women should have been allowed to adopt with the consent of the husband.

Regarding clause 9 I find that the clause reads like this :

"No person except the father or mother or the guardian of a child

shall have the capacity to give the child in adoption."

This goes to show that apart from the father and mother who have the right to give a child in adoption, the guardian will also have the simultaneous right where there is a guardian of the person or property appointed for the minor. I don't think that is right and proper. At the same time I also think that that is perhaps not what is intended by the provision of the Bill, but that sub-clause (1) of clause 9 is controlled by sub-clause (4) of clause 9, that is to say, that the guardian will have a right to give in adoption only when the mother and the father are not alive. If that is the intention of the Act, then the provision made is all right, but if it gives simultaneous power to the guardian and also to the father and the mother of the child, I am afraid difficulties 'will arise, because while the guardian may want to give the child in adoption to one person, the father and mother may want to give the child to another person.

SHRI H. C. DASAPPA (Mysore): There is no such possibility. When the mother and father are alive, no guardian can act.

PANDIT S. S. N. TANKHA: That is why I said that sub-clause (1) is controlled by sub-clause (4). If that is not the intention, then there will be difficulty. Here sub-clause (1) says:

"No person except the father or mother or the guardian . . ."

This sub-clause does not seem to be properly worded, because it says that the father the mother and the guardian will all have simultaneous right to give a child in adoption.

SHRI H. C. DASAPPA: It is not simultaneous.

DR. W. S. BARLINGAY: How can there be a guardian if there is a father or a mother alive?

MR. DEPUTY CHAIRMAN. Yes, Mr. Tankha, please go on. We have to finish soon.

PANDIT S. S. N. TANKHA: It is not necessary that the natural guardian should be the guardian of the person or the property of the minor. He can be a separate person altogether.

Further, there is one other objection which I have in respect of clause 9 and that is in sub-clause (2) wherein it is specified that:—

"but such right shall not be exercised save with the consent of the mother unless the mother is a minor".

I have a great quarrel with these words "unless the mother is a minor," for this would mean that the husband has the right to give away the child without the mother's consent where she herself is a minor, but I submit. Sir, that this is a great hardship for her. After all, Sir, even if the mother is not a major, still the child is hers and primarily it is necessary that her consent should be obtained to give away her child in adoption. I submit that it is very necessary.

SHRI P. N. SAPRU: May I interrupt? There is a legal difficulty in...

MR. DEPUTY CHAIRMAN: You may explain it later on when you speak.

PANDIT S. S. N. TANKHA: I would have been glad to know what the legal difficulty is.

MR. DEPUTY CHAIRMAN : He will explain it later on when he speaks.

PANDIT S. S. N. TANKHA: But, that is how I feel. Suppose the wife is seventeen years of age or even eighteen, and the husband chooses to give away the child in adoption a year or two before she attains majority, he can do so. But is it right that we should allow such a thing to be done and the mother be deprived of her child? I think that such a thing should not be allowed, it should not even be thought of at all and I am sure. Sir, that the lady Members will support me in this respect.

[Pandit S. S. N. Tankha.] Next I come to clause 10 and there I agree with the Minute of Dissent which Shri Kailash Bihari Lall has appended to the Report, for I see no reason why in sub-clause (1) of this clause it has been provided that a person to be given in adoption should be a Hindu before he can be adopted. I can well understand that the person who is going to adopt the child and the person who is giving the child in adoption should both be Hindus. But why should it be necessary that the child to be adopted should also be a Hindu ? Suppose I want to adopt a son and I adopt a Muslim boy who . . .

SHRI J. S. BISHT: (Uttar Pradesh): It is a Hindu adoption law.

PANDIT S. S. N. TANKHA: Yes, it is a Hindu adoption law and it is only a Hindu who is adopting. I am a Hindu. Why can't I adopt a Muslim boy?

SHRI V. K. DHAGE: The child has to become a Hindu.

AN HON. MEMBER: Convert him and then adopt.

PANDIT S. S. N. TANKHA: I want to adopt a Muslim boy as ...

SHRI KISHEN CHAND: You cannot do it.

DR. SHRIMATI SEETA PARMA-NAND: You can make him a Hindu. He can be converted.

PANDIT S. S. N. TANKHA: But why any conversion ? I am a Hindu and I am being controlled by this law and I am taking or giving the child in adoption. It is right that the parties must be Hindus. But why should the boy be a Hindu necessarily? That I fail to understand.

I also agree with the several speakers who have said that there is no reason for fixing this age-limit of 15 years in condition (iv) specified in clause 10. I fail to understand why this arbitrary age-limit of fifteen years

has been laid down here. I could have well understood it, as Mr. Bisht suggested yesterday, if it had been mentioned here that no person below the age of majority, or who is not a major, may be adopted, though personally speaking I am against even such a restriction, because I feel that complete freedom should be given with regard to adoption. Suppose a person wishes to adopt a married person. what is the harm? He has no child and take a fancy to a young man who is already married or who is unmarried but is a major, and he wants to adopt this man.

SHRI KISHEN CHAND: Why not an older man, a man as old as his own father, if there is no harm ?

PANDIT S. S. N. TANKHA: Sir, I have known of a case in which an American who came here, took a fancy to a young Hindu gentleman here who was already married and he adopted this young man as his own son. This American lived here with that gentleman for several years and left all his considerable property to him. So, if a man takes a fancy to a grown up and married person, why should he be deprived of the right to adopt that person ?

MR. DEPUTY CHAIRMAN: You have exceeded the time-limit, Mr. Tankha. Please finish soon.

PANDIT S. S. N. TANKHA: Yes, Sir, I will take only a few minutes more.

Next I come to clause 11. Mr. Bisht has found fault with condition (vi) of this clause as he thinks it would open the floodgates for litigations. On the contrary, I think if this provision is not retained, it would lead to a lot of litigation, because it will never be known as to when actually the adoption had or had not taken place. Unless the child is removed from the family of the natural father and taken to the family of the adoptive father, how can it be known for a fact and for a certainty that the child had been adopted?

1. P.M.

Surer J. S. BISHT: Have a regular ceremony of *datta homam*.

PANDIT S. S. N. TANKHA: But the Bill says that it is not necessary.

SHRI J. S. BISHT: Why? It is necessary.

PANDIT S. S. N. TANKHA: You have taken away the need for its performance. If you retain that ceremony, I can well understand; otherwise, there must be some positive evidence to show that the adoption has taken place.

SHRI J. S. BISHT: That is exactly what I said. Have it registered after some time.

MR. DEPUTY CHAIRMAN:  
Please wind up, Mr. Tankha.

PANDIT S. S. N. TANKHA: Regarding clause 13, I agree with the remarks of my hon. friend, Mrs. Reddy. that it will be very hard for a child to be adopted by the adoptive father or the mother and then to be deprived of the property. After all, when a child is adopted by the adoptive parents, they cut off his rights in the natural family. So, it is a particular act on their part which debars the child from getting the property of his natural father. Now, after some time, if they change their mind and deprive that child of the property by either willing it away or gifting it away to any other person, it will be very unfair and most unjust to that child. He would be left in the lurch.

Regarding clause 16, I entirely agree with the observations of my friends, Mr. Bisht and Mr. Rajagopal Naidu. that it is desirable that provision should be made for the registration of the deed of adoption after, or within, a few months, say, three months or six months of the date of actual adoption. It is only by the execution and registration of such a document that the avenues of litigation will be cut short and not otherwise. It is possible that at the parti-3—42 Rajya Sabha/56

cular time when they want to adopt, they may not have the facilities for registration or for the execution of the adoption deed, and, therefore, I say that that could be done later on. In the Oudh Estates Act which has now been repealed by the U. P. Zamindari Abolition Act, there was such a provision that if the holder of an estate wanted to adopt a person, the deed of adoption must be executed within three months. That was a very salutary rule and I think that it is very necessary, in order to avoid further litigations, that a provision should be made in this Bill that there should be formal execution of documents and their registration.

**श्रीमती सावित्री निगम (उत्तर प्रदेश):**  
उपसभापति महोदय, इस एडाप्शन बिल का हादिक समर्थन करते हुए मुझे अपार हर्ष हो रहा है। साथ ही साथ मैं माननीय श्री पाटस्कर साहब को, जो कि उस बिल के मूवर हैं, उनको आधुनिक युग का ऋषि मान कर, अपनी हादिक बधाइयां देती हूँ। उनकी विनम्रता, योग्यता और इसाफ की प्रवृत्ति ने इस विधेयक को इतना सफल और जितना प्रभावपूर्ण बनाया। मैं श्रुत डा० बालींगे की तरह एक स्वर से माननीय मंत्री जी को बधाइयां देना और दूसरी ओर इस बिल को भी निरर्थक बताना, ऐसा नहीं चाहती, क्योंकि मैं जानती हूँ कि यह विधेयक बहुत ही इन्नोसेंट मेजर है, परमिसिव मेजर है और किसी प्रकार इस विधेयक द्वारा कोई जबरदस्ती नहीं की जा रही कि कोई लड़की को ही एडाप्ट करे। हर व्यक्ति को खुली छूट है कि वह चाहे तो लड़के को एडाप्ट करे या लड़की को एडाप्ट करे। मैं यह कभी नहीं समझती कि इस बिल की आवश्यकता नहीं है।

हमारे देश में बहुत से ऐसे संतानही लोग हैं, जो इच्छुक रहते हैं कि उनको भी संतान का सुख बच्चों को एडाप्ट करके मिल सके, और उन लोगों का हमें ध्यान रखना है। इसीलिये यह बिल अत्यंत आवश्यक है। इसमें न तो कोई ध्वराहत की बात है और न किसी चिन्ता की; जिनको पिंड-दान की लालसा है वे बड़ी खुशी से लड़कों को ही एडाप्ट कर सकते हैं, लेकिन जिन्हें पिंड-दान से कोई ताल्लुक नहीं है और न उसमें विश्वास रखते हैं और, जो चाहते हैं कि इस जन्म में ही अधिक परवाह की जाय, वे चाहें तो एडाप्टेड सन की तरह एडाप्टेड लड़की भी

### [श्रीमती सावित्री निगम]

रख सकते हैं। वे चाहें तो लड़की को ही एडाप्ट कर सकते हैं क्योंकि लड़कियाँ अधिक प्रेमशील होती हैं हालाँकि ऐसे एडाप्शन अब भी होते हैं और आगे भी होते रहते, चाहे यह एडाप्शन बिल पास होता या न होता। लेकिन इस तरह से जो बच्चे एडाप्ट किये जाते हैं, उनके अधिकार सुरक्षित रखने के लिये, उनको एक लीगल स्टेटस देने के लिए इस विधेयक का लाना बहुत जरूरी समझा गया। आजकल विशेष रूप से जो लड़कियाँ पढ़ रही हैं और स्वावलम्बी बन रही हैं, उनमें से जो बहुत सी ऐसी हैं, जो विवाह नहीं करना चाहतीं, उनकी कभी यह इच्छा होती है कि वे कोई बच्चा एडाप्ट कर लें या अपनी कमाई हुई संपत्ति के लिये कोई उत्तराधिकारी चुन जायें। इसलिए अनमैरिड लड़कियों के वास्ते एडाप्शन का अधिकार आवश्यक हो गया था। आज भी ला मिनिस्ट्री में ऐसे केसेज पड़े हैं कि बहुत ही लड़कियाँ हैं, सर्वनमैन्ट सर्वेन्ट हैं, जिन्होंने बच्चों को एडाप्ट किया है, लेकिन उनको लीगल स्टेटस नहीं दिया जा रहा है और उनके मामले पेंडिंग पड़े हुए हैं। यह जरूरी हो गया था कि उन सब लोगों को राहत पहुँचाने के लिये यह विधेयक लाया जाय।

श्रीमन्, क्लॉज ७ में बहुत ही वृद्धिमत्तापूर्ण कदम उठाया गया है, जो कि पत्नी को भी इंपोर्टेन्स दी गई है जिसको कि बच्चे का पालन-पोषण करना होता है। अगर ऐसा न किया जाता तो बच्चों के साथ बहुत बड़ा अन्याय होता क्योंकि असल में गोद तो पिता लेता है लेकिन पालती तो माँ ही है और अगर माँ की राय न ली जाय तो बच्चे को दूर्भाग्यपूर्ण व्यवहार मिल सकता है। इसलिए यह एक बहुत ही महत्वपूर्ण कदम उठाया गया।

क्लॉज ९ में अनाथ बच्चों को एडाप्ट करने का जो अधिकार है वह बहुत ही दूरदर्शितापूर्ण है। जहाँ माता और पिता को एक ही तरह से गोद लेने की इच्छा होती है, वहाँ उस संतान को जो अनाथ है उसको भी एक प्रेम करने वाले माता-पिता मिल सकेंगे और उसको कानूनी अधिकार मिलेगा। यह बहुत ही आवश्यक बात थी जो इस बिल में की गई है।

क्लॉज १० में जो १५ साल की उम्र की कैद रखी गयी है, उसके बारे में भी सेलेक्ट कमेटी में बहुत विचार किया गया। हमारे यहाँ वर्ष सर्टिफिकेट रखने का रिवाज नहीं है और देश में इतनी साक्षरता नहीं है कि सब लोग वर्ष सर्टिफिकेट लें, इसलिये सम्भव था कि जहाँ

१६, १७, १८ साल की उम्र के लड़के लड़कियों को गोद लेने का सवाल होता वहाँ २२, २४ या २५ साल के लड़के-लड़कियों को भी गोद ले लिया जाता। बड़ी उम्र के बच्चों को गोद लेने में माँ बाप को भी कठिनाइयाँ होती हैं क्योंकि वह नये परिवार में आकर अपने को आसानी से नहीं खपा सकते। उसके कांसीक्वेंस होते हैं वह हम समझ सकते हैं जैसा कि भुवाल संन्यासी कांड में हुआ। सब बातों को देखते हुए हमने जरूरी समझा कि छोटी ही उम्र के बच्चे एडाप्ट किये जायें, तो वे अपने को परिवार में खपा सकेंगे और अपने को उस परिवार का अंग बना सकेंगे। इसलिये १५ वर्ष की उम्र रखना जरूरी हो गया था।

क्लॉज ११ में इल्लेजिटिमेंट बच्चों को भी जो अधिकार दिया गया है, यह एक बहुत ही महत्वपूर्ण और आवश्यक सुधार हुआ है। देश की आने वाली पीढ़ियाँ इसको बहुत ही प्रशंसा की दृष्टि से देखेंगी। श्रीमन्, मेरे विचार से बच्चों के लिए 'इल्लेजिटिमेंट' शब्द ही डिक्शनरी से निकाल दिया जाना चाहिये। बच्चे कभी इल्लेजिटिमेंट नहीं होते, अगर इल्लेजिटिमेंट होते हैं तो उनके माँ-बाप होते हैं जो उनको जन्म देते हैं। इसलिए बच्चे तो बिलकुल वेगुनाह होते हैं, वे भगवान के स्वरूप माने जाते हैं। हमें यह "इल्लेजिटिमेंट" शब्द बिलकुल निकाल देना चाहिये। लेकिन अगर अभी नहीं निकाला गया और उनको कानूनी अधिकार दिनाया गया है तो मैं समझती हूँ कि यह चीज आगे चलकर इस तरफ एक कदम होगी कि इल्लेजिटिमेंट जैसी कोई चीज हमारी कानूनी किताब में न रह जायगी।

क्लॉज १७ भी बहुत आवश्यक है। अक्सर ऐसा होता है कि एडाप्शन के नाम पर बहुत सी संस्थाएँ बच्चों को बेच देती हैं और बेच कर नाजायज़ फायदा उठाती हैं। बच्चों का तरह-तरह से एक्सप्लायटेशन रोकने के लिये ही यह रखा गया है कि कोई व्यक्ति गिफ्ट से किसी को एडाप्ट नहीं करेगा।

क्लॉज २७ के बारे में विष्ट साहब ने सेलेक्ट कमेटी में एतराज पेश किया था कि ये शब्द "not be a charge on the estate of the deceased" निकाल देने चाहियें। मैंने कहा भी था कि अगर "नाट" शब्द हम न निकालेंगे तो इसका मतलब यह होगा कि हम एक हाथ से मेन्टेनेन्स दिलवा रहे हैं और दूसरे हाथ से उसको

वापस ले लेंगे क्योंकि जो आदमी अपने रिश्तेदारों को या डिपेंडेंट को मेन्टेनेन्स खुशी से देना चाहता है उससे उसके परिवार वाले मेन्टेनेन्स मांगेंगे ही नहीं। ऐसे लोग जो अविवेकपूर्ण होते हैं और अपने परिवार वालों को मेन्टेनेन्स नहीं देते या देना नहीं चाहते अगर उनसे मेन्टेनेन्स दिलाया गया है तो उसके साथ यह भी जरूर रखना चाहिये था कि वे अपनी प्रापर्टी डिस्पोज आफ़ न कर सकें और उन लोगों को जबर्दस्ती अपनी प्रापर्टी में से ऐसे दुःखी और असहाय लोगों को मेन्टेनेन्स देना पड़े। श्रीमन्, मैं तो कहूंगी कि मेन्टेनेन्स तो एक बिल्कुल अंतिम अधिकार है जो हर एक आदमी को जरूर ही दिया जाना चाहिये। मेन्टेनेंस के हक को सुरक्षित रखने के लिये मैं यह जरूर चाहूंगी और मैंने इसके लिए ला मिनिस्टर महोदय से बार-बार इंसिस्ट किया था कि इस "नाट" शब्द को हटा दें तभी इस बिल का पूरा फायदा वे लोग उठा सकेंगे जिनको मेन्टेनेन्स दिलाया जाने वाला है। श्रीमन्, तन्हा साहब की बात ठीक है कि शादी-शुदा स्त्री को भी मेन्टेनेन्स मिलना चाहिए, लेकिन जो स्पीचेज यहां हुई हैं इस बिल के विरोध में, उनको देखते हुए हम लोगों ने यही सन्न कर लिया कि जो कुछ मिल जाय वह बहुत है।

श्रीमन्, बिष्ट साहब ने कहा है कि: Let the poor man have upper hand. मैं जानना चाहती हूं कि क्या उनकी यह मांग उसी तरह की नहीं जैसा कि रशिया यह मांग कर रहा है कि कि Let me have upper hand in Hungary. या ब्रिटन और फ्रांस की सरकारों ने मांग की है कि: Let us have an upper hand on Suez Canal and in Egypt.

श्री जसौद सिंह बिष्ट : मैंने "अपर हैंड" कही नहीं कहा है।

श्रीमती सावित्री निगम : कहा है; मैंने अखबार में भी देखा कि...

