

SHRI BHUPESH GUPTA : It is a reflection on the Members. Members who do not stand up, how do you expect that they will vote with you? (Interruptions.)

THE VICE-CHAIRMAN (SHRIMATI SHARDA BHARGAVA) : Two Members only want that vote should be taken but we can still have a vote by standing also.

SHAH MOHAMAD UM AIR : What is the use of asking Members to stand?

THE VICE-CHAIRMAN (SHRIMATI SHARDA BHARGAVA) : Let him be satisfied. Those in favour of the motion will kindly stand up.

(After a count) Ayes 22.

Those against: Noes 2.

SHRI T. BODRA : One minute.....

THE VICE-CHAIRMAN (SHRIMATI SHARDA BHARGAVA) : There is no question of speaking. Already you have spoken.

The 'Ayes' have it.

The motion was adopted.

# MOTION RE THE DISPLACED PERSONS (COMPENSATION AND REHABILITATION) RULES, 1955

THE MINISTER FOR REHABILITATION (SHRI MEHR CHAND KHANNA) : Sir, I beg leave of the House to move:

"That this House concurs in the following motion adopted by the Lok Sabha at its sitting held on the 22nd August, 1956, namely:—

"That the following sub-rule be substituted for sub-rule (3) of rule 19 of the Displaced Persons (Compensation and Rehabilitation) Rules, 1955, as further amended by the Notification S.R.O. No. 1161, dated the 30th April, 1956, namely :—

"(3) For the purposes of calculating the number of members of a joint family under sub-rule (2), a person who on the relevant date—

(a) was less than eighteen years of age; or

(b) was a lineal descendant in the male line of another living member of the joint family;

shall be excluded :

Provided that where a member of a joint family had died during the period commencing on the fourteenth day of August, 1947, and ending on the relevant date leaving behind on the relevant date all or any of the following heirs, namely,—

(a) a widow or widows;

(b) a son or sons (whatever the age of such son or sons);

but no lineal ascendant in the male line, then, all such heirs shall notwithstanding anything contained in this rule, be reckoned as one member of the joint family."

THE VICE-CHAIRMAN (SHRIMATI SHARDA BHARGAVA) : You can speak.

SHRI MEHR CHAND KHANNA : I thought I would speak at the end.

SHRI H. N. KUNZRU (Uttar Pradesh) : It is very necessary that the thing should be explained. We don't understand it as well as the hon. Minister does. He must tell us why it has been found necessary to change the previous rule. It is very unfair to us to present the rules and then to sit down and say that these will be explained afterwards.

SHRI MEHR CHAND KHANNA : Madam I think it was in 1950 that claims were invited from the displaced persons who have left their properties in West Pakistan under the Claims Act. About 4,50,000 claims were received for the value of about Rs. 5 crores. The claims were received till some time in August 1952. We then formulated a scheme for the payment of compensation for the properties left in West Pakistan. This scheme was announced by my predecessor, I think towards the end of 1953. It was called the interim compensation scheme. Under this scheme, a family was considered as one unit and the ceiling allowed therein was Rs. 50,000, the claims had been invited for the properties left in West Pakistan irrespective of the fact whether the family was joint or undivided.

There was no such thing under the compensation, I mean the interim compensation scheme, whether the family comprised of the father or son or brother or widow, sister-in-law or anybody. He or she was to receive compensation according to a scale. The family was considered as one unit, and the ceiling of the compensation in the interim compensation scheme was Rs. 50,000. We started making payments and by the time we came to the final scheme which was introduced by me in June, 1955, I believe we had paid compensation to about 50,000 persons. I am quoting from memory, Madam, and I may be wrong. But on the basis of this scheme, the compensation had been paid. When the final compensation scheme was announced, we gave certain concessions or we liberalised the interim compensation scheme, because during the time when the interim compensation scheme was in operation and the final compensation scheme was announced in June, 1955, it was represented to the Government that some families that had come from West Pakistan, owned large properties. They had claims not worth thousands, but their claims were worth 30 lakhs, 40 lakhs, 50 lakhs or a crore, two crores and three crores. Their case was brought to the notice of Government and it was suggested that some of these families consisted of two members, three members or four members and they had left their big claims and if such a family under the final compensation scheme is also to be treated as one unit, as under the interim scheme, then these families are likely to suffer a great deal. With this consideration in view, Madam, we made a very important departure and gave some concessions in the final compensation scheme; that departure is reflected in the old Rule No. 19. I think these rules were passed most probably on the 27th of September, 1955; it may be the 27th or the 26th. There we say:

"Where a claim relates to a property left by the members of an undivided Hindu family in West Pakistan (hereinafter referred to as the "joint family"), the following provisions shall apply.

(2) Where a joint family consists of—

(a) two or three members entitled to claim partition, the compensation payable to such family shall be computed by dividing the

verified claims into two equal shares and calculating the compensation separately on each such share.

(b) four or more members entitled to claim partition, the compensation payable to such a family shall be paid by dividing the verified claims into three equal shares and calculating the compensation separately on each such share."

I am coming to the proviso a little later. Where a family consisted of one member, that one member will get one share. Where the family consisted of two or three members, it will be given two shares, and where the family comprised of four or more, then they will be entitled to three shares. Let me explain the implication of this, Madam.

The implication of this is that in the interim compensation scheme, where the ceiling was Rs. 50,000 no family was entitled to receive payment more than Rs. 50,000. Under this revised rule, a family consisting of three units, were to get two shares and four or more got three shares. What we did at the same time was, where the ceiling was Rs. 50,000 we raised it to Rs. 2 lakhs. This House did it. Where under the interim scheme, only Rs. 50,000 was to be given to a family, under the final compensation scheme and as laid down in rule 19, that family was entitled to receive, Madam, up to Rs. 6 lakhs, because if the family comprised of more than three members, that family was entitled to three shares.

DIWAN CHAMAN LALL (Punjab): No, no.

THE VICE-CHAIRMAN (SHRIMATI SHARDA BHARGAVA): Let him continue.

DIWAN CHAMAN LALL: But that is not a correct statement. That statement refers only to claims over Rs. 18 lakhs. If it is Rs. 18 lakhs and it is a joint family, it does not come up to Rs. 6 lakhs.

SHRI MEHR CHAND KHANNA: I have stated that we were approached by big families who had left properties worth lakhs and lakhs of rupees.

DIWAN CHAMAN LALL: How many?

SHRI MEHR CHAND KHANNA: Well, you are one of them, I am one of them.

DIWAN CHAMAN LALL: But how many of them are there? I am sorry my hon. friend, as is his usual habit, is importing personalities into this matter. What I want the hon. Minister to do is to face this House with his facts. How many such families are there?

SHRI MEHR CHAND KHANNA: The number of families who have got large claims is fairly large.

DIWAN CHAMAN LALL: Fairly large does not mean anything. How many?

SHRI MEHR CHAND KHANNA: I am prepared to give the information.

DIWAN CHAMAN LALL: The House is entitled to get correct information.

SHRI MEHR CHAND KHANNA: I am giving the hon. Member the information. The number of persons who have got large claims is fairly large.

SHRI BHUPESH GUPTA (West Bengal) We would like to know it.

THE VICE-CHAIRMAN (SHRIMATI SHARDA BHARGAVA): I think the hon. Minister should go on. Afterwards you can speak.

SHRI MEHR CHAND KHANNA: I do not remember the exact number. But if the hon. Member, Mr. Bhupesh Gupta or Diwan Chamal Lall were to table a question I shall be glad to give the information.

DIWAN CHAMAN LALL: This is extraordinary.

SHRI BHUPESH GUPTA: What are the financial implications? We want to know the number for we want to understand the financial implications.

SHRI MEHR CHAND KHANNA: I thought you would help me in these things. I am giving you the financial implications.

DIWAN CHAMAN LALL: Surely, surely.

SHRI MEHR CHAND KHANNA: My point is this. After we raised the ceiling from fifty thousand rupees to two lakhs, if there was a family of more than three members, it could get six

lakhs of rupees; if it had a claim of Rs. 36 lakhs, it could get up to four lakhs of rupees and if that family had a claim of rupees eighteen lakhs, it could get two lakhs of rupees. As against the original ceiling of fifty thousand rupees, we are having this ceiling of two lakhs of rupees. Under our scheme, we give for a one unit family, two lakhs of rupees, for a two unit family four lakhs of rupees and for a more than three unit family six lakhs of rupees but we made one proviso and that was:

“Provided that in the case referred to in clause (a) none of the members and in the case referred to in clause (b), none of the minimum number of four members—

(i) is less than 18 years of age; or

(ii) is lineally descended from another member....”

That is what we laid down in that rule. That is the rule that was passed by this House and we started implementing that rule. Within a very short while, the Advisory Board which is attached to my Ministry for giving advice to us in all matters relating to the implementation of the compensation scheme pointed out to me that there appears to be some ambiguity because, when we come to explanation number two, down below, there is some confusion and I was advised by the Advisory Board that this matter should be re-examined. I discussed this matter with the Ministry of Finance and I discussed this matter with the Ministry of Law and I was advised that the intention of the Government is entirely clear that there was no ambiguity or misunderstanding about the intention of Government in the matter of giving compensation according to the provisions of rule 19 but that we would be well advised to clarify the rule so that there is no misunderstanding. It is with this object and purpose, simply to clarify the ambiguity, that this rule was laid before both the Houses of Parliament; the other House has made an amendment and it has now been brought before this House. There is no other intention whatsoever. People talk of legal phraseology, legal technicality and all that. I say that they may have a bearing on this but as far as Government is concerned, Government is only concerned with one thing and that is, what was the intention of Government

when this rule was framed and whether that intention is being fully implemented or not. We have paid compensation up till now to about a lakh and a quarter persons; thirty-five crores of rupees have already been paid in compensation and this has been done on the interpretation of rule 19 that I have given. There is nothing else in the amendment that I have moved except as stated by me. The amendment reads:

“For the purposes of calculating the number of members of a joint family under sub-rule (2), a person who on the relevant date—

(a) was less than eighteen years of age; or

(b) was a lineal descendant in the male line of another living member of the joint family;

shall be excluded.”