श्री जसौद सिंह बिष्ट : "फ्री हैंड" कहा था।

श्रीमती सावित्री निगम : फ्री हैंड और अपर हैंड मिलना चाहिये, यह कहा था। सदियों से पुरुषों ने हमारे समाज में अपर हैंड पाया है। हमारे धर्म में और समाज में उसका जो नतीजा हुआ है, क्या वे उनसे थके नहीं। उसका नतीजा क्या हुआ? सदियों तक हमारी हिन्दू जाति पिछड़ी रही और गुलाम भी हो गई।

अगर किसी देश में जननी या "मां" पिछड़ी हुई होती है और उसका एक्सप्लाइशन होता है तो सारा देश ही पिछड़ा जाता है। इसलिए मैं कहूंगी कि यह बात हमारी कांस्टिट्यूशन की आत्मा के विरुद्ध है, और ऐसी दलील उनको नहीं देनी चाहिये। जहां वे अपर हैंड और फ्री हैंड दमन के लिये चाहते हैं वहां हम स्त्रियों के लिये बिल्कुल मिनिमम जस्टिस मांगते हैं। हम नहीं चाहते कि स्त्रियों को कोई अपर हैंड दिया जाय, हम मिनिमम जस्टिस, कम से कम इसाफ, चाहते हैं जो कि मनुष्यता के नाम पर, मानवता के नाम पर, उनको मिलनी चाहिये। श्रीमन्, आप ही बतायें कि यह कितना अन्याय होगा, यदि किसी परिवार में मां राजी न हो और बाप किसी बच्चे को गोद ले लेता है। जहां पुरुष अविवेक के कारण पत्नी को अच्छी तरह से नहीं रख सकता वहां उसको ही गोद लेने का अधिकार देना और जो स्त्री जन्म भर बच्चे का पालन करती है, सेवा करती है, उसको वही अधिकार न दिया जाना, यह बिल्कुल अनुचित है। क्योंकि यह तो एक बच्चे को गोद लेकर अपनी पत्नी का जीवन बर्बाद करने का अधिकार देना है। इस बिल में यह बुद्धिमानी की बात की गई है कि अगर किसी आदमी की दो-तीन बीवियां हैं, तो उन सब की राय लेकर वह किसी बच्चे को गोद ले सकता है। लेकिन मैं सोचती हूं कि अगर कोई आदमी दो-तीन बीवियों को रखने की हिम्मत रखता है तो उसकी समझदारी इस बात में है कि वह उनको बराबर का सम्मान दे और सब की सम्मति ले। यह न हो कि उनको अधिकार न दे और बच्चे को परिवार के बीच गोद ले लिया जाय और बाद में उसकी लाइफ हेल हो जाय। इसलिए मैं यह सोचती हूं कि जहां पर कलह होने की संभावना है, वहां पर गोद लेने का कोई अधिकार नहीं होना चाहिये।

श्रीमन्, आजकल भी एडॉप्शन करते समय पूरी तरह से लिखापट्टी करवा ली जाती है लेकिन इस बिल से किसी तरह का झगड़ा होगा, यह मैं नहीं सोचती। कलाज १७ बहुत आवश्यक है और इसमें जो बात लिखी गई है, वह ठीक है। मुझे इस कलाज में ऐसी कोई बात नहीं दिखाई देती जिससे कि झगड़ा होगा।

श्री जसौद सिंह बिष्ट : आपको अदालत का तजुर्बा नहीं है।

श्रीमती सावित्री निगम : श्रीमन् मुझे श्री जसवन्त सिंह जी की स्पीच सुनकर बहुत दुःख हुआ। १८ वीं सदी में ब्राह्मणवादी पुरातन

### [श्रीमती सावित्री निगम]

पंथी हमारे समाज पर हावी हो गये थे जिन्होंने हिन्दू धर्म और हिन्दू जाति को पतन के गर्त में पहुँचा दिया था और कुकृतियों में फँसा दिया था। ऐसा लगा कि वही चीज उनके गले में बैठकर अंतिम साँस ले रही है। उन्होंने ब्लू ब्लड की जो दलील दी उसको सुनकर बड़ा विचित्र सा लगा। उन्हीं ब्लू ब्लड वालों में से जो राजा-महाराजा थे वे खत्म हो गये, उनकी स्टेट्स खत्म हो गईं, लेकिन वह "ब्लू ब्लड" अब भी उनके दिमाग में मौजूद है। यह बड़ी अजीब बात है कि वे बार-बार हिन्दू धर्म का नाम ले रहे थे, जैसे उन्हें हिन्दू धर्म की बड़ी चिन्ता है। मैं हिन्दू धर्म की अनुयायी हूँ। मैं जानती हूँ कि श्रोतरी, कुती और मंदोदरी के इल्लेजिटिमेंट बच्चे हुए, लेकिन हम अपने घरों में पूजा-पाठ के समय उनका श्रद्धा से नाम लेते हैं। जब हम उनको पवित्र मानते हैं तब इल्लेजिटिमेंट बच्चों को हम क्यों घृणा की दृष्टि से देखते हैं, यह बात मेरी समझ में नहीं आती। श्री जसवन्त सिंह जी ब्लू ब्लड के पीछे क्यों परेशान हैं, यह बात मैं अभी तक नहीं समझ सकी। शायद वे चाहते कि जहाँ ब्लू ब्लड है, वहाँ बच्चों को गोद न लिया जाय।

श्रीमन्, हिन्दू धर्म में जो नियोग करने की प्रथा है वह बताती है कि हिन्दू समाज इस विषय में कितनी दूर तक जाता है। हिन्दू समाज सर्वशक्तिमान् है और अक्षुण्ण है। उसमें छोटे-छोटे रस्म-रिवाज होते हुए भी वह कभी नष्ट नहीं हुआ। श्री जसवन्त सिंह जी के दिमाग में हिन्दू समाज के प्रति जिस संकीर्णता का नक्शा मौजूद है, अगर सचमुच में वह ऐसा है तो उसे नष्ट हो जाना चाहिये। हिन्दू धर्म बड़ा विशाल है, उसमें सब तरह के ऊँच-नीच और पिछड़े हुए लोगों को ऊँचा उठने का पूरा अवसर प्राप्त है। हिन्दू धर्म में इन गुणों के होने से ही वह अभी तक जीवित है, अक्षुण्ण बना हुआ है और बना रहेगा।

श्रीमन्, बार-बार यह कहा जा रहा है कि पति को ही यह अधिकार होना चाहिये कि वह बच्चे को गोद ले या न ले। लेकिन उन लोगों ने यह नहीं सोचा कि बेचारी पत्नी जो दिन भर घर में काम करती है, रोटी बनाती है, घर की देखभाल करती है, और बच्चे को जीवन-दान देती है, उसको यह अधिकार क्यों नहीं दिया जाय। श्रीमन्, आजकल स्त्रियाँ भी कमाने लगी हैं, और कमाने के साथ-साथ वे घर की देखभाल भी करती हैं, बच्चे का पालन-पोषण करती हैं।

तो फिर उनको बच्चा गोद लेने का अधिकार मिलने पर क्यों एतराज किया जाता है? गोद लेने के समय बेचारी पत्नियों को कम से कम स्वीकृति देने का तो हक दिया जाना चाहिये।

श्रीमन्, क्लोज १८ में "इंज्यूरियस" शब्द जो रखा गया है वह उचित है लेकिन माननीय बिष्ट साहब कहते हैं कि वह शब्द बड़ा अस्पष्ट है। मैं नहीं समझती कि इस शब्द को रखने से बिष्ट जी को किसी प्रकार की चिन्ता होनी चाहिये। इंज्यूरियस शब्द इतना साफ है कि मान लीजिये कोई औरत जान से नहीं मार डाली जाती, मगर उसको किसी तरह से जान का खतरा है, चाहे वह किसी रूप में हो, तो इस आधार पर उसको अलग होने का अधिकार मिलना चाहिये। सदियों से पुरुषों ने समाज में रह कर स्त्री का शोषण किया है और उसको अपमानित किया है। तो इस शब्द को रखकर बड़ी बुद्धिमानों की गई है और स्त्री के प्रति इंसानियत बरता गया है। मेरी समझ में नहीं आता है कि इस शब्द को रखने पर उन्हें क्यों किसी तरह का एतराज होना चाहिये।

उन्होंने यह भी कहा कि दो बीबियों को मेंटेनेंस का अधिकार क्यों दिया है। कोई भी स्त्री अपनी मर्जी से अलग होना नहीं चाहेगी किन्तु बहुत से ऐसे अन्यायपूर्ण आदमी होते हैं जो अपनी स्त्री को बार-बार दुःख दिया करते हैं और दोनों पत्नियों के साथ एक जैसा व्यवहार नहीं करते। इस तरह की जिन स्त्रियों को दुर्भाग्यवश अलग रहने के लिये मजबूर किया जाता है, उनको कम से कम इज्जत के साथ अलग रहने के लिये मेंटेनेंस अवश्य मिलना चाहिये। मेरी समझ में नहीं आता कि ऐसे भी हृदयहीन लोग हो सकते हैं जो यह कहें कि दो बीबियों को अलग रहने पर मेंटेनेंस लेने का हक न दिया जाय। क्या बिष्ट साहब यह चाहते हैं कि बीबियों की जिन्दगी हमेशा हेल बनी रहे और वे पति से अलग रहकर सम्मानित जीवन न बितायें?

**श्री जसौद सिंह बिष्ट :** उनको डाइवोर्स का राइट है।

**श्रीमती सावित्री निगम :** हिन्दू स्त्रियों में लाखों में एक होगी जो डाइवोर्स करना चाहेगी। जब आप स्त्री की घर में छीछालेदार करना चाहते हैं तो कम से कम उनको मेंटेनेंस लेने का अधिकार तो दीजिये ताकि वे सम्मानपूर्ण जीवन व्यतीत कर सकें। मेरी समझ में नहीं आता कि पुरुषों के दिलों में स्त्री के प्रति इस तरह की भावना क्यों उत्पन्न नहीं होती कि स्त्री को भी सम्मानित जीवन व्यतीत करने का पूरा अधिकार है।

अब जमाना बदल गया है और तेजी से बदलता जा रहा है, फिर भी हमारे विष्ट साहब इस तरह की बात सोचते हैं।

(Interruptions.)

मुझे आप डिस्टर्ब न करें, मेरे पास समय बहुत थोड़ा है। आप अपने समय में बोल सकते हैं। तो इन आधारों पर मैं आप से कहूँगी कि आप लोग अपनी भावनाओं को बदलें और जहाँ तक मेन्टेनेन्स का सवाल है, वह स्त्री को अवश्य मिलना चाहिये।

श्रीमन्, विष्ट साहब ने जो स्पीच इस सम्बन्ध में दी है उसमें उनकी एक बात का, जो कि बहुत महत्वपूर्ण है, मैं समर्थन करती हूँ। वह यह है कि बिल के क्लॉज २७ में जहाँ पर यह दिया है कि "not be a charge on the estate." उसमें से "not" शब्द को डिलीट कर दिया जाय ताकि मेन्टेनेन्स का हक मिल जाय।

श्रीमन्, जो भी तन्खा साहब के दिमाग में शक-शुबहा हों; लेकिन अगर हम लोग उन बहनों को, उन स्त्रियों को, जो कि विवाहित हैं, गोद लेने का अधिकार न दें, तो हम एक प्रकार से अन्याय कर रहे हैं। मेरे दिमाग में भी यह बात थी और मैं तन्खा साहब की इस बात से बिल्कुल सहमत हूँ कि शादीशुदा स्त्री को भी अपने पति की आज्ञा से एडाप्ट करने का अधिकार दिया जाना चाहिये। अगर अब भी कोई सुधार लाया जा सकता हो जिससे विवाहित स्त्रियों को गोद लेने का अधिकार दिया जा सके तो मुझे बड़ी खुशी होगी। जब हमने सर्वेक्षण बिल में उन्हें इनहेरिट करने और इनकम अर्न करने का अधिकार दे दिया है तो कम से कम पति की मर्जी से उनको यह अधिकार भी दिया जाना चाहिये।

श्रीमन्, यहाँ पत्नी से पति को मेन्टेनेन्स दिलाने की बात किसी सदस्य ने उठाई है, मैं उसका पूरी तरह से समर्थन करती हूँ। मैंने इस बात को कमेटी में भी कहा था कि जो बेचारे आश्रित पति हैं, कमा नहीं सकते हैं, मजबूर हैं, उनको पत्नी से मेन्टेनेन्स लेने का अधिकार दिया जाना चाहिये। लेकिन, श्रीमन्, सेलेक्ट कमेटी में कुछ सदस्यों ने शिर्षलरी दिखानी चाही और कुछ लोगों ने यह धमंड प्रकट किया कि यह बड़ी बे-इज्जती की बात है कि पत्नी से मेन्टेनेन्स लिया जाय। इसीलिये उन्होंने यह मुझाव अस्वीकृत कर दिया। लेकिन मैं उनको इस बात का विश्वास दिलाती हूँ कि शायद करोड़ दो करोड़ में एकाध ही ऐसी स्त्री मिलेगी, जो कि अपने अपाहिज पति को या लाचार पति को पूजती न हो या अच्छी तरह

से रखती न हो या उसकी सेवा न करती हो। यदि एकाध ऐसे एक्सेप्शंस हैं कि वे बेचारे अपने पत्नी से दुर्व्यवहार पाते हैं तो उसके लिये हमें बड़ी सहानुभूति है और यदि कोई सज्जन कोई ऐसा अमेडमेंट लायेंगे तो मैं उसका सब से पहले समर्थन करूँगी कि ऐसी हालत में जब कि पति मजबूर हो तो उसको भी मेन्टेनेन्स का हक जरूर दिया जाना चाहिये।

(Time bell rings.)

श्रीमन्, मैं यह चाहती हूँ कि चूंकि यह विधेयक बहुत जरूरी है और पूरा हिन्दू कोड को संयुक्त करने वाला तथा बांधने वाला है, इसलिये बिना अधिक संशोधनों के इसको इसी तरह पास कर दिया जाय। बाद में यदि किसी संशोधन की आवश्यकता महसूस हो तो अगली पार्लियामेंट के सेशन में यदि वह संशोधन लाया जाय तो ज्यादा अच्छा होगा। आज कल जितने भी प्रोग्रेसिव किस्म के लोग हैं और जो नये जमाने के अनुसार नये मूल्यों और नई मान्यताओं को मानने वाले हैं, उनसे मेरा निवेदन है कि हालांकि मैं भी यह मानती हूँ कि इस विधेयक को और आगे जाना चाहिये था और इसमें कुछ कमियाँ रह गई हैं लेकिन फिर भी वे इसको अपना पूरा सहयोग दें और इसको इसी प्रकार से पास हो जाने दें ताकि पार्लियामेंट के इसी सेशन में पूरा हिन्दू ला पूरी तरह से कोडीफाई हो सके। धन्यवाद।

SHRI KISHEN CHAND: Mr.

Deputy Chairman, after such an eloquent sneech of my colleague, I raise my humble voice. I cannot start with the same bouquets as she started saying that we have another Manu, because I humbly submit that this Bill is a retrograde Bill, that this Bill is badly drafted, that it has got a large number of clauses which have implications that will be suicidal to our society.

[THE VICE-CHAIRMAN

SHRI P. S. RAJAGOPAL NAIDU in the chair]

It is becoming cheap praise now-a-days that everybody who brings in any reform or alteration in the Hindu Code Bill is considered to be a Manu, as if this law is going to stand for a very long time. I submit that there must be *raison d'etre* for any Bill when we bring it here, either it should be in continuance of certain traditions of



[Shri Kishen Chand.] Hindu religion, that it is in conformity with that tradition and it is being adjusted to modern times; or it is a progressive measure in tune with modern times. I submit from both these points of view this Bill does not fulfil the conditions. It is neither an absolutely up-to-date modern law of adoption as is prevalent in the U.K. or U. S. A. or in other countries of the West where adoption is separated completely from religion; nor is this Bill a continuance of the Hindu Code Bill. We have in the Hindu law a complete code of adoption and maintenance. There may be certain clauses here and there in that code which require change and alteration. But this Bill as it stands is so contradictory in itself that it cannot be considered to be continuance of the Hindu Code Bill.

Sir, an hon. Member, by a passing remark, while considering this Bill tried to criticise certain beliefs of the Hindu religion. He says they are superstitions. May I point out to the hon. Member that only on the republication of a certain book published in America there was such agitation all over the country? It is the toleration of Hindus that the hon. Member can, in a privileged position, make any remarks about the Hindu religion in this House and if the same hon. Member says the same thing outside also, Hindus are tolerant people and they will not mind it very much. But if he says the same thing outside about some other religion he will have to bear the consequences. Every religion is based on certain faith and beliefs and in faith and beliefs there will be some sort of what you may call superstition. You may call it belief in the supernatural or you may call it absolute faith in the existence of God; and certain consequences follow from it. It is an integral part of the Hindu religion to believe that there is a life after death, that there is a continuation of human life and wherever the soul resides that soul receives some sort of satisfaction by the actions of his descendants.

DR. W. S. BARLINGAY: On a point of personal explanation I must

say that I was only talking of *pinda dan* and I was not talking about this question of re-birth and so on and so forth. We are not going into all these.

SHRI B. B. SHARMA: *Pinda dan* is connected with that idea.

SHRI KISHEN CHAND: You cannot have *pinda dan* unless you believe that the soul is immortal.

DR. W. S. BARLINGAY: *Pinda dan* is something much more than that.

SHRI KISHEN CHAND: I am very glad that if *pinda dan* is more than that, I was humbly saying . . .

(Interruptions.)

THE VICE-CHAIRMAN (SHRI P. S. RAJAGOPAL NAIDU): Order, order.

SHRI KISHEN CHAND: I was submitting that if you believe in that, and if the son performs certain ceremonies, when he remembers his ancestors and makes an offering, it is a belief of the Hindus that the soul of the departed ancestor gets some satisfaction. And the two things are connected together. If you do not believe in it, it is your own personal view, but to openly try to wound other people's faith is not fair.

DR. W. S. BARLINGAY: I must again point out that I am a born Hindu. I believe in several things in the Hindu religion and all that I have been saying is that there are superstitions in Hindu religion just as there are superstitions in other religions also.

SHRI J. S. BISHT: You are not reforming others.

DR. W. S. BARLINGAY: Of course, not.

SHRI KISHEN CHAND: I was saying that if you believe in adoption, it should be for a purpose. If the adoption is to be performed, it must be for a purpose either on a religious basis or on a secular basis. I have given an explanation that for the religious basis, it must be according to the Hindu religion *i.e.*, offering of *pinda*

*clan*; and for that there are certain regulations. It should be a *sapind*. The person who is adopted must be a *sapind*, otherwise that *pinda dan* is not fully effective and so on. If you do not believe in that, there is a secular law, in which for the adoption there is no rule at all. Anybody adopts anybody, at any time, for any consideration, for any reason.

SHRI J. S. BISHT: There should be a civil law of adoption.

SHRI KISHEN CHAND: It will have nothing to do with Hindus. It should be a civil law of adoption. There is a law in existence for it; what is the need for this Bill? Any person can take any boy or girl or anybody, old or young, as an adopted child of the adopting person. Under the civil law he completes a document and gets it registered. We are trying to satisfy two different things, two contradictory things. We do not satisfy anything. I was simply surprised at an hon. lady member saying that in the Hindu religion there was no idea of chastity at all. And she had the audacity to say that our revered persons like mother Kunti and mother Draupadi and all these were unchaste women.

DR. W. S. BARLINGAY: She never said that.

SHRI V. K. DHAGE: No. She did not say that.

SHRI KISHEN CHAND: She said that both these had illegitimate . . .

DR. W. S. BARLINGAY: She only said that Hindu religion was so broad-minded.

SHRI KISHEN CHAND: She mentioned the name of Kunti and mentioned the name of Draupadi and said that both these women had illegitimate children and she said there was a system of *niyog* in the Hindu religion which permitted the birth of illegitimate children. All that was said and without explaining ....

SHRI V. K. DHAGE: But that is true.

SHRI KISHEN CHAND: There is another champion who without reading all the texts comes forward to say by hearsay that it is true.