Those who were excluded before are being excluded now.

DIWAN CHAMAN LALL: No.

SHRI MEHR CHAND KHANNA : You can have your say.

SHRI JASPAT ROY KAPOOR (Uttar Pradesh) : I have nothing to say. I was only trying to understand.

SHRI MEHR CHAND KHANNA: We have done one thing further. In the old rule, as it existed, supposing there were three brothers, A, B and C, out of whom two are living while the third, C had died leaving lineal descendants. What we have done now is that with a view to seeing that justice is done to the third brother who has died, having left property in Pakistan—if he had not died he would have been entitled to be counted as a member of the family—we are treating that brother as one who is living today. For that purpose, we have laid down:

“Provided that where a member of a joint family had died during the period commencing on the fourteenth day of August, 1947, and ending on the relevant date (the relevant date, I believe, is the 26th September, 1955) leaving behind on the relevant date all or any of the following heirs, namely :—

(a) a widow or widows;

(b) a son or sons (whatever the age of such son or sons);

but no lineal ascendant in the male line, then, all such heirs shall notwithstanding anything contained in this rule, be reckoned as one member or the joint family.”

So, we have liberalised the rules a little more; we are doing away with the restrictions which completely eliminated a widow or the heirs of the deceased brother. We have brought that in because we feel that they are entitled to a share in the compensation as one of the brothers if he had been alive. One thing more that should be noticed is this that as far as the minor is concerned, we could have easily taken the age of the minor on the 14th August 1947, because that was the date of partition, and the claims were also invited for the properties left in Pakistan before that date. What we have done is this. A minor on the 14th August, 1947, would have been excluded for the purposes of counting in these two or three units as I have stated above but now we have advanced that minor's age by about eight years. If he was a minor and his age was 13 on the 14th August, 1947, as a minor he would have been excluded if we had taken the complexion and the character of the family as it existed on the 14th August, 1947, but we have further liberalised the rule to this extent. We have given the minor the benefit for the eight years or nine years that he has spent here in India. We count his age on the 26th September, 1955, and if he is still a minor on that day, of course, nothing could be done and we exclude him.

This is the brief explanation that I wanted to offer. We have brought forward this motion with the best of intentions and to clarify the position, and number two, to liberalise the rule a little further.

Thank you.

THE VICE-CHAIRMAN (SHRIMATI SHARDA BHARGAVA) : Motion moved:

“That this House concurs in the following motion adopted by the Lok Sabha at its sitting held on the 22nd August, 1956, namely:—

“That the following sub-rule be substituted for sub-rule (3) of rule 19 of the Displaced Persons (Compensation and Rehabilitation) Rules, 1955, as further amended by Notification S.R.O. No. 1161, dated the 30th April, 1956, namely:—

[The Vice-Chairman.]

"(3) For the purposes of calculating the number of members of a joint family under sub-rule (2), a person who on the relevant date—

(a) was less than eighteen years of age; or

(b) was a lineal descendant in the male line of another living member of the joint family;

shall be excluded:

Provided that where a member of a joint family had died during the period commencing on the fourteenth day of August, 1947, and ending on the relevant date leaving behind on the relevant date all or any of the following heirs, namely,—

(a) a widow or widows;

(b) a son or sons (whatever the age of such son or sons); but no lineal ascendant in the male line, then, all such heirs shall notwithstanding anything contained in this rule, be reckoned as one member of the joint family."

THE VICE-CHAIRMAN (SHRIMATI SHARDA BHARGAVA): There is another amendment by Diwan Chaman Lall.

DIWAN CHAMAN LALL: May I have your indulgence to make a verbal amendment in this amendment of mine as in the last line of this amendment there has been an error in typing in my office and four words have been omitted after the words "joint family" and before the word "or", namely "not entitled to partition". So I seek your indulgence in adding these words at the proper place and move my amendment.

Now I move:

"That the following modification be made in the displaced Persons (Compensation and Rehabilitation) Rules, 1955, namely:—

'For Rule 19 of the Displaced Persons (Compensation and Rehabilitation) Rules, 1955, as amended by the Ministry of Rehabilitation, Notification S.R.O. No. 1161/R Amdt. V, dated the 30th April, 1956, the following be substituted, namely:—

"19. Amount of compensation in case of Joint Family.—

(1) Where a claim relates to a property left by the members of an undivided Hindu family in West Pakistan (hereinafter referred to as the 'joint family') the following provisions shall apply.

(2) Where a joint family consists of—

(a) four members entitled to claim partition, including sons (subject to Explanation II of clause 3), the compensation payable to such family shall be computed by dividing the verified claim into two equal shares and calculating the compensation separately on each such share;

(b) five or more members entitled to claim partition, the compensation payable to such family shall be computed by dividing the verified claim into three equal shares and calculating the compensation separately on each such share:

Provided that for the purpose of calculating the number of members of a joint family under sub-rule (2) a person who on the relevant date was a lineal descendant in the male line of another living member of a joint family not entitled to partition or a lineal ascendant in the male line shall be excluded:

Provided further that a widow or widows of a member of a joint family who had died during the period commencing the 14th of August 1947 and ending on the relevant date shall be reckoned as one member of the joint family.

(3) Compensation in the case of a joint family shall ordinarily be payable to the *Karta* of such family, but where the members of the joint family do not agree that the total compensation payable to the family may be paid to the *karta* of the family, such compensation shall be paid to each such member of the family in accordance with his share specified in the assessment order.

**Explanation I.**—For the purpose of this rule, the question whether the family was joint or separate shall be determined with reference to the status of the family on the 14th day of August 1947.

**Explanation II.**—For the purposes of this rule, in the case of every Hindu undivided family governed by the Mitakshara law, a son shall be deemed to be entitled to claim partition of the co-parcenary property against his father or grand-father, notwithstanding any custom to the contrary.”

**THE VICE-CHAIRMAN (SHRIMATI SHARDA BHARGAVA):** The amendments are before the House.

**SHRI MEHR CHAND KHANNA:** May I know what it is? I have not followed the change.

**DIWAN CHAMAN LALL:** If the hon. Minister will look at my amendment, on page 1, in the last but one line, there are four words that have been omitted after the words “joint family”. I will explain it in a minute as I come to that. Don't worry about it for the moment.

Madam, I am grateful to you for your permission. First of all it is my duty to disabuse my hon. friend's mind in regard to the category in which—I do not know which category he comes in—in regard to the category in which I come. I do not come in the category to which my hon. friend referred. I should have thought that he would have known that being head of that department, but I am sorry he did not know that, nor the very relevant fact as to the particular number of those assesseees, those claimants upon whose dead bodies, if I may so use that expression, he has based the entire argument that he has placed before us. May I also say this that in the thirty odd years of experience of legislative activity I have never listened in my whole life to a more disingenuous statement than the statement made by my hon. friend. He says and I hope he says it not with his tongue in his check, he says this: “In order to clarify the ambiguity this rule had been brought forward and laid before the House.” Language seems to have lost all meaning and all significance, if this is the reason that my hon. friend advances in support of this

measure. My hon. friend knows perfectly well that this Advisory Board did not ask him to get a clarification of an ambiguity. They went all out to ask him to see to it that the original statement that a joint Hindu Family consisted of the *Karta* and the sons is given effect to. That is what they asked. And why did they ask that Madam? They asked because of the activities of my hon. friend's department, after having originally passed this particular rule, having accepted this rule. This Rule 19 was first of all notified by my hon. friend on the 21st of May. It was passed by Parliament, the same Rule, some time in the month of September, 1955. And what was the Rule which was passed? Let me draw his attention to the relevant fact. It meant this exactly what he has been objecting to, namely, that “where” there are “two or three members entitled to claim partition”, the claim can be split up. Madam, you will realise that as far as our Punjab is concerned, the Mitakshara Hindu law applies, but as a matter of practice no son was entitled to claim partition during the lifetime of the *Karta*; nevertheless certain relief was granted under the Indian Finance Act and under the Indian Income-Tax Act making it possible to consider in a Mitakshara Hindu Family in West Pakistan—sons being entitled to claim partition—“Where there are two or three members entitled to claim partition”, that is, the sons, “the compensation payable” will be such and such. For four or more members the compensation would be such and such “Provided that in the case referred to in clause (a) none of the members and in the case referred to in clause (b), none of the minimum number of four members (i) is less than 18 years of age” that is excluding the minors etc. My hon. friend now wants to protect minors not in reference to the Joint Family and the sons of a living father but in reference to a dead father and a dead grand-father, in reference to brothers only, the sons of brothers, not the sons of the *Karta* of the family but the sons of brothers. Why do you drop sons of living fathers and replace them with brothers whose father is dead? And he has made this particular concession, namely, that if between those particular dates a minor had attained majority, he will be considered as an extra member of that family. Now the next para. is “(ii) is lineally descended from another