SHRI V. K. DHAGE: I do not want Mr. Kishen Chand to make the remark that I am saying that by hearsay. If he wants I shall produce the copy which says that Kunti and others gave birth to children not by their husband but by somebody else. This is the book Satyarth Prakash by Swami Dayananda Saraswati.

SHRIMATI T. NALLAMUTHU RAMAMURTI (Madras): I throw a challenge about the remarks on Kunti.

THE VICE CHAIRMAN (SHRI P. S. RAJAGOPAL NAIDU): Mr. Kishen Chand, come to the merits of the Bill.

SHRI KISHEN CHAND: Sir, there are remarks made about the Hindu religion which are absolutely incorrect. People may express any opinions they like, but to cast aspersions about our revered mothers is most unfair. In those days there was an idea to give a child with a god's name. If you say that this is a child of the Sun god, do you think that the Sun god became a human being? Some of the children of Kunti are connected with the Sun god, some are connected with the Moon god and the Rain god.

An HON. MEMBER: Indra.

SHRI KISHEN CHAND: Do you think that the Sun god adopted a human form, came here and then the child was born? We must have some sort of reason, some sort of connection with these ideas. When there is a sense of deification so that every child of a great man may be connected with some god, we take up that idea and make it a physical fact. Immediately we imagine that it is an illegitimate child—I am very surprised at this.

DR. W. S. BARLINGAY: What about Vyas? Was he not an illegitimate child?

SHRI KISHEN CHAND: I am saying about non-chastity being glorified.

AN HON. MEMBER : Who did it ?

SHRI KISHEN CHAND: Because some lady Member tried to show that our revered mothers were unchaste and they had illegitimate children.

(Interruptions.) Another

champion of unchastity.

SHRI V. K. DHAGE: What Mr. Kishen Chand is saying is that marriage is legalised prostitution. That is what he seems to think.

THE VICE-CHAIRMAN (SHRI P. S. RAJAGOPAL NAIDU): Mr. Kishen Chand, don't get yourself unnecessarily involved in this controversy.

DR. W. S. BARLINGAY: Sir, he says that there are people in this House who are champions of unchastity. I protest against that.

SHRI KISHEN CHAND: A lady Member made that speech and he can read that speech if he likes.

THE VICE-CHAIRMAN (SHRI P. S. RAJAGOPAL NAIDU): She is not here to defend herself.

SHRI KISHEN CHAND: The words are in black and white; the speeches are taken down verbatim and they can be seen.

As I pointed out. Sir, the whole idea of adoption according to this Bill is wrong, and when you were speaking as a Member, you pointed out that in clause 4 there was an anomaly—if a son's son is surviving there is no justification for permitting adoption—and there are so many other anomalies. There are many anomalies in the Bill which require removal, and they have been pointed out by hon. Members. I do not like to repeat them, but I will come to one other point which has not been stressed by any hon. Member so far, and that is about clause 18.

In clause 18, the first sub-clause says: "Subject to the provisions of this section, a Hindu wife, whether married before or after the commencement of this Act, shall be entitled to

be maintained by her husband during her life time". That means that even if the wife is living with her husband, she can claim maintenance living side by side with her husband. In foreign countries there is an idea that a woman performs certain duties in looking after the household, and because she is doing work she is entitled to a portion of the salary of her husband. You know the case of Shelley who was getting £ 1,500 as his income, and out of that £ 500 was given to his wife, £500 was kept by himself and £500 was utilised for the expenses of their family. My argument is strengthened by the Report of the Select Committee. The Report of the Select Committee says that the words "may claim maintenance from her husband only if and while she lives with him" have been omitted. That means she can claim maintenance while she lives with him and she can also claim maintenance when she does not live with him. For the conditions when she can claim maintenance while not living with her husband, there is sub-clause (2). Under sub-clause (1) every woman will be entitled to claim maintenance while she is living with her husband. I would like Mr. Sapru, when he speaks, because he was the Chairman of the Select Committee, to try to clarify this point in the light of the Report of the Select Committee, where it has been very clearly stated that she can certainly claim maintenance when she is living with her husband. This will create a great deal of complication especially in our society. It will mean that every wife can go to a court of law and say that the husband is not giving her a fair proportion out of his income ....

THE VICE-CHAIRMAN (SHRI P. S. RAJAGOPAL NAIDU): It is a statutory duty cast upon the husband to maintain his wife.

SHRI KISHEN CHAND: I have requested you to read the Report of the Select Committee on page 3, I will read out once again. The words "may claim maintenance from her husband only if and while she lives with him" have been omitted as unnecessary.

That means that the idea behind this is that she can claim » maintenance from her husband while she lives with him. In 99 per cent of the cases, wives live with their husbands, and while they are so living it will lead to a great deal of complication.

SHRI P. N. SAPRU: This clause must be read with the other subclauses and the preceding clause.

SHRI KISHEN CHAND: Claiming maintenance while she lives with her husband is one thing, and claiming maintenance while she does not live with her husband is another thing. There are certain conditions under which while she does not live with her husband, she can claim maintenance if he has treated her with cruelty, if he is guilty, or some such thing. Under sub-clause (2) she can claim maintenance in spite of not living with him, but under sub-clause (1) she can always claim when she is living with him. The underlying idea is that she is performing a duty to the family, she is serving the family by cooking food, bringing up children, looking after the household, and as a reward—in the British law it is an accepted fact—the wife can claim maintenance even while living with her husband.

SHRI H. C. DASAPPA: The hon. Member knows that when the wife lives with her husband she generally empties the husband's pocket.

SHRI KISHEN CHAND: We have got to go by the Report of the Select Committee and the wording of the Bill. It is not a question as to what happens in actual life, but whether the husband gives her maintenance or does not give is a separate matter. The quantum of maintenance has been left to the law courts. I submit, Sir, that it will lead to a great deal of litigation. In many countries the idea is that up to one-fourth of the income of the husband may be considered to be the proper maintenance for a wife. I would have suggested that subject to an appeal to the law court there should have been a maximum limit fixed, a maximum of one-fourth of the income of the husband as the quan-

tum of maintenance for the wife. without having such a provision you are making the matter very complicated and various Judges may take various views. What portion of a husband's salary should be considered a proper and fit maintenance for the wife? If there is a limit fixed.....

SHRI P. N. SAPRU: If you will read clause 23, you will find the principles which should guide us in fixing the maintenance. Those principles merely enunciate the law as laid down by the Privy Council and various High Courts.

SHRI KISHEN CHAND: I agree with the hon. learned Member who says that it has laid down certain principles. I was submitting that when these principles are being interpreted, there will be various interpretations and it is possible that one court may hold that half the income of the husband is a reasonable maintenance for the wife and another court may hold otherwise. This clause 23 will apply to cases where the husband is dead in a majority of cases and the widow is claiming maintenance from the property.

SHRI H. C. DASAPPA: No, no. Not necessarily.

SHRI KISHEN CHAND: I submit, Sir, that in my humble opinion, instead of putting it so vague, if some sort of a limit was fixed, if some percentage of the husband's income was given as the maximum limit, it would have simplified matters because, in case of difference of opinion, the husband could have said, "I am prepared to give the maximum", and if he is prepared to give the maximum, there will be no question of referring to a law court the dispute whether it is a fair maintenance or not.

Sir, as I said, most of the clauses of this Bill are rather controversial and I would once more suggest that this Bill be circulated for eliciting public opinion.

SHRI B. B. SHARMA: Sir, I want to put in certain ideas which have not been put in by various friends here,

[Shri B. B. Sharma.] but who have simply pointed out the defects in the Bill. Before I do that, I want to pay my compliments to the Minister for Legal Affairs in words which, though not mine, have been adopted a little, just as my friend, Dr. Barlingay paid his compliments:

गतं नीतेः शास्त्रम्; क्वचिदपि पुराणं व्यपगतम्;  
विलीनाः स्मृत्यर्थाः; निगमवचनं चाप्यपहतम्;  
इदानीं 'पाटस्क' प्रभृति वचनान् न्यायपदवी;  
न जाने को हेतुः शिव, शिव, कलेरेष महिमा !

DR. SHRIMATI SEETA PARMA-NAN D: Is that a compliment, Sir ?

SHRI B. B. SHARMA: When the law of *Smriti* has been given the go by.....

DR. W. S. BARLINGAY: Are we criticising the hon. Minister or what?

SHRI B. B. SHARMA: No, no. I am hailing him.

DR. W. S. BARLINGAY: 'कलेरेष महिमा' ।

BARLINGAY: 'शिव शिव

AN HON. MEMBER: Not he.

SHRI B. B. SHARMA: I must say that this Bill is neither the old law of adoption adapted to the present circumstances, nor is it a new law altogether of the modern times—the so-called civil law. It has been in a way given to us in accordance with the other principles laid down in other laws of marriage, succession and others. And it is only the last of those laws. In this, the very purpose of adoption has been altogether neglected. I do not know why people adopt. In the old Hindu law, the purpose of adoption was the spiritual good of the father, for getting some virtue by having a male issue. *Putra*, as the lady Member, Shrimati Yashoda Reddy, has pointed out, means he who redeems his father from the hell.

"pmr T^; TWRJ WRK: W. pr:

Therefore, the purpose of adoption was clearly religious, and no other principle for adoption was given in Hindu law excepting this. Temporary reasons there were none for adop-

tion. Now, that principle has been given a go-by. Now, we are trying to choose any person—male or female—to come to our family only to satisfy our personal whims. I have no objection to that whether it be a male or a female who is adopted under the present conditions. But the Bill as it stands is, to my mind, very defective in certain respects.

I find in clause 9 that the mother has also been given the option of giving a child in adoption only under the condition that her husband is dead or when he ceases to be a Hindu. In these cases, the mother also can give a child in adoption. Now, the mother has also been given the power to remarry. If she wants that she should get rid of her previous husband's child, she might hand over the child to somebody else and be free to remarry. This is something peculiar under the circumstances as we are finding it today.

Then I come to clause 10 about persons who may be adopted and the scope is limited to a particular class or set of persons called Hindus only. As my friend, Shri Tamta, pointed out, if we are to choose a person to come to our house only as we please—particularly one whom we love—why not give those persons a large scope of adopting any person whether he is a Muslim, a Hindu, a Christian or anybody? Why do you limit it to a particular class of persons called Hindus? There is no religious basis attached to the principle of adoption. Let us go and be free and adopt any persons whom we catch a fancy for.

One thing, Sir, about clause II. Condition (vi) says that "the child to be adopted must be actually given and taken in adoption by the parents or guardian concerned or under their authority with intent to transfer the child from the family of its birth to the family of its adoption."\* Now, how is this transfer to take place? It is not made clear here. It is not a property which can be transferred by a deed. If we are not going to move them about like chattel, certainly there must be some religious ceremony attached to the transfer.

DR. W. S. BARLINGAY: Even under the present Hindu law, *datta homam* is not necessary.

SHRI B. B. SHARMA: That is what I am saying. Now, you are not incorporating the law as it stands today. You are making a secular law, and in that secular law there is no religious ceremony at all. So, how are you going to effect the transfer of the child? Under the Hindu law of the *Smriti* type there is only giving and taking. Here there is no religious ceremony for transferring the child.

DR. W. S. BARLINGAY: Giving is giving.

SHRI B. B. SHARMA: Giving is giving and taking is taking, but it is not a religious ceremony that we are going to have. Here you are doing away with it altogether. There should be a religious ceremony performed at the time of adoption. Are you going to incorporate that here? If you are not, then, what is the sanctity of this giving and taking?

THE VICE-CHAIRMAN (SHRI P. S. RAJAGOPAL NAIDU): Under the existing law, it is only so far as the *dwijas* are concerned that *datta homam* is essential. In the case of *non-dwijas*, it is not essential. Now, under this Bill they are doing away with this *datta homam* as being wholly unnecessary.

SHRI B. B. SHARMA: *Datta homam* is only part of the ceremony. That is not the whole of it. You can do away with *datta homam* if you like, but there must be some particular religious way of performing it.

DR. W. S. BARLINGAY: There is no particular way.

SHRI P. N. SAPRU: It is only giving and taking. There is no particular way.

SHRI B. B. SHARMA: A man simply goes and hands over his child. Is that the way?

THE VICE-CHAIRMAN (SHRI P. S. RAJAGOPAL NAIDU): That is the existing law.

SHRI B. B. SHARMA: Anyway, I leave it at that.

There is another point. Here is clause 13 which says :—

"Subject to any agreement to the contrary, an adoption does not deprive father or mother of the power to dispose of his or her property by transfer *inter vivos* or by will."

Now, the question is this: If he is authorised to transfer his property after having taken a child in adoption, it only means that the boy loses all his rights in his ancestral property and he also loses all his rights in the property of the adoptive father. What may happen is that after some years the adoptive father may get angry with his adopted son and will away his property to somebody else.

SHRI P. N. SAPRU: That is the law as laid down in the Hindu Succession Act. Every coparcenary has a notional share in the property and he can dispose of that share as he likes. That is what is contained there.

SHRI B. B. SHARMA: Does the adopted son get this notional right in the property of the adoptive father at the time of adoption\*? You do not give the time factor here. That is what I am contending. Has the adopted son a vested interest in the property of his adoptive father from the time of his adoption? Can he inherit a share or can he claim partition from his adoptive father after adoption? You cannot do that.

SHRI P. N. SAPRU: His right is subject to the safeguard "subject to any agreement to the contrary".

SHRI B. B. SHARMA: Agreement with whom?

DR. W. S. BARLINGAY: Anything else would be unconstitutional.

SHRI B. B. SHARMA: How? Do you mean to say that it would be unconstitutional if .....

DR. W. S. BARLINGAY: Everybody is entitled to his property.

SHRI B. B. SHARMA: Everybody is entitled to his own property but he has taken the responsibility of adopting the son. With whom would the agreement be? The adopted son would be a minor and cannot be a party to any agreement. The natural father cannot be a party to an agreement, because he has no concern or interest after giving away his son in adoption. He is not interested in the property of the adopted son and, therefore, he cannot be a party. The clause says: "Subject to any agreement to the contrary". Agreement with whom? The adopted son being a minor cannot be a party to any agreement. The father who gives that son away in adoption cannot be a party, he has no interest in that property, and any agreement by him would have no value. There must be two parties to an agreement or contract. That is my problem.

DR. W. S. BARLINGAY: Between the giver and the taker.

SHRI B. B. SHARMA: Then, he must have some consideration for giving, and what consideration does he get? In clause 17 you have provided:

"No person shall receive or agree to receive any payment or other reward in consideration of the adoption of any person, and no person shall make or give or agree to make or give to any other person any payment or reward the receipt of which is prohibited by this section."

This is what you say in clause 17. This is a penal clause. Now, if this clause is there, how can that father who gives his son in adoption, enter into any agreement to the contrary? He cannot. If he cannot, and if the boy is a minor and he cannot enter into any agreement, then with whom you are contemplating that agreement? The only persons who can enter into any agreement are the natural father and the adoptive father, and the natural father cannot be a party to any agreement by which he can be said to have taken some consideration for giving his boy away in adoption, because otherwise he may have

to go to prison or get fined. The boy being a minor, cannot be a party to any agreement, and the adoptive father is left free to dispose of his property in any way he pleases. This is the position in which an adopted son would find himself after this Bill is passed..

(Time bell rings.)

One thing more and I have done About maintenance, there are certain conditions. A wife is entitled to maintenance during her life-time; that is the custom under the law. A Hindu wife here is allowed to claim maintenance as well as to live separately from her husband under 2 P.M. certain conditions. With two conditions I would agree. I mean sub-clause (2) (a) which says:

"if he is guilty of desertion, that is to say, of abandoning her without reasonable cause and without her consent or against her wish" etc.

and sub-clause (2) (e), which says :

"if he keeps a concubine in the same house in which his wife is living" etc.

Excepting these two conditions, I have very strong objections to sub-clauses (2) (b), (c), (d) and (g). Sub-clause (2) (b) says :

"if he has treated her with such cruelty as to cause a reasonable apprehension in her mind that it will be harmful or injurious to live with her husband".

This is a very vague clause. Any excuse can be put forth to claim maintenance as well as the right to live separately. The most obnoxious is subclause (2) (c), which says: "if he is suffering from a virulent form of leprosy". Poor fellow, himself a victim of a very fell disease, now he is to suffer not only that and his wife will not look after him in this dire distress but will leave him in the lurch and go away and live separately and claim over and above all that . . .

THE VICE-CHAIRMAN (SHRI P. S. RAJAGOPAL NAIDU): That is the existing law.

SHRI B. B. SHARMA : We are reforming the law and not deforming it.

THE VICE-CHAIRMAN (SHRI P. S. RAJAGOPAL NAIDU): Your time is over.

SHRI B. B. SHARMA: Then subclause (2) (d) says: "if he has any other wife living . . . .

THE VICE-CHAIRMAN (SHRI P. S. RAJAGOPAL NAIDU): That is also in the existing law.

SHRI B. B. SHARMA: The existing law has to be modified and that is what Mr. Pataskar is doing.

THE MINISTER FOR LEGAL AFFAIRS (SHRI H. V. PATASKAR): I am not scrapping the existing law.

SHRI B. B. SHARMA: But you are reforming it. I want you to reform it.

THE VICE-CHAIRMAN (SHRI P. S. RAJAGOPAL NAIDU): Mr. Dhage.

SHRI V. K. DHAGE: Mr. Vice-Chairman, Sir, I agree with some of the speakers here in paying compliments to the hon. Minister for Legal Affairs for having brought forward this law of adoption. Two distinct things have been done in this law and they are, one, the women have been given the right to adopt and also the right to consent or to withhold consent when the husband is adopting a son. Second, a daughter also can be adopted if so desired. I welcome the provisions that are made in this Bill with regard to these.

Now in the Bill, as has been framed it has been provided that an unmarried lady can also adopt a child to herself. I welcome this provision and according to the Bill an unmarried male also can adopt a child to himself. Now, there is no provision in this

Bill to prevent two persons coming to an agreement or an understanding, not married to each other, to have a child or two and the Bill does not prevent that such a child be adopted by either of them. I think the reading that I am giving to this clause is not incorrect. I am not opposing this position if it were to happen—let me make it very clear—if under the law the position can arise that if two people, a male and a female, come to an agreement to have children without entering into a contract of marriage and afterwards each one of them adopts a child to himself or herself. Such a thing is not prevented under these provisions of the law. As I am connected with some of the institutions in Hyderabad, namely, foundling homes etc. I think such a measure is a healthy one. It will not prevent a foundling from being adopted by the real mother of that child. Much of the social evil in this regard will probably be mitigated.

Another point that I wish to establish is this that under the present scientific surroundings it is possible to adopt certain measures. Before I come to that, I would like to explain as to what has been exactly the basis of adoption in the Hindu law. According to the Hindu *Shastras* every *dwija* takes an oath at the time

I of his *upemayanam* or the sacred thread ceremony in which he vows to discharge three debts, three *tins* as they are called, and one of the debts is, as he has been given birth to, he shall also give birth to others. It is in discharge of this debt that a marriage

ceremony has to be performed so that he might be able to discharge that debt to the society. It is possible that people are not capable of discharging their debts in spite of the fact that they might have married.

May I know how much time I have got? I cannot speak very fast. I wish to know the time so that I shall be able to regulate my speech according to the time. THE VICE-CHAIRMAN (SHRI P. S. RAJAGOPAL NAIDU): YOU have still ten more minutes.



SHRI V. K. DHAGE: It is in order to discharge this debt that the marriage ceremony has to be performed. It is one of the *samskars* in the life of a person according to Hindu *Shastras*. Having been married, he may still not be able to discharge that debt.

Then how to do it? It was recognised in the olden days that a person not having a child may not have a child because he or she may be sterile. One of the two parties to the marriage may be sterile. The difficulty was overcome by the adoption of the law called the *niyog*. Now the *Shastras* permitted a person not having a child to enter into an arrangement with another person and agree that the child born of such an arrangement will be adopted by one of the two parties. I don't want to go into the details of the *Shastras* but this was permissible and that is how many of the great *rishis* also have been born. Let me not go into that controversy as was raised here on the floor of this House. But there was one thing and that was the basis. It was that the child should have some element of the blood of the two parties to the marriage who did not have a child. Therefore, when the system of *niyog* went out of vogue and the system of adoption came into existence, it was laid down that a person from the family of the same *gotra* or branch, to show that he has the same blood of the same family, is adopted. Now, here we are doing away with these conceptions. But suppose the husband is a willing party when there are no children and when the husband is sterile now we are able to determine scientifically whether a person is a sterile or not and these tests can be easily done and he permits his wife to have an artificial insemination as it is happening in the Western countries and the wife is able to conceive and a child is born, is there anything in the present law here against the adoption of such a child? What I wish to say is, if this happens and if the husband adopts that child so born, is there anything to prevent it?

SHRI P. N. SAPRU: Any child born during wedlock within 280 days is presumed to be legitimate. It is not a rebuttable presumption and evidence of non-access cannot normally be given in court.

THE VICE-CHAIRMAN (SHRI P. S. RAMGOPAL NAIDU): That is the presumption.

SHRI V. K. DHAGE: I have not been able to follow this legal side of the question. But so far as I understand it, it only confirms what I have said, that a thing like this is possible. If it is so, then I would like you to make a provision for that here. It is not at all immoral.

SHRI P. N. SAPRU: A child born out of artificial insemination will be legitimate.

SHRI V. K. DHAGE: Secondly, there is the possibility we do not rule it out—of a married man still keeping another woman, and the wife may be a consenting party, because it is not the husband who is sterile but it is the wife who is sterile and she wants a child in the family. She may be a consenting party to a child being born to the husband through another woman. I am stating it as a very rational proposition. The child so born is adopted and the wife is consenting to such adoption. Is there anything in the present law to prevent a thing like that taking place? I feel, as far as I have been able to read the law, even an arrangement of this type is not ruled out. If that is so, I would like suitable provisions to be made in that regard also so that there is the psychological satisfaction to the parties concerned that the child adopted does bear the blood of one of the two parties to the marriage. This is one point that I would like the House to consider.

The third proposition—or is it the second? I do not know. If we have the equality of sexes and if equal arrangements are being made and equal protection is given, then in the matter of maintenance, I do not understand why the husband should not be entitled—

ed to maintenance from the wife, if the wife has sufficient means. In the Hindu Marriage Act, as the House knows, we have made a provision that alimony shall be payable by the wife if she has sufficient property for the purposes of paying that alimony. If that be the case there should also be a similar provision in this Bill in the matter of maintenance, that the wife also should be made to pay maintenance to the husband. As we all know, Sir, in modern times, there are many cases—I know of many in Hyderabad—where the husband is unable to earn, not because he is not sufficiently qualified, but because he has not been able to get a job. But the wife, though not so qualified, because she is a practising doctor or something like that, is able to have a sufficient income. In that case it is reasonable that the husband also should be able to claim maintenance from the wife.

DR. SHRIMATI SEETA PARMA-NAND: That is alimony coming by the back door.

SHRI V. K. DHAGE: But what is wrong about it?

DR. SHRIMATI SEETA PARMA-NAND: You did not want to get it through the front door and so you are trying to get it through the back door.

SHRI V. K. DHAGE: Sir, these are the main points that I wanted to raise now. Regarding the other points, minor ones, with regard to the particular provisions made in the Bill, I shall speak when the proper amendments come up for consideration in the House.

SHRIMATI T. NALLAMUTHU: RAMAMURTI: Sir, I am surprised that a Bill, that is in consonance with all that we have achieved by way of reform in our Hindu law, to give the rightful place to woman in every way, should have met with so many criticisms in this House. This House I believed, and I believe it today also, is on the progressive path and not on

the path of retrogression. Some of my brothers, the hon. Members, here pointed out that to give the right of adoption to the wife and the right of being adopted to a daughter is a step in the wrong direction. I ask this House whether to suggest a custom, that might have been there in antediluvian eras, of allowing one's own wife to go and mix with another and produce a child is a step forward or a step backward, in the light of our cultural ideals of today.

THE VICE-CHAIRMAN (SHRI P. S. RAJAGOPAL NAIDU): Nobody has said that.

SHRIMATI T. NALLAMUTHU: RAMAMURTI: But I thought just now I heard Mr. Dhage suggest.

THE VICE-CHAIRMAN (SHRI P. S. RAJAGOPAL NAIDU): He was only referring to artificial insemination.

SHRIMATI T. NALLAMUTHU: RAMAMURTI: No, he also quoted some old custom. But if I have misheard him, it is all the better, for then I would know he is in agreement with the Bill.

The other thing was about artificial insemination. What has society come to? Are we going to produce mechanical Rotham's robots, away from affection, away from all sentiments that we should suggest such processes for propagating progeny? I, as an Indian woman, am unable to see, eye to eye with those who make such suggestions. Another hon. Member said yesterday that allowing unmarried women to adopt was inconsistent with the Bill that was coming up for the suppression of immoral traffic among women. This is really revolting to anyone left with any good sense that this kind of a calumny should be cast on Indian womanhood. We are all here, Sir, in this House as Members on equal terms with the hon. Members our brothers here. Is any moral sense lacking in us? Well I will pass on.

It is said that:

[Shrimati T. Nallamuthu Ramamurti,]

"The old order changeth yielding place to new

And God fulfils Himself in many ways

Lest one good custom should corrupt the world." There might have been old customs, very wonderful customs too, 10113 long ago. Customs die hard true. But we are all living in changing times and we have to go along with the change. At the same time keeping to the best ideals that we hold dear in our cultural traditions and in our Constitution, I hope we will promulgate further laws.

It was pointed out that a wife should not be consulted in adoption that it would cause confusion and discord in the family. This is clear injustice to a woman who has been a partner to her husband sharing his joys and sorrows and looking after his comforts and welfare, who has been a friend and very often a counsellor in distress, an expert nurse in his illness and, in fact, the guardian of the household. She is the person who has been responsible for his wealth, who has effected economy and accumulated property by her self-sacrifice. Many a time, I have seen a wife denying herself the comforts of the world that she herself provides for her husband. In adoption, the husband brings a stranger, a third person, into the household. The stranger will inherit property her husband earns: he will get the right to live\* in the house, share all that her husband, through her service and sacrifice, has accumulated. He will have the same privileges as that of the husband and yet, should she not be consulted in bringing home this stranger to enjoy all that she has been a party to create? Is she to be brushed aside as a moth? I will here quote our great poet Tagore when he voices the woman's place in his play, "Chitra". Princess Chitra exclaims,

"I am Chitra, no Goddess to be worshipped, nor yet the object of common pity to be brushed aside

like a moth with indifference. If you design to keep me by your side in the paths of danger and daring, if you allow me to share the great duties of our life, then you will know my true self".

That is the demand that is being made in this Bill. Is woman to be ignored? Should she not have a voice? Where is justice then? -What is meaning of our Constitution?

Further, Sir, we have claimed to have monogamy and bigamy is done away with. If so, how can a woman live in the same house when one of them is neglected, nay hated? She would naturally ask to live away, separately, from her husband. What harm is there if she lives separately and claims maintenance? Another gentleman said that to enact this Bill was to drive the last nail into the coffin of a happy Hindu family in the shape of the Hindu Code Bill. Now, why should a happy Hindu family be compared to a coffin? On the other hand, I would say that this Bill on Hindu adoption and maintenance will bring happiness into the Hindu families. No person would say that adopting a daughter is driving a nail into the coffin. This is the kind of thing that would ensure the happiness of family and society. I hope, Sir, that in enacting this Bill into law, our good brothers like the hon. Shri Patas-kar and the Chairman of the Select Committee, Shri Sapru, would be ever remembered and I am sure that they will be the pride not only of women in this country but also of their partners. The world knows the services rendered by the great father of our Shri Sapru, Sir Tej Bahadur Sapru. He was responsible for raising the age of marriage and consent and to him we are indebted for giving such a good future to the children of this country. The son truly inherits the greatness of Sir Tej Bahadur Sapru in the way in which he has guided this Bill and I hope he will see that the Bill is passed into law.

THE VICE-CHAIRMAN (SHRI P. S. RAMGOPAL NAIDU): Mr. Sapru, you are not hearing the compliment being paid to you.

SHIRMATI T. NALLAMUTHU RAMAMURTI: The hon. Minister Shri Pataskar's name is bound to go down to posterity as having righted the wrong that had been perpetrated on our sex. We are here to thank our Constitution which has enabled us to share in the making of laws and to make our laws just between the sexes. It is a law that would ensure the happiness of all children and especially girls. It is a law as good as the law that had been passed for the abolition of *sati* and child marriage. All these were practised in the name of religion. There were also stout and strong opponents then but time has proved that these are just measures which have brought credit to the authors of these legislations. Raja Ram Mohan Roy is still remembered as also Shri Harbilas Sarada, for the great services rendered to our society. In our own Legislative Assembly in Madras, there was a stout Congress leader who said that employment of unmarried woman teachers was detrimental to the safety and security of society. It reminded me then of some other things. The then councillor challenged him—she comes from my family—and she lives today to see the passage of this Bill. This is going to be a land-mark in the progress of women. I might remind the House that when the railways were first introduced in Britain, they said, "Let not the railways be introduced because the cows in the countryside will stop yielding milk". When the first Government college was established or mooted for women by the late Sir P. S. Sivaswami Ayyar, a gigantic fighter for the rights of women, the same argument was brought forward that the whole of the Marina there would be contaminated by this scourge. So, Sir, down through history, this sort of argument goes 'on. Kunti was mentioned and it was said that she was not chaste but I would request hon. Members who quote from the long gone ages, to study the conditions of those times, to study the background of the social structure. We should have a historical perspective when we sit in judgment on 4—42 Rajya Sabha/56

ages long past. Therefore, Sir, with all the power that is in me, not only as a Member of this House but with all the force that is behind the womanhood of India—and I cherish my sister Shrimati Seeta Parmanand as a stout fighter—I support this measure. I hope that this Bill would meet with your approval and go down in history as a measure that is, in a sense, the essence of all that we have passed in this House and in keeping with all the best ideals that we are setting before us for the proper education advance of womanhood in this country.

DR. P. V. KANE (Nominated): Mr. Vice-Chairman, I first congratulate Mr. Pataskar, the hon. Minister in charge of the Bill, for having brought forward a consolidated law on adoption because, at present there are so many systems in India and in different ways but I cannot say the same thing about the detailed provisions in the Bill. I cannot congratulate him on that score. Many clauses are left rather vague and I shall come to that aspect if time is allowed but first of all, I must say something about the argument that had been trotted out about the rights of women and about progress and all that. Please do not misunderstand me. I am not against any such thing; rather, I am against adoption in the sense that thereby we are doing something against what we preach. In one breath you say that you are going to have a socialistic pattern of society while in another you are extending the scope for disposing of property when it should not be disposed of. I may give an example. Suppose a man is dying or is dead without any heir and if the widow adopts a stranger—he might be a total stranger—you allow that stranger to inherit the property and thereby the State is deprived of property. You should try to put obstacles in the way of adoptions instead of clearing them. That you have not done. I am against all sorts of adoptions. Societies have been without the principle of adoption for hundreds of years. The Parsis, for instance, do not adopt except for purposes of funeral rites. There is no adoption among the

[Dr. P. V. Kane.] Muhammadans and no adoption is there among the Christians. Even in England, from which we take much of our law, until 1926, there were no adoptions. They are all advanced countries, far more advanced than we are. These countries, for instance, America and England, have not got a law of this kind. In the first place, I must make it clear that I am not against the principle of adoption in the sense that there should be no extension of it but once it is allowed, you are really taking undue liberties. That is what I want to make clear.

Coming to the Bill, my opposition is this. You call it Hindu law of adoption. My submission is this. The lady Members can say, "we are going forward". But no; the Hindu law even before did allow a woman absolute rights; even a widow could sell the whole property if she was starving or for some family necessity. So, the absolute right for women was not quite unknown. Now you have extended it as regards adoption of daughters by a man and by a man having a son also; remember that. Under the present Bill a person having a son can adopt a daughter. Then there was no adoption by a woman unless she was a widow, that is a married woman. Even an unmarried woman is now allowed to adopt. It will create complexities but I am not opposed to it because of these complexities. My contention is this. When you call it a Hindu law of adoption, do not throw overboard every fundamental principle of Hindu law. You may have a separate law of adoption for all sorts of people, Hindus, Muhammadans, Christians, for everybody. You have such a legislation. For instance, you have a Special Marriage Act for all and you have a Hindu Marriage Act. Of course, even a Hindu can marry under the other Act where divorce by mutual consent can be had but under the Hindu law you cannot have divorce by consent. So there are two parallel legislations as regards marriage. Similarly, you can have a law of adoption under which any man can adopt anybody why a Hindu,

he may adopt a Muhammadan or a Christian or anybody—if you are so minded to expand this adoption. Let those people, who want to expand and who show their sympathies to all sorts of things like equality, fraternity etc., have such a law for themselves, but if you want to have a Hindu law and that is our contention and many of the Lady Members seem to have misunderstood us let there be a separate legislation. We are not against the kind of adoptions that you want, but do not call it a Hindu law of adoption. As long as you keep the word 'Hindu', as long as you keep the joint family which you have not had the courage to do away with, do not interfere with the fundamental principles and do not throw them overboard. Do not confuse the two. One lady Member said that all this was old. Millions of people still believe, and have believed, what is said in the *Smritis* you are all educated ladies and you have your own ideas but why do you want to foist your ideas on other people? Are you legislating for yourself, for the educated people, or for the whole of India out of whom 80 per cent are not literate. They still believe that adoption is for two purposes:

अपुत्रेणैव कर्त्तव्यः पुत्रप्रतिनिधिः सदा ।

पिंडोदकक्रियाहेतोर्नामसंकीर्त्तनाय च ॥

for *pinda* and *udaka* and *kriya*, for offering *pinda* to the deceased ancestors. Among the Parsees also they have the same thing But they have no right of property but still they have adopted sons only for those purposes. Adoption with the consequence of property is recognised only in the Hindu system and that has been there for the last 2,000 years. No other system recognises that.

SHRI AKBAR ALI KHAN: The Roman law recognised adoption.

DR. P. V. KANE: But that was in 400 or 500 A.D. Now there is no Roman law. Of course, the English people have some Roman law but not this. For hundreds of years there has been no adoption except among the Hindus and that too of a son. Now, somebody said that a daughter

•could be adopted in Malabar. I do not deny that, but are you going to have the Malabar law for the whole of India or are you going to apply the law of India to Malabar also? Supposing some castes in Malabar adopt daughters—some, not all—you may do away with it but you have kept the customs. You have preserved customs and usages intact and, therefore, those people will not be affected. But why do you bring that in a law which never had it. I have no objection to this custom being retained among them but my point is this. The purpose of adoption is very clear. Somebody said it was not religious because property was concerned. Certainly, as they say, poor men have souls to save but nobody gives a son in adoption to a poor man. And that is natural because whatever he had by birth, it goes away and if you send him to a poor family he loses both ways. Therefore, nobody gives a son in adoption to a poor family. By performing the rites if he can benefit they do that. But I have seen cases where poor men are given children for adoption but such cases are rare; they are done for the sake of satisfying the poor man and his relatives. So what I say is, you are throwing overboard the fundamental principles of Hindu law and that is what I am objecting to. Because there is such a practice among a small community at the other end of India or because there have been such customs for some 2,000 years, you cannot bring it in here.

Then the question of equality of women was mentioned. Women have equality of inheritance but the right to adopt is not property. The right to adopt is governed by different principles altogether; it is governed by the religious conscience of the people. Vast number of people still believe that a son is required for bliss. Those of you who do not believe in the other world or who do not believe in the ministrations of the son are quite free to adopt without that idea in the mind, but they do adopt. I know even Justice Ranade who was a Prarthana Samajist gave special authority to his widow to adopt a

son and they adopted. I do not want to mention about their private matters but ultimately they quarrelled and went to the High Court and so on. So, my point is although you may profess many things, still you are a Hindu and there is bound to be this feeling in your subconscious minds at least. Simply because some educated men and women have come to this conclusion that this is most of all a secular matter, that does not mean that most of the Hindus have come to believe that. As a lawyer I may tell you thousands of people come for advice on this, whether they should adopt a particular person, whether there is any objection on the ground that he is the sister's son or daughter's son and so on and so forth. Therefore, what was said by some of the lady Members is not correct. That is their view; but do not foist it on millions of people who had never before such an idea in their minds and who even now do not have that idea. If these women want such a thing, then let them have a general law of adoption; for others let there be a Hindu law of adoption, as far as possible in conformity with what has been said and with the judicial decisions.

SHRI H. C. DASAPPA: How will it help matters if there is a general law and another law for Hindus separately?

DR. P. V. KANE: I will tell you how it helps. If a man wants to adopt he will do that; nobody can prevent him if he wants to adopt, but then the point is that that general law will not necessarily be like this. Take for example a joint family of two brothers. One has a son and the other has not. The other one can adopt a son or a daughter and in order to give something to the daughter he will separate and thereby reduce the share. The other brother is affected; do not suppose he is not affected. It is a permissive measure no doubt but permissive with consequences as to property; always remember that. Under the present law a man having a son also can adopt a daughter. Suppose there were two brothers and each had a son. Both of them can adopt

[Dr. P. V. Kane.]  
daughters or anyone of them can adopt a daughter.

DR. SHRIMATI SEETA PARMA-NAND:  
What is the harm?

DR. P. V. KANE : I am not talking about the harm. Even if you give the whole property to *the* daughter, there is no harm. My point is that the person who had right under the Hindu law by birth is still there. No one can take it away and you are interfering with it by adoption of a daughter. Do not suppose that this is so very innocuous; in practice it is going to be an El-Dorado for the lawyers. But I am not on that point.

I rather rejoice at the prospect of lawyers taking advantage of the lacunae. I am a lawyer, but I am not practising. At least my brother lawyers are practising. At present Hindus are under a particular law. Now, these two legislations will give a lot of work for them. That is apart. At present, therefore, my point is don't throw away fundamental principles. If you think that adoption should be made there is no difficulty. You are afraid of affecting Mohammadans, but Mohammandas are not compelled to adopt. If you make a general law that no marriage which is not monogamous is valid, I can understand your fear. But why don't you bring, together this Hindu law of adoption as a whole and another general law of adoption on the modern lines, the English law of 1926? Then, there will be no such opposition, as I am bound to say there will be if it is not so. I find people, Congressmen, are speaking against this measure. Being bound by loyalty to their party they will vote, but they have already expressed—I have not been present to hear all the speeches—that they are not very much satisfied. They are not very happy about it, although the lady Members are happy about it.

DR. SHRIMATI SEETA PARMA-NAND:  
Some male Members also. Let not that impression be there, that there are no male Members who like this legislation.

DR. P. V. KANE: I don't say that Congress Members are opposed. Then, I come to some details.

The *Manjukha* says:

SHRI H. V. PATASKAR: What does *Dattaka Mimamsa* say?