[Diwan Chaman Lall.]

member or along with another member is lineally descended from any other living member of the joint family not entitled to claim partition." This rule was clear enough, plain enough, and obviously it had to be clear enough and plain enough. What is a joint Hindu family without the sons, and if my hon. friend sought to exclude the sons, he sought to destroy the whole basis of a joint Hindu family by giving a definition to a joint Hindu family which, in the centuries that Hinduism has been in existence, has never been heard of. That is what my hon. friend sought to clarify. What his Advisory Board sought to clarify was this. Make it perfectly clear that you have not this intention to exclude the sons. Say that the sons do form part and parcel of the joint Hindu family. Now it was said by him that the sons need not under this rule form part and parcel of the joint Hindu family and it was pointed out to my hon. friend again by his Advisory Board and by many others that if you would only look to Explanation II you would see that the sons are included. There is Explanation II to this particular rule which says, "For the purposes of this rule, in the case of every Hindu undivided family governed by the Mitakshara law, a son shall be deemed to be entitled to claim partition" etc. The point that I raised just now is in regard to those of us who come from West Pakistan where the rule, as it prevails in the rest of India, was not given effect to, that is to say, during the lifetime of the *Karta* the son had no right to claim partition but the law and my hon. friend's own law gave the right to the sons, namely, that they were to be considered as part and parcel of that unit, of that undivided Hindu family even if they did not have during the lifetime of the *Karta* the right to claim partition of the property.

SHRI P. N. SAPRU (Uttar Pradesh): Is there any such ruling there which says that a Mitakshara-governed person cannot claim partition?

DIWAN CHAMAN LALL: That is what the High Courts held at that time and therefore relief was given originally in the Indian Finance Act and in the Indian Income-tax Act and the relief was given by my hon. friend thereby bringing the sons into this particular rule. Father and the sons form-

ed the unit for the purposes of reckoning whether there are three members or more than four members. If there are three members they would be entitled to divide the particular claim into two portions. For instance if the claim is of Rs. 18 lakhs, if there are two portions to be divided and there are three members of the joint family including the sons, they would divide the claim into nine lakhs and nine lakhs with the result that whereas with 18 lakhs they could get two lakhs as compensation, by dividing thus they would get a few thousand more. That was the position and if they could divide the family into three parts they would get still a little more. The position therefore was clear enough. This is what Explanation II says, "For the purposes of this rule, in the case of every Hindu undivided family governed by the Mitakshara law, a son shall be deemed to be entitled to claim partition of the coparcenary property against his father or grand-father, notwithstanding any custom to the contrary". Now my learned friend says very innocently that an ambiguity is being cleared. Of course we are not all supposed to be lawyers nor supposed to be well versed in the rules of procedure adopted by my hon. friend or the law that he had passed in order to clarify an alleged ambiguity. Where is the ambiguity? You have not clarified an ambiguity. You have taken a stern step to exclude every son and substitute brothers and yet you call it a Hindu undivided family. Under this rule, under this amendment that my hon. friend has brought, what happens is this. Not a single son can be considered part and parcel of the family for the purposes of this particular rule of dividing into two or three portions. Yes, brothers of dead *Kartas*, the father must be dead, the grand-father must be dead, the brothers are considered. Where is the undivided Mitakshara Hindu family without the sons.

SHRI MEHR CHAND KHANNA: What is the implication of provisos (i) and (ii)?

DIWAN CHAMAN LALL: The implication of proviso (i) is that my hon. friend has excluded minors. That is what he has done. Proviso (ii) only relates to those who are not entitled to claim partition. "Not entitled to claim partition" is a phrase that would govern both (i) and (ii). It is a little legal matter that I shall deal with. My hon. friend

is not a lawyer; I will have to deal with the Law Minister. Whatever it may be, the fact still remains that the sons were part and parcel of this particular rule which he is now altering. Now what is the origin of this? My hon. friend told us that his Advisory Board asked him to clear an ambiguity. That is not correct. It is an astonishingly incorrect statement. What they have asked him to do was to see to it that the position of the sons was made definite and clear without any doubt whatsoever. Why did they do that? What was the reason for doing all this? The reason was very simple. Let me take a minute of your time. I am making a reference to page 3, Chapter II of the Proceedings of the Advisory Board. This is what is said there: "In the draft rules as circulated to the Board, the undivided Hindu Family is treated as one single unit for the purposes of assessment of compensation. The Joint Family would, under the rules, as they stand at present, get appreciably smaller amounts than would be the case if each member entitled to claim partition is treated as a separate unit. This question of the treatment of the Hindu Joint Family is one which has been agitated on the floor of the Central Legislature for many years and some form of recognition of the principle that the Joint Family deserves relief has been incorporated in the Finance Bill, 1955 and in the recent Report of the Taxation Enquiry Commission. Moreover in 1954 when the Bill to provide for payment of compensation and rehabilitation grants to Displaced Persons was under discussion in the Lok Sabha, on an amendment moved by Shrimati Sucheta Kripalani in regard to this matter, the then Minister for Rehabilitation, Shri Ajit Prasad Jain stated that relief on the lines of the income-tax exemption could be considered as one of the forms of relief. The amendment moved by Shrimati Sucheta Kripalani was to the effect that the compensation payable to each co-sharer should be determined separately. The said amendment was not accepted and to avoid any complaints on the basis of excessiveness of relief to such joint families, the Board has accepted the principles underlying the provisions given in the First Schedule of the Finance Bill, 1955, some of which have been in force for several years now. The Board has incorporated in the draft rules a new rule based on these principles. After the amount of compensation is determined