DR. H. V. KANE: *Dattaka Mimamsa* has not been followed. *Dattaka Mimamsa* says so many things. You show me any instance where courts have allowed the adoption of a daughter ...

DR. SHRIMATI SEETA PARMA-NAND:  
Heads I win, tails you lose.

DR. P. V. KANE: According to the *Dattaka Mimamsa* only a brother's son can be adopted. Privy Council and courts say it is recommendatory. They have said that they have simply given an order. The brother's son, the brother's grandson must be adopted is merely recommendatory. *Dattaka Mimamsa* says no man can adopt an only son.

SHRI H. V. PATASKAR: What do you say about a daughter being adopted ?

DR. P. V. KANE: They say there are examples in the Ramayana. In the *Ramayana Dasarath* gave in adoption his daughter to *Lomapada*.

SHRI H. V. PATASKAR: There is no authority.

DR. P. V. KANE: *Ramayana* is not an authority. *Dattaka Mimamsa* is authority. Many of these conclusions have not been found in the decisions of the Privy Council. You should follow the judicial decisions also for the last two hundred years, judicial decisions given by the highest tribunal, by the High Courts, and so on. Has there been a single case which does not come from the extreme south of India in which a daughter's adoption has been upheld? No case. I challenge anybody to show any case.

The other converse case is a girl adopting a male. What authority is there ? I do not use the word 'spinster'. They say there is some stigma attached to it. Yoy say 'unmarried woman'. Ultimately, the two things come to the same thing. There is nothing lost in using a good word. My point is this. Suppose you have an unmarried woman and she adopts. Then she marries. What would be the result? The result would be, he would succeed to her property, if any. The son she gets from the husband would succeed to the whole property of her husband. This man is only a stepson. Why do you want to go out of your ways? A widow has been given the power to adopt. A wife has been given the power to adopt with the consent of the husband. However, that is your lookout. All the ladies who want this power will reap the fruit of it ten or twenty years hence. My point is this. As I said, if you say it is a secular idea, why not give it to all and sundry, everybody? No answer to that.

DR. SHRIMATI SEETA PARMA-  
NAND: There is answer.

DR. P. V. KANE: You are only troubling the Hindus. You are afraid of affecting others.

SHRI H. V. PATASKAR: What is the trouble ?

DR. P. V. KANE: There is no trouble. Therefore, why don't you do it ? Why go after the Hindus in every case ? You are creating laws which apply only to Hindus. They do not apply to Mohammedans. There should be no discrimination anywhere under your law. You will find in the Directive Principles also it is said, in article 44, that it should be the endeavour of the State to have a uni-form civil code. You are not doing it after ten years. That is my complaint. Why do you always run after the Hindus because they are tame people, do not rebel or anything like that?

Then, Sir. I should like to refer to some of the lacunae. Look at clause 13 You say: "Subject to any agree-

ment to the contrary . . ." That v. very vague. Agreement by whom? Then in clause 10 you have said that the man to be adopted must not be more than fifteen. He cannot enter into a contract. Therefore, there must be some specification. You can say "unless there is a custom", only by custom", you can adopt a married man. And in the next condition it is said he or she has not completed the age of fifteen years. Therefore, who will make the contract ? There is no contract. The poor fellow who is taken in adoption has nothing. Supposing the guardian is allowed to give in adoption and the poor fellow somehow or other does not look into the matter, as often happens, this poor man will be sent from pillar to post. So, there must be something more specific. It is for the hon. Minister to find out. I would suggest, subject to any agreement to the contrary, between the adoptive person and the person adopted if major or the guardian or by the court'. In some cases, there may be a grown up person, if there is a custom, because that you have allowed. Custom has been preserved. Therefore, you may say agreement between person adopting and the person adopted if a major or the guardian or by the court. The court may compel an agreement of that kind. So, something of that kind will have to be put in. Otherwise, the adoptive father's powers are unrestrained. Otherwise, he may adopt today a person and then a number of years after he may sell the whole property. The poor fellow will lose his interest in the original family and gets nothing in the new family. He is the guest of two houses and goes with nothing. That is one thing which struck me.

Then, again, you will find . . .

THE VICE-CHAIRMAN (SHRI P. S. RAJAGOPAL NAIDU): Dr. Kane, please hurry up with your points.

DR. P. V. KANE: I will take five minutes more. Otherwise, I shall sit down. The main points I have put in, but there are some lacunae. If you look at the clause dealing with other conditions for a valid adoption,



for. P. V. Kane.] that clause is very halting. I do not think it has been very carefully drafted. You will find :—

"(i) if the adoption is of a son, the adoptive father or mother by whom the adoption is made must not have a Hindu son . . .

Suppose he has a deceased son's or son's son's son, then he can still adopt. That is against the Hindu law. Under Hindu law, the son, grandson and great grandson are in the same position. Not only so, the great grandson, according to *Manu*, is supposed to be—if I may quote the verse :—

STκr prFT Tr^W sP^lfHIMlfid fa^TJTII

far greater than even the *putra*. My point is this. Suppose a father has lost his son, but there is a son's son, or a son's son's son. Under the present law, there is no adoption. So, I would suggest adding a Hindu son or son's son or son's son's son. That must be there. That is my objection. Whether you will accept it or not, is another thing. Again, there is number (ii) : "if the adoption is of a daughter, the adoptive father or mother by whom the adoption is made must not have any Hindu daughter living at the time of adoption." If he has already a daughter, he cannot adopt. If he has a son's son or a grandson, he can adopt a daughter. Now, I should say that it is fundamentally opposed to the Hindu idea. I would suggest that this should be dropped altogether.

Then, there are other similar points. What about after-born sons ? Under the present Bill there is no provision for that. Suppose a man adopts today and some years after he gets a son by his wife.

The adopted son gets his share always and then the son by the wife born afterwards. The point is that the adopted son would be getting an equal share. That point should be made clear.

[MR. DEPUTY CHAIRMAN in the Chair.]

Then some hon. Members said that we were progressing. *Sati* was abolished. Do not suppose that these were recognised under the Hindu law in the sense in which you recognise adoption of a daughter. *Sati* was looked down upon. In the *Shruti* it is said that no man should die before his appointed hour comes. Exceptions are allowed as in the case of *sati*. If there were small children *sati* was regarded as a sin, and the lady Members have forgotten that *sati* was most rampant in those regions where women got a share of their husbands' property even in a joint family after their husband's death—in Calcutta and Bengal. You just look into the old times, about 1829, and you will find that out of all the *satis* in the whole of India more than half were in Calcutta and Bengal because in Bengal a widow succeeds in a joint family to share of her husband. That is not allowed here, in the other parts. Talking only of *sati* does not mean anything. Similarly, *Manu* says that if a girl is not married even after she attains majority, she should wait three years and then choose her own husband. That would mean no compulsory child marriage. A girl may marry at any time. She can choose her own husband. People somehow or other forget these things.

Then there is another point that I would like to point out about maintenance. I find very loose words have been used everywhere. But I would draw particular attention to two places and they will have to be corrected. At page 9 there are clause 21(vii) and (ix). Clause 21 (vii) says "any widow of his son or of a son of his predeceased son, so long as she does not re-marry". But suppose she is unchaste, then what happens ? Still she has to be a dependant. That is the point. Therefore, you must add something there.

SHRI H. C. DASAPPA: That was considered and given up.

DR. P. V. KANE: I do not know about that. What I say is a greater reason why you should look into it. Suppose there is widow of a son, wayward. Suppose she has no means. She can file a suit against her father-in-law. Then look at (ix)—"his or her illegitimate daughter, so long as she remains unmarried". She may remain so till her lifetime and may lead a loose life and she has to be supported. I would suggest that 'unless she is chaste and lives with the family' should be added. If she chooses to live separately, then let her support herself.

Sir, I do not want to take more time of the House. This is a very great piece of legislation which will affect the Hindu society. It is a Hindu law coming on the anvil after fourteen years and it must be carefully considered.

SHRI H. N. KUNZRU (Uttar Pradesh): Mr. Deputy Chairman, I should like to deal only with two or three points that arise out of the Bill before us. The first question is, that of principle. I am personally not in favour of adoption at all. But we know that the right of adopting sons has been enjoyed by men belonging to the Hindu community for a very long time, and it is not practicable to deprive them of this right. If, therefore, we have to concede the right of adoption, I think the next best course would be to allow adoption only in those cases where a man has no child of his own. But here again we are met by the difficulty that the Hindus enjoy the prescriptive right of adopting a son. Now, this Bill goes a little further and allows them to adopt daughters also. If the man had no children, if he was childless, I could understand his being allowed to adopt a daughter, I should have no objection to it, but to allow the extension of the present right of adoption when a man has children of his own, passes my understanding; and I am, therefore, not in favour of the extension of the existing right of adoption so as to enable a man who has a son to adopt a daughter. Un-

less you discard the entire theory of adoption you cannot take the step proposed in the Bill, but even on other grounds I am against the principle on which the Bill proceeds. If we are going to base adoption not on any principle but on the general desire of a few men to have, say, a daughter when they have only sons, then I can suggest difficult cases in which it

3PM <sup>WOL/A</sup> De me\* to refuse permission to a man who has a son to adopt another son. Suppose, Sir, a man has a son who is underdeveloped, mentally underdeveloped and at the same time, or apart from being underdeveloped, does not keep good health—he is mentally underdeveloped, I need not specify what mental underdevelopment means, there are various forms of mental underdevelopment. Apart from this, a boy may not be keeping good health and there may be genuine fear that he may die in a few years. If we are going to extend the right of adoption, is there any reason at all why we should not allow such a person who has a son already to adopt another son? I can see no answer to it at all. I have no doubt that the Minister for Legal Affairs will say that what has been proposed in the Bill is quite right and that the extension of the measure to the adoption of a boy where a boy is already living will not be desirable. He has the power to say so. But he cannot satisfy anybody by such a reply. Take another case, to which attention was drawn by Shri Naidu. A man has lost his son. But he has a grandson living. Is he going to be allowed to adopt a son and if so, on what ground? The religious ground does not exist in these cases because the grandson is as capable of looking after the soul of his grand father as a son is for looking after the soul of his father I should like to have a clear reply to that question. At present, a person with a grandson living cannot adopt a son. But can such a man under this Bill have the right of adopting a son? If so, it is very undesirable. We all know that *unfortunately* in our society and perhaps in all societies, there is never a complete

[Shri H. N. Kunzru.] identity of views between the parents and between the daughter-in-law and her mother-in-law, and father-in-law. Now, it is quite possible that a man who is displeased with his daughter-in-law may, either in order to deprive his grandson of his share or to reduce his share, adopt a son or adopt a daughter.

DR. SHRIMATI SEETA PARMA-NAND: That cannot happen.

SHRI H. N. KUNZRU: If he has a son, he can adopt a daughter. Why not?

DR. SHRIMATI SEETA PARMA-NAND: Yes, but on this account, the share will not be taken away because now both father and mother can will away as far as their own property is concerned, because even after the death of the father . . .

SHRI H. N. KUNZRU: My hon. friend has not understood the matter at all.

DR. SHRIMATI SEETA PARMA-NAND: I will explain it when I speak,

SHRI H. N. KUNZRU: You will no doubt explain it. But I should like to hear the explanation of the hon. Minister for Legal Affairs. It is quite clear that, if a man has a grandson living, the whole of the property will be inherited by him. If, however, he is allowed to adopt either a son or a daughter, then obviously the grandson's share will be affected.

DR. SHRIMATI SEETA PARMA-NAND: Not by the daughter.

SHRI H. N. KUNZRU: Well, in the case of his earned property, it will be.

DR. SHRIMATI SEETA PARMA-NAND: That he could will away.

SHRI H. N. KUNZRU: The daughter has, under the Hindu Succession Act, an equal right with her brother to inherit to her father. I think, therefore, that the extension of the right of adoption to such a case also would be undesirable and it does I

not matter whether the person adopted is of the male sex or of the female sex, as I have already pointed out. Again, if we are going to let a person who has a son adopt a daughter, why should not a man who has a daughter adopt another daughter if he likes to do so? I mean, this argument would apply even to the case of a man who has a boy and who wants to adopt another boy. His own boy is not very clever. He himself is a very able man. He would like to have a clever son. But unfortunately, the son that he has is rather far from being clever. He sees a boy in his own community who is after his own heart and he wants to adopt him. On what logical ground can you refuse the gratification of his desire? I can see no logical reason for not allowing such a man to have another son or not allowing a man who has a daughter to adopt another daughter. The daughter may also be mentally underdeveloped or may be sickly. The astrologer in whom Hindus believe may have told the father of the girl that she will not live long. What is unreasonable, therefore, in his desire to adopt another girl? Most people will say that he should adopt a boy in that case. But since you are allowing abnormal people to have an opportunity of gratifying their desires, why not cover this case also? *(Interruption)*. Normally people do not, when they have a boy, adopt a daughter. I mean, you can take a plebiscite is the Hindu community and the reply to it will show whether this is normal or abnormal. I am not against the adoption of a daughter at all in principle. If a man who is childless wants to adopt a daughter rather than a son, I shall place no obstacle in his way.

SHRI H. C. DASAPPA: That is just what it does.

SHRI H. N. KUNZRU: This does not merely do that My hon. friend knows that very well. But since he sits on that side, I think it is his duty to say something in defence of the Government.

Now, there are just one or two things to which I should like to draw the attention of the House. A man who adopts a child must get the consent of his wife or if he has more than one wife, of all of them, unless any one of the wives is of unsound mind or is a minor. Now, if you say that, as a woman, whether a minor or a major, will be affected by an adoption, her consent also should be taken, you will be met with the reply that under the Contract Act, the consent of a minor is of no value whatsoever. Similarly, the refusal of a minor to permit a certain thing to be done is legally of no value. Now, what are we to do in this case? Suppose the wife of a man—shall I say is seventeen years. She will cease to be a minor when she is eighteen. But if her husband insists on an immediate adoption, and wants to adopt either a boy or a girl, her desires will have no weight with him. I mean they will be of no legal consequence. He can disregard her wishes.

DR. SHRIMATI SEETA PARMA-NAND: She can refuse to give consent.

SHRI H. N. KUNZRU: My hon. friend again does not understand the matter.

DR. SHRIMATI SEETA PARMA-NAND: I would like the hon. Member not to speak in these disrespectful terms.

SHRI H. N. KUNZRU: I am trying to point out to the lady Member who has interrupted me gratuitously too many times that she is doing it under a complete misapprehension. It is the duty of every one of us to make a relevant remark that they have not understood the subject that they are speaking about.

I mean, Sir, the refusal of a minor to allow a certain thing to be done is of no legal consequence at all.

Consequently, now the husband in the matter of adoption, so long as she is a minor, can refuse to abide

by her wishes. He can take a child in adoption even though his minor wife may be completely opposed to it. How are we to deal with such cases? Are we to allow such cases to arise? I think that there is a way in which we can prevent such cases from occurring, and that is to prevent the husband from taking a child in adoption till his minor wife comes of age. This is a case of the protection of the rights of the wife.

SHRI P. N. SAPRU: Please repeat it again.

SHRI H. N. KUNZRU: My suggestion is that the man should not be allowed to take a child in adoption so long as his wife is a minor. That is all.

SHRI H. C. DASAPPA: Or give in adoption..

SHRI H. N. KUNZRU: I will come to that later on.

No hardship will result if this restriction is placed on a man's right to adopt a child. Let him allow his wife to become a major and then consult her; if she agrees, let him adopt a child, a male or a female just as he likes. But if she does not agree, then he should not have the right of foisting a child on her, as he will have while she is a minor.

Take the case of giving a child in adoption, to which reference was made just now. I think that case is on all fours with that of taking a child in adoption. If a woman has given birth, say, by the time she is 16 or 17 to two children, and her husband wants to give away one of them in adoption to any other person, he should not have the right, while his wife is a minor. This again is in the interests of women themselves. The interests of the wife must be protected. Since we are changing the present law, let us take all possible care to protect the rights of those who will be immediately affected by adoption.

[Shri H. N. Kunzru.]

There are some other points, but I do not want to deal with them at all. I do not want to refer to maintenance and all that. Whether maintenance is a little more or a little less, does not matter to me. I have limited my remarks to those questions that appear to me to be matters of principle. As regards the detailed questions, they are of a different kind. I personally am not concerned with Hindu law as it is. I am not in the strict sense of the term a believer. I do not believe in all that is written in the *Shastras* and so on. The remarks of those who base themselves entirely on the *Shastras* or any old religious books do not appeal to me at all. I want to go by the light of reason, and I have, "therefore, confined my remarks to those matters which concern some principle or which concern the legitimate rights of women. We have by our Hindu Marriage Act and Hindu Succession Act done what we could to enable women to enjoy the rights that they were for long unjustly deprived of. We have done what we could to raise their status in society. Let us take care that we do nothing in this Bill which would in certain cases be a hardship to women or which would virtually amount to the negation of the rights that a wife should enjoy.

SHRI KAILASH BIHARI LALL (Bihar): Mr. Deputy Chairman, I stand here to give expression to my ideas which I have often placed on the floor of the House. I could have remained silent but I thought that these points would not be touched upon during the debate. So, I have taken my stand here. My position is precarious. I have agreed to the principles laid down in this law of adoption and maintenance as reported by the Select Committee. I have also mentioned that I do not agree to all of them, but because of the trend of the times I have agreed, and most of you also must be feeling that, in spite of whatever might be said here, this heavy engine, this steam-roller will roll down all the arguments that have been advanced and that this Bill

is sure to be passed into an Act. So, I support the Bill and I support Mr. Pataskar.

But my heart has always been with Dr. Kane. I have always regarded him as an authority—and all of you must also have regarded him as an authority—on Hindu law. I have always supported him and I still support him in whatever he has said on the floor of the House. You also must have felt in your heart of hearts that we are putting our hands in things which we are not entitled to do. As soon as we speak about our *rishis* and our *Shastras*, we are branded as reactionaries. I feel that we are not equal to the task that we have undertaken, and we are undertaking this, as we do always, hastily. It is not that I am backward in spirit and have not believed in reforms. I have always done that in my life and I am forward in all these matters, but we cannot speak with absolute authority on what is happening in society. Man is only an agent of the force, the power that is generated. We cannot say that people were wise in the old days and we are all fools now. There were many things which were bad in those days also, and there are many bad things which we are doing today, but we have to do that because of the force of the times.

It has happened also in the society. There was a time when people were steeped in the *purdah* system. People used to regard those ladies who used to come out of *purdah* as something not desirable. Today everything is changing so fast that I was tempted to interrupt my friend, the Member from Hyderabad, when he was speaking about chastity and unchastity, that it is such a difficult thing to define that we have to bow down to the inevitable at the present time. Even the standard of morality is changing today. We cannot stick to anything that was held as good in the past or is being held even today as good but we have to take things as they are coming. A challenge from this side or that side always comes up that if

you leave it, as our respected Dr. Kunzru said, to the people, to the majority of the Hindus, you will see what will be the fate of this, but we are not enacting any law on that principle of leaving it to the masses because they are not fit to take care of even themselves. Although in the days of democracy we believe in the majority rule and majority decision but at the same time we feel that the majority of them are not able to take care of themselves. So they come through the organisations and if those organisations take into their heads to support certain ideas which may not be liked even by the majority, we have to go by that and so it is in this way that the society is working today and we have to bow down to these inevitable ideas. As it is, I suppose Dr. Kane in whatever he has said with only one exception when he was stressing the point that when you have to enact anything, do it in the name of general civil law for the country other than for Hindus. I feel that even if you are to enact something for the Hindus, let it be for really the Hindus in the sense in which the people all over the world regard the people of this country. So, there would be no harm even if you enact law in the name of Hindus provided you give a right definition of the word 'Hindu', but that you are not doing. You are clinging to the word 'Hindu' and at the same time, you are denouncing the word 'Hindu' as communal. If you denounce the word 'Hindu' denounce it and ask the people not to touch that word with a pair of tongs. Then I will know that you have the courage, but no, you are not doing that. You are denouncing Hindus as communalists and you are having in your bosom the word Hinduism which is a misnomer. Many of my friends may not like this truth but Hinduism is a misnomer. There is no such thing. People have begun to like it because outsiders spoke about the religion of this country as Hinduism. They little knew how many kinds of philosophy there are in this country and they said that Hindus were idol worshippers,

that they had no religion, that they had no religious philosophy and that they were barbarians and then we began to dance and say that our religion is Hindu religion. It is my standing challenge to any *Pandit* to say what is Hinduism. There is no such thing as Hinduism, but we are so much in love with that that we have come to Hindus as the followers of Hinduism, not the people as residents of Hind but as the followers of Hinduisms and then brand Hindu as communal. This is my request to you that if you denounce the word 'Hindu' or the followers of Hinduism, then for God's sake don't say the two things together. In one breath you say that we have declared war against communalism and in another breath you say that we should enact laws for the Hindus. If you declare war against communalism then why do you pat communalism by passing a law for Arya Samajists, a law for Muslims, a law for Christians and a law for Hindus? You cannot shut your eyes to the fact that all such separate laws have a tendency to encourage the formation of separate customs and usages. All these go to disrupt the bonds of unity in a nation. If you have so many names on a communal basis, if you have so many laws on a communal basis, don't you see what harm you are doing? You are helping communalism. There was a time when the Muslims were governed by the Hindu law, even Mr. Jinnah was governed by the Hindu law before a Congress Muslim brought up a law in the Assembly that all Muslims, irrespective of any customary law, should be governed by the *Shariat* law or the unwritten law of Islam. Then we shut our eyes and said "It concerns the Muslims, and how does it matter to us, and let them pass any law". So we divided. You did not aim with a long-range view that any such law will go to divide the nation and the Muslims began to say that they were a separate nation. A time will come when the Buddhists will say that they are a separate nation, the Jains will say that they are a separate nation and the Arya Samajists will say that they are a separate nation.

[Shri Kailash Bihari Lall.]

with separate set of laws, customs, names and everything. How will you be able to join them together and make a fusion of all people in this country if you go with this trend or idea ? That is my central point before you. Of course, you are going at break-neck speed without thinking what you are doing. I know how much legal acumen you bring into the discussion of this law. I am only saying that we should not be arguing here like lawyers. We should not give the uppermost of our communal feelings. So far as the well-being of the nation is concerned, so far as the future of the nation is concerned, so far as the building up of this nation is concerned, we should be consistent in our thought. I can say with all respect that by the way in which we are enacting laws here for each community we are giving impetus to the different communities .....

{Time bell rings.) How much time have I taken?

MR. DEPUTY CHAIRMAN: Fifteen minutes.

SHRI KAILASH BIHARI LAL: On the merits of the Bill I have said that the society is changing. The structure of the society is changing and it may be possible that new things may come in and it is with that spirit of resignation that I have supported the principles of the Bill that is being passed. I think that perhaps a time may come when the daughter may come to have superiority and a time may come when the girl will form a family. Till now the boy used to form the family. So far willingly, voluntarily, a man used to give away his daughter to another man to form the family and he used to bring a girl from the other's family to form a family. It is not that before this Bill a girl was looked down upon or the boy was regarded as a very high-up. The thing is that it is in this way that the society was made to run and the family was formed. A time may come when the male will not form the family. In Malabar, we hear, it

is the girl who forms the family. There are so many customs and manners in our land. After all this is a vast land and there are various customs and manners in very society. In Sikkim a friend of mine was saying, there was a time—perhaps it is so even now—that only the eldest brother used to marry and if there were four brothers they all used to live with the same woman, and if any of the brothers chose to marry a separate woman, then he used to be disinherited. So I say, in this big country there are so many kinds of customs and laws and a time may come when the structure of our society might itself be changed and we also have to go with the changes. So I said we can fix nothing anywhere. You cannot say this is chastity and that is not chastity. You cannot say this is moral and that is immoral. With the change of times, we may also change our ideas. Therefore, from that point of view and from that spirit of resignation I have accepted everything that is put in this Bill and I support it. But the only thing that I did not like was this idea of a communalism that is there in this Bill and that I have pointed out in my Minute of Dissent.

With this explanation, Sir, I support this Bill.

DR. SHRIMATI SEETA PARMA-NAND: Mr. Deputy Chairman I support this Bill generally, and I use the word "generally" with special reference to the contents of the Bill. I support it only generally, Sir, because I feel on account of the present conditions that are existing in this country with regard to the subject of adoption and on account of the views held in the matter of making this a part of the Common Civil Code, certain principles that should have been introduced in it to give complete equality to man and woman are not there, as it has to form a part, for the present, of the Hindu Code. At the same time I support it because it does advance the position of woman even in the matter of adoption, to some extent. Sir, I feel it would have

been very good indeed, if this Bill dealing with adoption had been separated from the Bill dealing with maintenance. But I appreciate that the question of time was there, with the life of the other House almost coming to an end, and that was an important consideration. Now that the entire Hindu Code, but for the section dealing with the joint family, will have been enacted, with the passage of this Bill, it was necessary to have adoption and maintenance combined; and as a result of that, Sir, some confusion has been caused and that has been voiced here on the floor of the House.

Sir, it is too late in the day to go into the question whether it is right to deal with such a piece of legislation as this which on the face of it looks "communal". I would like to say that nobody can ever charge this Government of all governments with being communal, when the Prime Minister himself is saying time and again and asking the people to get rid of communalism. The reason why this Bill has to deal with Hindu society is merely because 80 per cent of the people are Hindus and we have had diverse pieces of law applying to people not only in different parts of the country but also with regard to matriarchal and patriarchal societies in the same parts. So, we had first to codify the law that applies to the major portion of the citizens and then to go ahead and carry out the pledge of giving a common Civil Code to all. If I may say so, this piece of law dealing with adoption, and the law of Special Marriage, are in themselves precursors of the Common Civil Code to come.

Here as an example, I may make a reference to the way in which the Christian community in this country has been demanding, through the National Christian Council, the application of the divorce conditions that are there in the Special Marriage Act, to their community also. A Bill on those lines has already been introduced in the Lok Sabha by a private Member, because I suppose Govern-

ment has not the time to proceed with the Bill, and I do not know whether it will be possible to get that Bill through in this session. But there is this demand because under the Christian law, it is possible to get divorce only on one condition, namely that of adultery, and they have seen how progressive the Hindu Marriage law or Special Marriage law has been in this respect. So, it is a question of having patience.

The important points that are considered controversial in this Bill are unfortunately those provisions dealing with the right of a woman to adopt and also the adoption of a daughter when there is a son living. There were two points on which I did not see eye to eye with the Select Committee; but I did not press my point of view through a Minute of Dissent, for obvious reasons. I wanted the Bill to be as non-controversial as possible and also that it should have as quick a passage as possible.

One point is this. As was rightly pointed out by some hon. Members— and we are thankful to them for their sense of justice—just as a man while his wife is living can adopt with the consent of the wife, similarly, it should be possible for the wife to adopt, with the consent of the husband. But probably it was viewed from the point of view of the property coming through the man and since property comes through the man, so, naturally, it was felt that the right of adoption—naturally according to them, but according to me, it is only "naturally" with a question-mark— should be that of the father. When the consent of either party is to be taken, then only it will be equality and in the interest of harmony in the house both are sure to agree and nothing would have been lost. It is so particularly now since women have given equal rights of inheritance and the women too may bring in some property into the family of the husband and, therefore, it was necessary that this right should have been given to her also.



[Dr. Shrimati Seeta Parmanand.]

Similarly, I did not agree that the right to maintenance should not have been given to the husband. Of course, Dr. Barlingay did make his point clear and the two cases are also not on par, because polyandry does not exist in this country. The case of a man having more than one wife, living separately and asking for maintenance cannot be compared to that of a woman, because we don't have polyandry. When there is actual divorce when the Special Marriage Law was under consideration, our men probably thought it beneath their dignity to accept alimony because in the advanced countries of the West it was not done, but in the Hindu Marriage Act it was accepted finally. On a par with that, we should have provided for maintenance here. Suppose the husband is of unsound mind or he lives separately. There are so many points of this nature, but I will not go into all of them here. I will only say briefly that that is another point on which I did not agree with the majority of the Select Committee. But I did not write a Minute of Dissent. The Chairman of the Select Committee and the majority of the Members said that it would be a slur on Hindu society that any husband should even agree to that, that it should be written in any piece of Hindu legislation that the husband should be willing to take maintenance from the wife.

There is this other point. I should have liked the right of adoption of the husband and the wife put on par and clauses 7 and 8 should have been combined. There is no reason why there should be two clauses, one saying that the man may adopt and the other saying that the woman may adopt.

Sir, instead of dealing with all the clauses here, I would try to give replies to some of the points raised here by hon. Members.

MR. DEPUTY CHAIRMAN: You may leave that to the hon. Minister for Legal Affairs.

DR. SHRIMATI SEETA PARMANAND: Sir, it is on behalf of the women that I am speaking. I will deal with them within the time at my disposal, at least as many of them as possible. Some Members have been given a few minutes more and I would crave that indulgence from the Chair.

The hon. Mr. Bisht said that if all the wives were given the right to give consent that would make the man's life miserable. It has to be pointed that if all the wives are living in the same house, in the interest of harmony it is necessary that the consent of all the wives be obtained. If such a consent is not forthcoming, there should be no adoption. Just think how miserable the life of the poor child would be who would be taken in that family. Mr. Bisht raised objection to clause 18 and said that we should not give such wide powers to the court because, he said that it would take about 30 years for a case law to be built up. I for one feel, Sir, that though case law should have its place—I wanted to mention this earlier when the other parts of the Hindu Code were being enacted, when we were codifying the customs, usages and the different laws on marriage, divorce, etc.,—this laying of more and more stress on case law would in a way take away the spirit in which the law is enacted by the Legislature. So, as far as possible, barring the law relating to crime and similar matters, case law should not be given so much of importance because it will again complicate the law for the common man and it will really become an El Dorado, as he himself said, for the lawyers. The hon. Member also asked whether the dependents of a man who died before this measure comes into force, would be entitled to maintenance. He wanted that point to be, made clear. I think, Sir, that this would naturally apply to deaths occurring after this measure comes into force and so, I do not think anything has been left vague.

I would now deal with some of the points raised by Mr. Jaswant Singh. I was very much hurt at the way in

which he dealt with the whole question of looking at the rights of women. One can perhaps ignore the way in which he treated the subject because he is new to the House and was not present here when the other sections of the Hindu Code were enacted. I would mention here the case of the blue blood and the effect on it of illegitimacy, etc. Sir, coming as he does from the Socialist Party and being more.....

SHRI JASWANT SINGH (Rajasthan): Sir, I do not come from the Socialist Party.

DR. SHRIMATI SEETA PARMA-NAND: I am sorry. I withdraw my remarks. I would say this: In the modern concept of things, to talk of blue blood, is not correct. We have taken the decision that it is not the fault of any child to be born out of wed-lock, it is the parents who commit illegitimate acts and, therefore, no stigma should be attached to the child. Therefore, it is too late in the day to talk of blue blood and all that. While on this question, I would ask one question of him. He extolled the custom of *sati*. When men extol the system of *sati*, I always feel suspicious about their real reverence and admiration for that particular quality of sacrifice in the women which makes them observe *sati*. I feel that really in their heart of hearts they feel about the superiority of men which makes the women commit *sati* after the death of the husbands; otherwise, I would ask that Member from Rajasthan to say how in Rajasthan new born girls were exposed outside in those days when women were committing *sati*? It must have been because girls were not wanted in large numbers. With the role of womanhood being viewed that way, how can they, while extolling the women, explain that atrocious custom that prevailed there. The hon. Member also said that men being—he used these words—"earning members" of the family, should have the right to adopt and not the women. I gave an answer to this point while dealing with the general points—and he was not present then—and said that

women would have the right to inherit not only their husband's property but also in other ways—in three capacities as I said. That being so, women should perhaps have a greater right because men inherit only in two capacities, as son and a widower while the women inherit as widows, daughters and mothers. The hon. Member also said that he held women in great admiration. His utterances are not consistent.

I would now come to some of the points made by Shri Rajagopal Naidu. He said that this legislation was not progressive but retrogressive. It can be said that:

पुराण मित्येव न साधु सर्वम् ।  
सन्तः परीक्ष्य अन्यतरत् भजन्ते ॥

Whatever was there in the old Hindu society is not good because it is old. Whether a woman should be given the right to adopt or whether a daughter should be adopted—whether this is a step in the right direction or not—is to be determined according to our own reading of society and our own experience. Sir, people who have gone abroad have seen the great advance that women have made all over the world and in some countries they have contributed to the civilisation and to the economic life of the country.

{Time bell rings.}

I had hardly begun, Sir, I would like to have three or four more minutes.

At least people who have seen such advance should not do some disservice by saying that this measure is retrogressive. As Dr. Kane said, adoption is not only for property or not only for spiritual benefit as pointed out by Mr. Naidu, but for some other thing also. There is what is called natural affection. In other countries .....

Mr. DEPUTY CHAIRMAN: You must leave all this to the hon. Minister. You need not reply to these points. Let us have your views because time is running out.

DR. SHRIMATI SEETA PARMA-NAND: I have already lost one minute. I hope you will let me make it up.

I will take up only two points mentioned by Dr. Kunzru with special reference to what he said regarding my not having understood the provision. In the modern world and in the economic conditions as they are, women have to remain unmarried for various reasons, but they have got their natural maternal instinct. They cannot marry just anybody; they have to see whom to marry and whom not to. It is not a decision that they can take just forgetting a child. In the Western countries the old spinsters were blamed for keeping pets. In some Western countries even the unmarried mothers, as they are called, are not associated with any stigma because the natural desire to have children, particularly amongst women, is recognised. In our country, we do not want to go so far and 30, Sir, it is very right that if a woman remains single, she should be given the right to adopt. I will not agree with Mr. Naidu when he says, "Once a spinster, always a spinster". She can always marry later on if she likes to but the point is that she should have the right to adopt.

With regard to the question of adopting a boy or a girl, Dr. Kunzru suggested that a census should be taken in the country and that it should be ascertained as to whether a man who has a son or a woman who has a son would like to adopt a daughter. I would like to say that this depends on the type of people you contact. The people who are educated and who know the present psychology would always say that they would certainly like to adopt a boy and a girl because there are features in human nature which both of them contribute to make a whole home.

With regard to the two legal points, as you will say, raised by Dr. Kunzru and in which he questioned my under-

standing, I would say this. He said that if a grandson was there, there should be no adoption because that would affect the rightful share of the grandson. I would like to point out, Sir, that we have, in the law of succession, given the right to a person to will away his share in the ancestral property and the entire property in so far as it is self-acquired. That being so, nobody's right can be affected by any adoption. Even after adoption, he can will it away as he pleases. Therefore, this adoption will not affect anybody's right.

*(Time bell rings.)*

Only one important point, Sir. I agree with one important point—there are several important points but this is one with which I agree—namely that while there is a grandson, perhaps it is just that no son should be adopted because it will affect the share of the joint family property. But, even then a daughter can be adopted because, in a joint family, no daughter affects position of any male member so long as the joint family system is there. So long as the present law limiting the right of a daughter in a *Mitalc-shara* family to succeed is there, no adoption of a daughter can, in any way, curtail the right of a son.

There are several other points but I have not the time. Only one word about what Dr. Kane said and I have done.

MR. DEPUTY CHAIRMAN: You can't go on like that. Dr. Sapru.

DR. SHRIMATI SEETA PARMA-NAND: Sir, he said about discrimination, that we are making discrimination between different communities. I would only like to point out that he does not mind discrimination being made between boys and girls, between men and women, but he does object to certain discrimination being made, even according to the Constitution, among different communities.

SHRI P. N. SAPRU: Sir, I suppose the time she has taken will be allowed to me.

MR. DEPUTY CHAIRMAN: Yes; you will have your full fifteen minutes.

SHRI P. N. SAPRU: Mr. Deputy Chairman, there is a point of view which I would like to place before this House which is somewhat different from that which has been taken by other Members. I value intellectual integrity very much and I think it would not be a truth to say that this Bill is in strict harmony with the Hindu law of adoption, as we know it. But my defence of this measure is this. It has been the proud boast of Hinduism that it is a progressive creed. Hinduism has changed throughout with the times. It has adapted itself to changing times and circumstances. It does not look to any one seer or prophet as its founder. To the main stream of Hindu civilisation many sages and seers at different ages have contributed. Great sages have laid the foundations of what has come to be known as Hindu law. We, this democratically elected legislature, democratically thrown up by the people of this country, have taken up the place of the ancient sages and therefore, Mr. Deputy Chairman, I would say that irrespective of what the Hindu law in conditions of society which have today changed, which are very different today, was, it is incumbent on us to view the whole problem from a new angle and be the modern Manus. It is for that reason that I would like to pay a tribute to the big mind which Mr. Pataskar has displayed in bringing forward this measure.

Now, Mr. Deputy Chairman, the question of the desirability of the institution of adoption can be viewed from different angles. There may be some people who may think that adoption is a very bad institution. I know there are creeds in which adoption is strictly prohibited. I shall put forward before you a rational point of view because I do not claim to be anything more than a rational person. Having no fixed belief in personal immortality. I would like to feel that my name is continued by someone after I die. We live in our children and our children's children: and it is.

therefore, a very natural instinct for a man to give his affection to someone, be it a daughter or be it a son, and to desire that his name or personality may be perpetuated in some way or other. That name can be perpetuated by a son: that name can be perpetuated by a daughter. There are many people who, even though they have a son, would like to have the experience which a daughter brings. The affection—and I speak as a father — which a daughter gives is somewhat different from that of a son and I would not like anyone to miss that experience. Therefore, I think we are taking in this Bill a human view when we allow a daughter to be adopted even while a person has a son. There is another reason for that and it is an obvious reason. If we were to say that a childless person may adopt a son or a daughter, orthodox feeling or orthodox sentiments might feel more hurt than by the present proposal. I know that orthodox people look upon a son as a pathfinder for salvation. Speaking for myself, I would say I am not impressed with the argument that this Bill is not completely logical. It does not profess to be a logical measure. Any measure which wants to retain links with the past and which wants to bring past conditions into harmony with existing conditions can be nothing but a compromise measure which can be open to various attacks. Therefore, the big question which we have to consider irrespective of the provisions which are to be found in the various clauses of the Bill is whether it is right and just that daughters should be allowed to be adopted. The second big question that we have got to consider is whether this right should be given to the unmarried woman and to bachelors and if so what are the limits and what are the conditions under which this right should be exercisable by them. There are many women who are single women—who do not for one season or another desire to have marriage. They do not marry either because they are interested in their work or they do not find a person in life to whom they feel sufficiently attached to marry and yet they would like to have

[Shri P. N. Sapru.] someone in their old age or even when they are in the forties to look after them and they would like to have a daughter or a son. Why should the privilege of adopting a son or a daughter be denied to them? It is a very natural thing for them to think of having someone who will give them affection and to whom they can give their affection. Why should that desire be denied to them?