according to these rules, the amount is to be apportioned among the members of the family, according to the provisions of the Hindu Law."

While making this recommendation, we are conscious of the fact that this will entail further examination of the claim applications, that on the basis of the existing scale of compensation this may require some additional funds and that this may even necessitate some revision of the scale. We, however, feel that in the interest of justice *inter se* between the various categories of claimants this recommendation has to be accepted and implemented. Was it an ambiguity I am wanting my hon. friend to clarify? This was a substantial thing that they laid down and I say that my hon. friend accepted it; not only accepted it, but made Parliament accept it and we unanimously passed this particular rule when that was brought forward. And what was that rule? Again the Board itself has laid it down. The substance of that particular rule was laid down by the Board itself and what does the Board say? It is rule 14 on page 19:

"The Board's views on the treatment of the undivided Hindu family have already been indicated in Chapter II."

That I have just read out :

"To give effect to our proposal we recommend the inclusion of a new draft rule on the following lines:—

'(1) In the case of every Hindu undivided family which on the 14th day of August 1947 had at least two members entitled to claim partition, the compensation shall be determined by dividing the value of the verified claims into two equal shares, assessing the compensation on each of the two shares on the basis of the scale prescribed in rule 20 and adding up the compensation on both the shares. Thereafter the amount so determined shall be apportioned by the Settlement Commissioner among the members of the family according to the provisions of Hindu Law.

(2) In the case of every Hindu undivided family which on the 14th day of August, 1947 had at least four members entitled to claim partition. . . . ."



[Diwan Chaman Lall.]

—then the compensation will be on three shares and so on. Then there is a proviso—

“Provided that in the case referred to in (1) none of the members and in the case referred to in (2) none of the minimum number of four members (i) is less than 18 years of age or (ii) is lineally descended from another member or along with another member is lineally descended from any other living member of the family entitled to claim partition.

*Explanation.*—For the purposes of this rule, in the case of every Hindu undivided family governed by the Mitakshara Law, a son shall be deemed to claim partition of the co-parcenary property against his father or grand-father, notwithstanding any custom to the contrary.

*Illustration I.*—If an undivided Hindu family has a verified claim for Rs. 30,000 and has three members entitled to claim partition, compensation will be calculated on two shares.....”

and in the case of five members entitled to claim partition, the compensation will be calculated on three shares of Rs. 10,000 each and the amounts thus due on each share will be added together and apportioned among the members of the family. What is it that we are asking?

SHRI MEHR CHAND KHANNA: What is the date of this?

DIWAN CHAMAN LALL: I will give the date in a minute. Let me tell my hon. friend that this is the substance of the thing that was recommended by the Board and on the basis of this recommendation, practically the draft itself was accepted by my hon. friend. Then what happens? He comes before Parliament and we pass this rule, rule 19, in all innocence believing that an undivided Hindu family is a family which consists of a *Karta* and the sons. We are certainly faced with a very serious proposition which I wish to place before this House and you, Madam, in regard to the privileges of this House. What happens after we have passed this rule?

- A certain gentleman who styles himself as an Under Secretary, I believe, in the Ministry, issues on the 12th January a

letter. And remember that this rule has been passed and accepted by us. Parliament which is a sovereign body has accepted this particular rule and the rule is clear enough in regard to the inclusion of sons for the purpose of reckoning the number of persons in a Mitakshara joint Hindu family. Then on the 12th January, 1956, Shri Kulwant Singh, Under Secretary to the Government of India.....

SHRI H. N. KUNZRU: On which date?

DIWAN CHAMAN LALL: On 12th January 1956. In September we passed this rule and three months later, my hon. friend does not come to this House; he does not place the matter before the Subordinate Legislation Committee, but acts in a manner, not he personally, but his Department is acting in a most arbitrary manner, in a most dictatorial manner and the Under Secretary is made to issue a communication nullifying the total effect of this rule which has been accepted by Parliament. And what does he say? He sends this letter to the Chief Settlement Commissioner. The number of the letter is 51 (21)-SI/55, Government of India, Ministry of Rehabilitation and it is dated, as I said, 12th January 1956. It says:

“I am directed to refer to Rule 19 of the Displaced Persons (Compensation and Rehabilitation) Rules, 1955 and to say that sons and grandsons, whether major or minor, should not be counted as members of the Joint Family, in the life time of their fathers and grand-fathers, for the purposes of computing compensation under sub-rule 2 of the said Rule.”