In the able speech which Mr. Bisht made yesterday he conjured up visions of the disharmony that will prevail in our homes if the consent of the wife is made obligatory in the case of an adoption. I think the provision in the Bill is a most salutary provision. I do not think a father or a mother has a right to bring a child into the family without mutual consent and without mutual agreement. After all, it is the mother who will look after the child and a child needs affection in the early years of its life. If it does not get affection in the early years of its life, it may be that it will develop in later life into a complete misfit in society. It is not, therefore, a question of equality of status between woman and man; it is a question of what is conducive to the welfare of the child which makes us insist that no child should be introduced into a family without the consent of both the partners. Pro-

creation is a joint act. Why should adoption which must be like the natural act of procreation be not a joint act? I think the legal difficulties which were pointed out by Mr. Bisht and to some extent by Mr. Rajagopal Naidu in the very thoughtful speech which he made are of an exaggerated character. Lawyers will get over or find loopholes in any legislation that you may pass in this or for that matter in any country.

SHRI P. S. RAJAGOPAL NAIDU: Your memory is so short.

SHRI P. N. SAPRU: Now, we know that no woman can adopt without the consent of the husband. We have done away with that. But in every case

where a widow adopts, consent or lack of consent is put forward as a plea or as a defence. And yet courts are able to arrive at decisions. I think that normally husbands and wives are not in a state of permanent clashes. If they clash, they know how to adjust their affairs and I think in actual practice this consent will not be found to be a difficult affair.

Then, passing on—as my time is limited—from the question of adoption, there were certain other points raised in regard to the rights of the adopted son by Mr. Braj Behari Sharma, but I shall leave them to Mr. Pataskar to reply. Passing on to the question of maintenance, I would say that normally the question of maintenance should not arise when the wife can under the Hindu Marriage Act sue for a judicial separation which would entitle her to a separate maintenance allowance. But we know our Hindu women and we know that they will not be prepared to sue for judicial separation. Therefore, we have made provisions for maintenance. This is an additional safeguard which we have given to our womenfolk. And in determining the quantum of maintenance, we have done nothing but codify the existing case law of the country. Hindu law is a progressive law. The courts have taken into consideration the changing environment and here is a tendency on the part of the courts to fix higher maintenance allowances today for womenfolk. That is as it (should be). Mr. Kishen Chand was rather nervous that the clause as worded would enable a wife to claim maintenance even while she was living with the husband. I would not be sorry if that happened, because I think she is entitled to some sort of allowance for the services that she renders in the family. But apart from that, on a careful reading of the clauses, I venture to think that his fears are not justified at all.

Then, I would like to say that personally I am very much opposed to maintenance being made a charge on one's property. If you make it a charge on one's property, it will be

very difficult for one to effect transfers of property and it is important from an economic point of view that we should not discourage, in the present stage of our economy, capital formation.

SHRI P. S. RAJAGOPAL NAIDU: There is always the safeguard made for the *bona fide* purchaser. It is in the Transfer of Property Act.

SHRI P. N. SAPRU: But that clause protects the *bona fide* purchaser. We have also today clause 26 or clause 27. Clause 28 deals with the *bona fide* purchaser for value and I would leave the maintenance clause much as it is today.

We have included in the list of those who have to be maintained a number of persons. We have included the illegitimate or the unwanted child as well. Now, the illegitimate or unwanted child cannot in any system of decent society be treated on the same footing as a legitimate child. I mean, marriage, property and inheritance go together. But the illegitimate child under our system of Hindu law -will have right to maintenance and that is as it should be. The provision is in accordance with the Hindu law governing the right of maintenance of illegitimate children.

Then, there is a clause which prohibits a person giving in adoption from receiving anything by way of gift and there is a penalty attached to his receiving a gift. Now, the reason for that was this. For the first time, we were introducing a measure which would enable persons to adopt daughters. Incidentally, I might say that I happen to be connected with a children's institute. We give children in adoption and we get applications, joint applications by husband and wife. Wives and husbands come and see those children. We receive applications from all manner of people for adoption. Sometimes they want sons; sometimes they want daughters and occasionally both. The point that I was driving at was this that we thought that it was in the

public interest that nothing which might look like sale of children should take place and we were particularly anxious to save or protect the daughters who might be taken in adoption. Another reason—and I think I may disclose this fact—why I was very keen on the point in the Select Committee that there should be some difference between the age of the person adopting and the adopted person was that in certain parts of the country a married person can also be adopted. Now, I think that is a bad custom, but people want that custom to be retained. And, therefore, it was suggested that the difference should be at least 21 years, between the adoptive father or the adoptive mother and the adopted child.

SHRI J. S. BISHT: That is only in the case of the opposite sex.

SHRI P. N. SAPRU: No. For all.

SHRI V. K. DHAGE. No. Of the opposite sex.

SHRI J. S. BISHT: If a man adopts a girl, that has to be 21 years.

SHRI P. N. SAPRU: You are right. I was getting mixed up. Now, you will find that there is a similar section in the English Adoption Act which was passed in 1926. I think the difference there is 25 years—I am speaking from recollection.

DR. P. V. KANE: In the 1926 Act the difference is 21 years.

SHRI P. N. SAPRU: I think this is a reasonable proposal. I am giving expression to a personal opinion, and I should have been glad if the maximum age for a child to be adopted had been placed at nine or seven or something like that. I would go lower than fifteen, because I think it is desirable that the child from its very early age should begin to look upon the adoptive father and mother as his own father and mother. He should get absorbed in the family, he should get imbued with the ideals of the family, he should become part and parcel of the family.

[Shri P. N. Sapru.]

Mr. Deputy Chairman, there is much that I could say as I have worked on the Select Committee, but I would say that we have tried to do our best. I may say that I am in agreement with Mr. Rajagopal Naidu in his criticism that the Bill needs to be revised so far as grandsons are concerned. I do not think that it should be permissible for a person to adopt a son when there is a grandson living. I think there is also something to be said for Dr. Kunzru's point that the right of the minor wife should be in some way safeguarded. That would be a suggestion which should be acceptable to our women Members.

Thank you, Mr. Deputy Chairman.

MR. DEPUTY CHAIRMAN: Mr. Pataskar.

SHRI C. P. PARIKH (Bombay): I want to speak. I have also given some amendments.

MR. DEPUTY CHAIRMAN: You can speak at that stage.

SHRI C. P. PARIKH: I hope you will give us reasonable time for this discussion. It is an important Bill and it is going to the other House, and, therefore, we must have our say on this matter. We will try to finish our speeches as quickly as possible.

MR. DEPUTY CHAIRMAN: In that case tomorrow also we will have to sit through the lunch hour. The other Bill should be finished by tomorrow evening.

SHRI C. P. PARIKH: This Bill is very important and we must have our say on this matter.

SHRI H. V. PATASKAR: I only wish that at least my reply should be finished today. Of course, I do not want to curtail any discussion.

MR. DEPUTY CHAIRMAN: Mr. Parikh, you can take some reasonable time on the amendments.

SHRI C. P. PARIKH: Sir, we must speak on general principles also.

MR. DEPUTY CHAIRMAN: Then please be brief. We will sit today ten minutes extra.

SHRI H. V. PATASKAR: When we come to amendments, there also should be some reasonable time taken.

SHRI H. C. DASAPPA: Mr. Deputy Chairman, I can assure you that we will not take more time than what is absolutely necessary. I am glad that we have now before us a measure which is the last of the reforms which we have to introduce in the Hindu law. I consider this by no means the least of those which we have considered. Sir, after all in India we cannot write on a clean slate. We cannot wipe off everything and simply produce something which is perfectly logical. Therefore, I claim, Sir, that this measure is a happy compromise between the society we have to deal with and the changing times and circumstances and the progressive thought of the country. For instance, Sir, let me deal with this *pinda* theory to which a number of hon. Members referred. In the first place, Sir, I do not think it is necessary for us now to make the question of *pinda* a major reason or argument for not effecting any changes. In the second place, Sir, after all when you come to examine the position, what is the percentage of our population who believe in this *pinda* theory and act upon it? In fact, Sir, Dr. Kane was pleased to say that you must think of the large masses of the country and you should not impose the progressive thoughts of the few large masses. But in fact, Sir, I speak of that part of the country from where I hail, viz., South India and there the large masses do not introduce this theory of *pinda* at all into the question of adoption. There is a simple question of two things firstly, the necessity in the family to preserve the family property intact and to help in the management of the same; secondly, natural love and affection. These are the only considerations which

present themselves before the large masses of the people and not this idea of *pinda*. Therefore, if today we are doing away with the question of *pinda* which is specifically referred to—the question of *datla hoinam* is also referred to if today we do not resort to these practices based on certain beliefs, we are only bringing the present law in conformity with the actual conditions. That is what I lay claim to. Sir.

Then, Sir, the right for a wife to adopt even when the husband was living was advanced by certain Members, I believe lady Members. First of all, we have got to determine to whose estate we are trying to find a successor. Is it the wife's estate? In that case it is a different thing. But if it is the man's estate and if it is the man's name that has to be perpetuated, then I think it would be a very strange and illogical thing for anybody to say that when the husband is living the wife should be permitted to adopt with the consent of the husband. If the son is adopted or even if a daughter is adopted, then the daughter takes the name of the adoptive father, not of the adoptive mother. Then why should the lady Members at all find fault with this piece of legislation when the whole texture is different, the conception itself is different?

Then, Sir, the idea of maintenance of the husband was also referred to by some hon. Members. I do not think I should answer that point seriously because, as I said, we are taking the existing society into consideration, and I must also add this argument to reinforce the other argument, *viz.*, I credit our womanhood with far greater virtue than men. I am prepared to concede that. It may be. Sir—and I do not cast any reflections that the men think less of being loyal to the women than women are towards men. But I may certainly assert this. There may be extraordinary cases, but normally speaking, whatever may be the difficulties which women have to face, still they would think of look-

ing after their husbands whatever their condition may be, whether they are infirm, invalid or aged. Therefore, I think there is no particular virtue in thinking of introducing a clause for the maintenance of the husband.

Next, the question of consent of a minor wife is a very important matter. I agree with the idea in principle if a child is to be given away in adoption. This aspect of the matter whether she is a minor or otherwise should be taken into account. I do not deny that at all. Nor do I deny the fact that the feelings of the mother have got to be taken into consideration when her own child is to be given away in adoption. But normally speaking, what will be the percentage where the child of a minor mother is given away or where one with a minor wife takes a child in adoption. In very few cases will such a contingency arise. I do not know whether it will be one in a million or one in ten millions. Logically, it may be correct. But I will place this viewpoint before the hon. Mr. Kunzru. Suppose a person has a minor child. Suppose he takes seriously ill, irrecoverably ill, and he feels like adopting. May I know what is the ....

SHRI H. N. KUNZRU: Adopting what?

SHRI H. C. DASAPPA: Adopting a son.

SHRI J. S. BISHT: No, he cannot adopt a son when he has a son.

SHRI H. N. KUNZRU: He will not be allowed to do that under this Bill.

SHRI H. C. DASAPPA: Suppose a person is seriously ill and he has a minor wife. It is an incurable illness. He has got to adopt somebody in order to perpetuate his family. Now, according to the hon. Pandit Kunzru himself, any consent taken of a minor wife is an invalid one. That is the law. Therefore the law being that any consent of a minor wife will be useless for all purposes, what is the good of



[Shri H. C. Dasappa.] asking for a consent of the minor wife ?

SHRI J. S. BISHT That is why I say, "Get rid of it."

SHRI H. N. KUNZRU: I have not said that the consent of the minor wife should be taken. What I said is that the husband should wait till his wife is a major to adopt a child.

SHRI H. C. DASAPPA: I am coming to that. Some people suggested about the question of the consent of the minor wife. The hon. Pandit Kunzru was pleased to say that he must wait. But unfortunately, the illness is not going to wait for him. He may die before the wife attains majority. Therefore, he can authorise her certainly. But can he name the person who is to be adopted ? He wants to adopt his own brother's son. Can any body assure us that, if he authorises his wife to adopt after his death, she will adopt only so and so ? And it will be very difficult .....

SHRI H. N. KUNZRU: Is it absolutely necessary that he must adopt another child before the present child dies?

SHRI H. C. DASAPPA: I am sorry. I am talking of his own illness—the illness of the person who wants to adopt. He falls seriously ill. His wife is a minor. He may not survive till the wife attains majority. He should have the privilege .....

SHRI H. N. KUNZRU: Who may not survive ?

SHRI H. C. DASAPPA: The father.

MR. DEPUTY CHAIRMAN: The adoptive father.

SHRI H. C. DASAPPA: The person who wants to adopt.

SHRI H. N. KUNZRU: K the adoptive father is sixty years old and the girl fourteen or fifteen, we should not encourage such a union.

MR. DEPUTY CHAIRMAN: It the young person is ill ?

SHRI H. C. DASAPPA: He may be twenty-two years. The minor wife is there. But he falls seriously ill. What is to be done in such a case? He may not survive till his wife attains majority.

SHRI H. N. KUNZRU: His widow after him will be able to adopt a child if this Bill is passed.

SHRI H. C. DASAPPA: Perfectly right. If the wife is to adopt, whom will she adopt? She may not adopt her brother's son. He may want to<sup>1</sup> adopt his brother's son. What I say is, when you give him the right to adopt, he must have the privilege of exercising his option, of course, with the consent of the wife. These are the only exceptional circumstances.

(Time bell rings.) Just

two minutes, Sir.

MR. DEPUTY CHAIRMAN: You have already taken fifteen minutes.

SHRI H. C. DASAPPA: Then, I agree with two things which have already been referred to by hon. Members, Pandit Kunzru, Shri Bisht and I think, Shri Naidu also, namely, that a son must also include a grandson and a great-grandson. There is also another point of Shri Bisht that the consent must be in writing, with which I agree. Today, a number of documents are registered. If you want to sell away any immovable property, whether you are literate or illiterate, you have got to execute the document in writing and register it. So, in order to avoid a considerable amount of litigation, I think it is better that we have the consent in writing.

There is only one more point which I wish to say—the question of charge. Sir, when we considered this at great length, we had a lot of arguments there and I am surprised that both Shrimati Savitry Devi Nigam and Shrimati Dr. Seeta Parmanand are not

convinced. I say, if it is to be a charge, it will make it impossible for us to have any transaction in regard to our properties because even if I want to borrow a hundred rupees from a co-operative society for developing that property, for legal necessity, for marriages and so on ...

SHRI P. S. RAJAGOPAL NAIDU: Under the existing law, are not women getting maintenance now ?

SHRI H. C. DASAPPA: No, no. I am saying that we want to have it as a charge.

AN HON. MEMBER: Yes, the existing law creates the charge.

SHRI H. C. DASAPPA: No, no. It does not become a charge in the sense that he cannot transfer property unless he discloses the encumbrances and so on.

SHRI J. S. BISHT: No, no. He maintains it subject to the charge. That is all.

SHRI H. C. DASAPPA: Special maintenance. There is a difference between a property being subjected to what you call undefined maintenance obligations and a charge. A charge has a definite meaning which is, as much as to say, that it must be registered and it must be disclosed during every transaction. If he does not disclose it, he may make himself liable for a criminal offence. In these days, it would be impossible to have any transaction with regard to properties if we want to create a regular charge, it may be, for instance, by way of a decree.

With these words, I welcome this Bill.

SHRI C. P. PARIKH: Sir, I am very particular that this Bill should be given great consideration and care because it is going to the other House. Often, in our House we have passed such legislations and we had to accept the amendments of that House and that has happened in the case of the Hindu Succession Bill. We have to \

see what we are going to do. Therefore, I am saying that we have to give due consideration to this and especially to this Bill, when there is such a great difference of opinion. And the difference of opinion has arisen on account of the equality of right between man and woman. As Shri Dasappa said women in India, on account of their virtues, are respected greatly and I must say that every woman is or will be a daughter, a wife and a mother. But when I speak about the respect that is given to the mother, it is the greatest. We must say that every one worth his salt has the greatest affection and love towards his mother. Therefore, that status should not be taken away by our western notions.

Sir, I want to point out what the hon. Pandit Kunzru has said. He has said very well that no man should be entitled to have adoption if he has a child, either male or female. I have no objection if he adopts a male or a female. But my own improvement on Shri Kunzru's views is that the age of adoption of those who adopt either a male or a female should be in the case of a male 40 and in the case of a female 35. No woman shall adopt any child unless her age is 35, because till the age of 35, she has a hope of having children.

AN HON. MEMBER: What about the age of 45 ?

SHRI C. P. PARIKH: I do not want to lose my time. You may increase the age. As far as the minimum is concerned, I am putting this age. The male must be 40 and above before he chooses to have adoption because in a hurry people have adopted children and afterwards, sons are born to them and so many quarrels have arisen.

With regard to a minor wife, the consent of a minor wife may or may not be legal. I, however, want to say that no man should be allowed to adopt any child, male or female, if he has a minor wife living and he must wait, naturally, till his minor

[Shri C. P. Parikh.] wife becomes a major. And I am very strong on this point that the minimum age of adoption in respect of the father should be 40 and of the mother 35; other exigencies will not arise then. What is the use of adopting a child at a very early age or before the age of 40 of the father or 35 of the mother ? There is the likelihood of their changing their views after adoption and in so many cases, this has happened.

As regards the adoption of a son, it is quite right. But as regards the daughter, so much confusion and so much difference of opinion have arisen. I say that, when you have a daughter; that daughter's husband should be considered your son, and if you have a son or you adopt a son, if he gets married, his wife according to our Hindu tradition and Hindu culture and Hindu civilisation, must be considered as a daughter coming into the family. Therefore, we should not make these distinctions against the age-long traditions which we have in this country. I think it would be much better if we say that no daughter should be adopted, but if some Members are insistent. I would say that with the age limit that I have suggested, much of the mischief will go.

Another point is with regard to the persons who might be adopted. There we have put down that the adoptee should not be more than fifteen years of age, unless custom or usage applicable to the parties permits otherwise. The second thing is that the adoptee should not be married. Both these conditions are wrong and antiquated, because there is a custom or in the Jaina community that married persons could be adopted. What is wrong in having a married man adopted ? In one's own family, a brother's son may be married and why should we prevent him from being adopted? Why must a person be forced to go outside his family ? I think we must seriously consider what we are doing. We must not debar persons because they are married.

Another thing is that the age-limit of fifteen is not necessary.

MR. DEPUTY CHAIRMAN: A widow is aged 25 years. Would you have her adopt a person who is 35?

SHRI H. C. DASAPPA: The difference in age is there to be considered.

SHRI C. P. PARIKH: My point is quite different. There are two separate things. One is the time of adoption. At the time of adoption, the man must be 40 and the woman 35. And so the question of a woman being 25 years of age does not arise.

MR. DEPUTY CHAIRMAN: The adoptee can be of any age.

SHRI C. P. PARIKH: If a man who adopts has one in his own family whom he can adopt, even if he or she is a little aged, why should we object?

SHRI H. V. PATASKAR : He can adopt the whole family.

SHRI C. P. PARIKH: By this clause you are taking away the right to adopt- Why should we put any restrictions like this and why should legislature interfere with a man's judgment and discretion ? Everybody knows that in the Jaina community, which is a very intelligent community, this custom is there. When we are passing such a legislation, let us have as few restrictions as possible.

I am not in favour of unmarried woman having the right of adoption, because according to me every man and woman should marry in the country in order to sober their minds also.