SHRI MEHR CHAND KHANNA: Correct.

DIWAN CHAMAN LALL: My hon. friend says “correct”. I say this is one of the most dishonest things to do, to get a departmental order passed over the head of Parliament and in contradiction of what Parliament has done. My hon. friend shakes his head; he may well shake his head about this matter. Is he aware of what the fate of this was eventually? Does he know that this matter was referred to the subsidiary Committee on Subordinate Legislation? I do not know if he has seen the fifth report.

SHRI MEHR CHAND KHANNA It was presided over by Mr. Chatterjee.

DIWAN CHAMAN LALL : I do not know who presided. It is a Committee of Parliament. My hon. friend should accept a Committee of Parliament and pay due respect to it. I do not care who it was that presided over it. It was presided over by a Member of Parliament under the authority of Parliament, with the unanimous decision of Parliament, and my hon. friend has no business to decry the validity of that particular Committee or the authority of that Committee.

SHRI MEHR CHAND KHANNA: It is an advisory body and it has made certain recommendations.

DIWAN CHAMAN LALL: People in this House are aware of the fact that it was an opposition leader who really presided—N. C. Chatterjee. It was an opposition leader.

सरदार रघुवीर सिंह पंजहजारी (पेप्सू) :  
उस कमेटी को तोड़ दीजिये ।

DIWAN CHAMAN LALL: My hon. friend is quite right.

सरदार रघुवीर सिंह पंजहजारी : अगर उसकी रिकमेंडेशन को नहीं मानना है तो उसको तोड़ दीजिये । उसको रखने से फायदा क्या है ।

DIWAN CHAMAN LALL: This is a very important matter, because I am going to raise a matter of privilege in regard to this particular letter that I have just read. It is a very serious matter how the privileges of this Parliament can be defied, can be adversely affected by an Under Secretary of my hon. friend's Ministry merely because my hon. friend has come to a certain conclusion regarding this matter which does not tally with the decision of Parliament. It is a matter of privilege which I shall deal with presently. Now all such subordinate legislation goes before the Subordinate Legislation Committee to find out whether the Department is transgressing the law, going outside it, exercising authority which it has no business to exercise and giving a decision in regard to this matter. My hon. friend said when I read that particular letter of Mr. Kulwant Singh "correct". But let us see. He says "correct" because it was done under his instruc-

tions. He has got to stand by that letter. But let us see what an impartial body has got to say in regard to this matter, a Committee of Parliament specially deputed for this purpose.

AN HON. MEMBER: What is this Committee?

DIWAN CHAMAN LALL: This is a Committee called Committee on Subordinate Legislation. I did not know until my hon. friend told me who the Chairman was. Here are the names:—

Shri N. C. Chatterjee—Chairman,

Shri S. V. Ramaswamy—one of the finest brains that we have got in Lok Sabha,

Shri N. M. Lingam,

Shri A. Ibrahim,

Shri Hanamantrao Ganeshrao  
Vaishnav,

Shri Tek Chand,

Shri Ganpati Ram,

Shri Nandlal Joshi,

Shri Diwan Chand Sharma,

Shri Hem Raj,

Shri H. Siddanajappa,

Dr. A. Krishnaswami,

Shri Tulsidas Kilchand,

Shri Hirendra Nath Mukerjee,

Shri M. S. Gurupadaswamy—

fifteen honest men who have no part in this controversy but who worked under the Chairmanship, as my hon. friend reminded me, of the opposition leader, Mr. Chatterjee, a very able lawyer, one of the most able lawyers, an ex-Judge of a High Court, whose legal opinion cannot be brushed aside in favour of the legal opinion of Mr. Kulwant Singh, Under-Secretary of the Rehabilitation Ministry. This is what they say on page 2 of the Fifth Report presented on the 13th August 1956—S.R.O. 1161 re displaced persons compensation and Rehabilitation Rules: "The Committee are of opinion that there is no justification for the modification of rule 19 so as to exclude the son from the benefit of getting compensation when the father is alive and when both are members of a Hindu undivided family." My hon. friend said that this is merely clarification of an ambiguity. Here is this Parliamentary Committee saying that it is

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a substantive change that you have wrought into this rule without any authority, without any justification. I hope my hon. friend when dealing with these rules in future will bear in mind this that no matter how powerful an individual may be in his Ministry, he has no authority whatsoever to upset the rules or modify the rules or amend the rules as passed by Parliament—and certainly not an Under Secretary of my hon. friend's Ministry. "The rule-making power is contained in section 40 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954. The Central Government's power is limited to make rules for carrying out the purposes of this Act, not to amend them, not to alter them, under this false plea of mere clarification, but only to carry out the instructions given by Parliament when Parliament passes a set of rules under a particular Act. That is all. The Committee therefore recommend that subclause (ii) in rule 19(3)(a) should be omitted." My hon. friend did not accept that advice. Now he comes to get the sanction of Parliament. Unfortunately he has got the authority to go ahead with that. This was the position in regard to rule 19(3).