SHRI H. V. PATASKAR: Do you mean to say that all those who do not marry are not sober ?

SHRI C. P. PARIKH: Mr. Pataskar, you are aged enough to know that all those who are not married, especially women, are not sober. I am prepared to say this with all the force that I can command. As regards other women, let us give them some

latitude to adopt and for this I am suggesting the age limit of 35. After that, even if that right is not properly used I would not mind it. But as regards unmarried women, they remain unmarried on their own choice and, therefore, to penalise them, do not give them the right of adoption.

With regard to the other point about taking the consent of two or more wives, that is very necessary. Mr. Bisht said that it would lead to litigation, but I think it will not. If a man has married two wives, he must suffer the consequences of the same. He must not be entitled to adopt because he has criminally broken the matrimonial promises that he had made to his first wife. Therefore, that man must be penalised.

SHRI J. S. BISHT: Marrying two wives was not criminal under the Hindu law.

SHRI C. P. PARIKH: Whatever it be, a man has criminally broken the matrimonial promises that he had given at the time of his marriage. If one reads those promises, one would understand their importance.

Another point is that the consent should always be in writing. As Mr. Bisht has pointed out, it is very necessary.

Another thing is that adoptions should be registered within one month of the time of giving and taking of the child. This is very necessary and will prevent many quarrels later on. Under the Civil Marriage Act, marriages are registered. Births and deaths are registered. Why not adoption also?

With regard to the other points, I have no time, and I will speak on my amendments.

DR. R. P. DUBE (Madhya Pradesh): Sir, I really do not want to make a speech- I want only two points to be cleared by the hon. Minister. The first point is that a man does not have the right to adopt, if he has a Hindu son living. As Dr. Kunzru said, that son may be

mentally defective or otherwise ill or he may be a rotten or anything like that or he may disown him. Simply because a man has a son and the son is a Hindu, he cannot adopt a son. He can adopt a daughter, I know, but I am talking about the adoption of a son.

SHRI B. K. P. SINHA: No son can be disowned under the Mitakshra system of Hindu law.

DR. R. P. DUBE: That may be the law, but I am talking about facts. Do not talk to me about your law.

There is another point about the spinsters. A spinster is given the right to adopt, but later on she may change her mind and marry. Mr. Parikh said that there should be an age-limit of 35, but I can tell you that a woman can produce a child even at 45. I am only requesting the hon. Minister to consider this possibility. A spinster is there, she adopts a child, later on she changes her mind and marries and gets a child. Human nature being what it is, she will give nothing to the child she has adopted, and thus poor child is deprived of its rights both ways. You have not made any provision in the Bill for that.

Then I come to another point. A man has married, he has waited and has had no children from his wife but gets a child through somebody else. He cannot adopt it because his wife will never give her consent for it. She will give consent for anybody else but not the child of a concubine, although he is the flesh of her husband's flesh and bone of his bones. (*Interruptions.*) All these restrictions you put only on the Hindus. You have the Hindu Marriage Act, you have the Hindu Succession Act, and there is this Hindu Adoptions and Maintenance Bill. Only the poor Hindus must suffer all these restrictions, and then you blame them if they go over to Islam or any other religion, where they could do whatever they like. Because one is a Hindu, one must suffer all these things. I don't know what is going to be the fate of this society, I am sure I will not live for

[Dr. R. P. Dube.]

more than 10 years and so I am not worried but I am only thinking about the future. Is there no public opinion, as one of my friends said? The Bills that are being passed in this House are not public opinion Bills but women's opinion Bills. Thank you.

SHRI H. V. PATASKAR : Sir, there has been an unusually large criticism, at least one that I did not expect. It might be that it was my error. All the same I would again request hon. Members that whatever our ideas, developed on account of the present state of things, I would again request them, before I give the reasons, which I would like to place before them, to consider the matter a little more dispassionately. What is the nature of the criticisms ? It has ranged from having no law of adoption at all to making no changes in the existing law of adoption as it stands. That is one. Then one hon. Member has gone to the length of saying that this will come in conflict with the proposed legislation relating to suppression of immoral traffic. I tried very hard to grasp what was meant. Unfortunately, I have not succeeded. Again there was an hon. Member who said that this was the last nail on the coffin of Hinduism. While one hon. Member has been saying that it is the last nail on the coffin another said that there was nothing like Hinduism and that it was all a misconception or *maya* and asked what we were doing. The usual criticism was naturally there that "Why are you legislating only for the Hindus?" a question which has been so often asked and repeatedly replied to. These are the points which have been raised. What is all this controversy about ? With out trying to answer at this stage in detail with respect to the provisions in this Bill, I would try, as brief!, I can, what has really been the basis on which this legislation is being enacted.

Now, I will begin by referring to the charge that by this Bill I am trying to interfere with what is called a

religious matter and no less a person than Dr. Kane, I am sorry that he is not here, a man who has studied *Dharma Shastra* even he feels and is a little upset by the fact that a daughter is being allowed to be adopted. He says, "Why do you do it here, have a general law" and he charged also that we dare not do it. All that to my mind, is beside the point but I would like to point out to him. as I did briefly then, what is the *Shastra*. Was it always the same? There are so many *Shruties* and so many *Smritis* and so many commentaries which are varied and people have forgotten that it was only not earlier than 100 years back that a daughter was adopted in many parts of the country. Dattaka Mimamsa, a book of authority on this subject, lays it down and, therefore, I need not take the time of the House by referring to its chapter and verse because I asked the eminent Dr. Kane himself and he conceded and said "Well it was there". Why has that disappeared? From that point of view, I would like to say that this has a history of its own. The present Hindu law is not the law according to the *Shastras*. On account of several factors throughout the generations it has undergone changes and in the last 100 years it underwent changes on account of the changed judicial system of administration which is good—I am not against it—and which we are now following and at that time those that were in power had to interpret and lay down for us what our *Shastras* said and this adoption of daughter is one of such things. The first was a case from Poona. The adoption was by a *Shastri* in a year prior to 1888—I don't know the year as it is not given here. It went to the Civil Judge of the place—an Indian—who knew what the customs were and what the *Shastras* said. Naturally, he decided that it was valid. It went in appeal to the High Court and then came a peculiar judgment. This is a judgment of a few pages. There were rulings before all these courts expanded. This is a judge made law. Formerly, there was a collection made of these decisions and

what does this judgment say? It said:

"The Dattaka Mimamsa, section 7, and the Sanskara Kaustubha are quoted to us as authorities in favour of the legality of the adoption." That was pointed out and these books can be seen even now. There was Colebrook's Digest which showed something else- I don't attach much value to that. There was ignorance of the conditions. That was a judgement of 1888 by one Mr. Parsons who was a Judge of the Bombay High Court and what does he know of the *Smritis*? Because he says:

"This is supported only by some Puranic instances". But he says that he prefers to follow Jagannatha who was the writer of *Vyavahara Mavukha*. Was he in a position to compare? No. but he says:

"We think that this latter authority is of great weight, and we follow it." That is an end of the matter.

Now after more than 60 years. I believe, in the same city of Poona where an orthodox Shastri had adopted a daughter, there will be voices raised or exchanged saying "Here' is sacrilege being committed by this Act which is being passed by the Parliament in 1956" against the so-called Hindu religion which my friend Shri Kailash Bihari Lall says, does not exist. That is the state of Hindu law. Why is it necessary and why are we doing it? It is because under the same law as interpreted by courts, a widow can adopt her own brother and there is nothing wrong. It is quite valid but if she adopted her daughter's son, who is nearer to her, almost like a son, they say, "No, judicial decisions have said that she cannot do it and therefore, that is invalid." No voice is raised against that. After all people will naturally be governed by certain things and probably they had no voice then. Now when we had to codify this law. I don't claim that this

is a perfect law, but I ciau um. ~ dispassionate consideration should be given to the matter as it deserves, but I regret that there should have been people of very great eminence not in favour of this reform. They should have tried to support this because I think their argument is based not on *Smritis* but is based on judicial decisions which tried to interpret them. I don't blame them. After all why do these changes happen? For so many. -centuries for hundreds and thousands of years the old laws were there and they were being varied so as to adapt them to changing conditions, to natural changes. But. unfortunately, in the nineteenth century the only basis for enforcement of these laws was the interpretation of these laws, to accept one interpretation or the other. Therefore, without going into all those matters, I would only suggest that this whole matter should be considered dispassionately.

Dr. Kane asked the question, "Why should we have a law of adoption? They do have one in England but not in many other countries." But I would like to point out to the House that the law of adoption is not-confined to India only. It exists in other countries also and when making a rational law we must take into account all those provisions in other countries, not with a view to copying them here, but with a view to taking what is best in them, what is suitable to our own conditions. From them we can derive some food for thought and consideration. I may point out that there are laws relating to adoption in Denmark, France, Greece, Poland. Switzerland, the U.S.S.R, the United Kingdom, Ireland and other countries. Similarly in North America you have such laws in Canada, in the U.S. they have such laws in the States of Alabama, California, Michigan, New York and other States, this matter is exclusively in their State sphere and so the laws vary in the different States.

Also just as we have some basis in the old scriptures, there was the original Roman law and there also

[Shri H. V. Pataskar.]

there was the provision for adoption There are countries in the world where once there was this law of adoption, then it ceased for some centuries and it was again reintroduced. I will not take up the time of the House by going into all those details, because hon. Members can find all that in this publication by the United Nations who have published a brochure on this subject. Therefore, I would say that modern conditions do require this law.

As I said yesterday there are two aspects to this question. There is first of all the religious sentiment. Whether rightly or wrongly people believe in certain matters as religious and such religious sentiments have to be respected. I am not one of those who are not in favour of paying any regard whatsoever to sentiments of people. After all, they have to be taken into account. My only argument is that these have been taken into account in framing this legislation.

Sir, the other aspect, as I pointed out, is the purely natural phenomenon. There is the natural craving in man, to whatever part of the world he may belong, to extend his "self". The idea of self is there. It is our old belief (that by having a son or a daughter we extend our self—the *Atman* that is in us. As the Sanskrit saying goes:

स्वर्गात्पुत्रं पुनर्जयति ।

Because the man regards it is himself that is born. That is what it all comes to. Whether it is a son or a daughter, it is all the same. It is only on account of recent happenings on account of certain economic phenomenon, certain social changes that a distinction has been made. But the natural craving is there. However, when you frame a legislation you cannot base it merely on sentiment. We have to respect them. In viewing the various provisions of this Bill. I would like hon. Members to see if we are doing anything in this Bill which will violently upset the existing sentiments

I on this matter. Also at the same time, are we enacting a piece of legislation which will be consistent with whatever experience we have got from people from all over the world? In this world now we cannot live in isolation. After all, we can learn from others, adopt whatever is good in them—whatever good can be gathered from other countries. So, it is from that point of view that I would like hon. Members to look at the provisions contained in this piece of legislation.

The main current that was underlying all the criticisms is as to why we are allowing a daughter to be adopted. Well, I listened very carefully to the observations of all hon. Members and the main question was "Why should there be a provision for the adoption of a daughter?" Well, if it is based on a natural craving, then the man can adopt a male child or a female child. Why should we make a distinction between them? On the contrary, I would ask hon. Members whether we are by this provision, doing anything which should really lead some people to think that we are trying to harm their sentiments and feelings? Probably, the hon. Member who said that this was the last nail on the coffin of Hinduism must be feeling it so. I have no doubt and I have respect for his sentiments. But I would request him not to be carried away by sentiments alone. There are people who believe in the theory that there should be a son in order to help the father to have salvation. I may not believe in that, but I do respect that feeling. Is there anything in this Bill against that feeling? Or I would rather ask the question "Are we doing anything here which will come in the way of anybody doing anything for his salvation, for the purpose of being saved from hell or for the purpose of getting the satisfaction of *pindal* Is there anything to prevent the man from doing what he wants for these purposes?" To that question I want a reply. Unfortunately, I have heard none and, therefore, I think there is no reply to that. So far as the provisions of the Bill are concerned, they do not in any way affect

anybody's sentiments on the subject, whatever they be. If that is the position, then I would expect them to accommodate others also who do not agree with them. There may be people who do not believe in the theory of such salvation. There are certain things which should be done in the context of social changes taking place. From that point of view, there is absolutely nothing to show that any sacrilege is being committed by allowing a daughter to be adopted.

Well, there are some minor points remaining. There is the question of the consent of the spouse, but I will not go into all those details. I would only say that even in some of those countries which have recently passed enactments and which have been existing for some years past, the consent of the spouse is necessary. I know that the law as it now stands says that a man can adopt even if he has not taken the consent of his wife. But have we not reached a stage in society when it should be laid down as a necessary rule that a person having his wife living and wishing to adopt and introduce a child in the family should take her consent? What is wrong in that, except that the old idea of superiority of man over woman, does not support it? I do not think everybody has that idea now, for people have changed in spite of themselves. But naturally some previous ideas, prejudices and sentiments, do still prevail in some parts. But is it such a rude shock in the year 1956 to say that if a man has his wife living, he should only adopt with her consent? That will only preserve family peace for him and probably that would be the happiest adoption that could ever be. I know that in 99

per cent, of the cases, if a 5. P.M. man has to adopt, he may

choose the boy. This is not a derogatory provision; this is a provision to be found all over and, therefore, it is that we have made this provision that the consent of the wife should be obtained before an adoption is made. So, I do not think there is anything in this; on the contrary, this will lead to a better

and happier adoption. I was told that it might be that the wife might wish a child from her parents' house to be adopted and the man might wish that he should take from his own family. It may be, but unless they do it with mutual consent, I am sure that is not going to lead to family happiness. That will break up the families. Considering everything, this rule about the consent of the spouse is a happy one.

We were asked as to why a spinster should be allowed to adopt. We were also faced with the difficulty as to what will happen if she marries? My friend, Dr. Dube—I do not know whether he is here or not—made some remarks which were really undeserved because it is not only the married people who can be said to possess always the wisdom. Generally the spinsters are not going to be many just as bachelors are not going to be many. If you have suggested that the bachelors also should be prohibited from taking an adoption, I could have understood but no such suggestion has been heard by me in this House. If a bachelor adopts, it is all right, but if a spinster adopts, it is not all right, it is something which I leave for your judgment to find out whether it is a sort of thing which is desirable or otherwise. The point is that a spinster hoping to get married will not adopt. Normally, that is what we expect when we are legislating. We should expect normal conditions and consider them in a normal way for people who act normally. Of course, for abnormal things, nothing can be done and nothing can be put in legislation.

There have also been extreme cases, that is, a man being allowed to adopt in spite of the fact that he has another son living. Normally, people who adopt do so for purposes of the son offering a *pinda* to them. If a boy is there, then naturally a man will not adopt another son because he has already got a person who is going to give him the *pinda*, but with respect to the others, it is very difficult. If a man is not satisfied with a son born of his own body, he will never think



[Shri H. V. Pataskar.] of adopting any other person. If the experience is sad, I think he will think hundred times before he again undertakes such a risk. Finding that the son born of his body has failed to serve him properly, I do not think such a man is likely to resort to this method. If a man has got the means and if he is of that charitable disposition, I am sure he will adopt another son; there is nothing to prevent it.

Then came the question of allowing the man to adopt a son while there was a son living. It was asked as to how it could be done and I do not see as to why it should not be done because it may well be that a person, once having a son, may also want to have a daughter. In such cases, the offering of *pindas* will not be the criterion because the son is already there but this will be from an entirely different motive altogether.

SHRI J. S. BISHT: Could the hon. Minister go on tomorrow ?

SHRI H. V. PATASKAR: I am just trying to finish.

There was another point raised, namely, that where a grandson is living but not the son, the man should not be permitted to adopt. This is a matter worth considering. As I said earlier, my object in these legislations is to create the least disturbance in the matter of sentiment. I do not want to affect violently all those who are likely to be affected by this piece of legislation. What Mr. Kailash Bihan Lall is saying as to whether this is right or wrong is not facing me; what I want is that I want to accommodate as far as possible the existing conditions also. I am still considering these things and when we come probably to the clause by clause consideration, this matter can be considered again.

There are so many other questions like the minor wife and so on. All these can be taken up when we come to the consideration of the clauses. So far as the principles are concerned. I am happy that with respect to

the clauses relating to maintenance, there has been almost agreement. Of course, some points have been raised which will be considered in due time. With respect to adoption also, there has been some discussion about the age of 21 years. As I said, this is based on the English law. Even in our society, it was thought that adoption of any woman by older men and adoption by some young man of corresponding people of their age was not a very good social practice. Even in the most advanced societies there is some such provision made in the laws there. This does not throw any reflection but the main point is that if it is possible, we should try to do something which is consistent with the conception. I know there is this custom that people in some areas adopt married people. Wherever that custom is there, we have provided an exception.

SHRI C. P. PARIKH: I want it generally.

SHRI H. V. PATASKAR: With due respect to the gentlemen who can even think of adopting a whole family, I am not prepared to extend that to those societies where it does not exist. Normally, when a person adopts, he adopts a person younger than himself. What are the adoptions when you can adopt a person with sons, grandsons, great-grandsons and all that? I think there is no demand from any other society and a demand having come from a very small section of the society, I have also shown regard for that.

SHRI C. P. PARIKH: Get the public opinion.

SHRI H. V. PATASKAR: This cry of 'public opinion' is always raised in order that nothing need be done. We have got too much experience about it. I am not at all worried about it. I will, therefore, again request hon. Members, by the time we reach the clauses tomorrow, to bestow their fullest consideration to this and bring to bear a constructive approach. It is

not as if anything is being tried to be done which will go against any- « body's sentiments, religious or otherwise.

SHRI J- S. BISHT: May I also make one humble appeal to the hon. Minister that when he deals with the clause by clause consideration stage he will bring a sympathetic and open mind to bear on it so that we may not have thg experience of the Hindu Succession Act which had to go to the Lok Sabha and come back again and then we had to take it up again. That will be the case if we push the whole thing in half an hour. Especially where, as the hon. Minister has seen, there is difference of opinion it is better that we hammer out a compromise so that it goes as a good measure from this place.

SHRI J ASP AT ROY KAPOOR:  
(Uttar Pradesh): As a flawless measure.

SHRI H. V. PATASKAR: This is last of the measures relating to the Hindu Code with which I am dealing and if I can claim humbly anything, I think I have always been sympathetic and trying to do my best to co-operate with whatever suggestions that may have been put forward and it will be my endeavour in this Bill also to do the same because I do not believe in forcing my opinion. After all I want to achieve something, some progress in society by this and I am sure hon. Members will not find

any occasion in the course of this piece of legislation when I do not give consideration to any point of view or to any suggestion that may be put forward. Whether we agree or we do not agree, we shall consider 'from every point of view whatever suggestions are put forward by any section of the House.

MR. DEPUTY CHAIRMAN: The question is:

"That the Bill to amend and codify the law relating to adoptions and maintenance among Hindus, as reported by the Select Committee, be taken into consideration."

The motion was adopted.

MR. DEPUTY CHAIRMAN: We shall take up clause by clause consideration of the Bill tomorrow. We have already taken 6 hours and 47 minutes out of seven hours allotted-So, the House will have to sit through the lunch hour tomorrow and also voting will have to be taken. I hope there would not be any occasion to ring the quorum bell. We shall try to finish this before two o'clock tomorrow.

The House stands adjourned till 11 A.M. tomorrow.

The House then adjourned at thirteen minutes past five of the clock till eleven of the clock on Thursday, the 29th November, 1956.