Now, the basic position is this that what my hon. friend is seeking to do is to exclude from the purview of the purposes of this compensation and the reckoning of the numbers of the joint family the sons and the grandsons of an undivided Hindu family, a proposition unthinkable in itself. Don't talk about an undivided joint Hindu family, don't talk about it, talk about something else. But the moment you talk of a joint Hindu family you have to consider that the sons are part and parcel of that family, and that you cannot exclude those sons. The Indian Finance Act does not exclude them. The Taxation Enquiry Report did not exclude them. All the advantages they could give in this matter were given to the sons of an undivided joint Hindu family. Therefore, the position boils down to this that this is a substantive change. Now various figures have been given to us to show that if that particular original rule counting the sons and the grand sons were to be considered valid, then according to my hon. friend there are large numbers—**apparently he does not know the numbers**—but there is a number of people who have got very large claims. I am

surprised to hear today that he is one of them—I certainly am not—one of the large claimants who would get large benefit. How many of them are there? I come from that particular part. I do not know personally of anybody unless they exaggerated their claims—I do not know of anybody in the Punjab more than the people that you could count on the fingers of your two hands with whose urban claims of this nature my hon. friend tried to frighten this House. You realise that it was my hon. friend's predecessor—at that time my hon. friend was Adviser in the Ministry—who stood out against this proposition that we placed before him time and again: We said, "there will be no burden placed upon you. Allow these people to make their own arrangement to sell and exchange their property". You stood out like the Rock of Gibraltar, unshakeable, immovable in regard to this matter. And then what do you give a man with a claim of 18 lakhs? You give what? You give him 2 lakhs. A family of, let us say, a father and five sons, six of them, after nine solid years, you allow them to bid for property. They bid for property when claims are being sold for eight annas and property goes up twice in its value. 2 lakhs becomes one lakh. Six members of a joint Hindu family are given the great benefit, after having left 18 lakhs or 20 lakhs property, of a lakh worth of property—twentieth part after nine years, and you call that compensation! I say it is playing with these people. My hon. friend should take up this stand that we have taken up in regard to this matter. We tried our level best to make him understand this, to make him agree, but he based his objection principally on what he said just now on the basis of finance. Well, my hon. friend knows perfectly well that when the interim scheme was propounded there was no final limit of Rs. 50,000. Rs. 50,000 was a figure suggested. It is wrong, it is misleading to say that Rs. 50,000 was a final figure.

SHRI MEHR CHAND KHANNA: I never said final.

DIWAN CHAMAN LALL : We raised it. Therefore, the question of the final figure of compensation was never decided. It was a tentative figure of Rs. 50,000. They stopped at that, but did not go beyond in their calculations. And my hon. friend knows what assistance each one

of us gave him in this matter of raising this particular claim to Rs. 2 lakhs. It is undoubtedly true that a great deal of difficulty arose in getting this particular thing accepted. Why should there be this further difficulty which my hon. friend has raised for himself unnecessarily in regard to the counting of the sons and the grandsons as part and parcel of an undivided Mitakshra family?

Now, Madam, I said that I would refer to this question of a breach of privilege of this House. We have the authority of this subordinate legislation committee; we have the authority of the Advisory Board attached to my hon. friend's Ministry, whose opinion in regard to this particular matter has been flouted by my hon. friend on three separate occasions. Let nobody run away with the idea that that Board merely asked my hon. friend to clarify an ambiguity. On three separate occasions my hon. friend was asked to do exactly what they had suggested in their own report to be done and their opinion was flouted. What is then the use of having an Advisory Committee. I do not know. But the fact remains that a decision of Parliament has been flouted by an Under Secretary. I do not want this to be considered as a personal matter at all. I am not concerned with the personality of the Under Secretary who is merely a cog in the wheel. But, Madam, the flouting of the decision of Parliament by an Under Secretary is a matter of privilege which at the proper time, I hope, will come before you. May's Parliamentary Practice talks about disobedience to rules or orders of either House. This was an order of the House. I may be allowed to quote therefrom. It states as follows:

"Disobedience to the orders of either House, whether such orders are of general application or require a particular individual to do or abstain from doing a particular act, or contravention of any rules of either House, is a contempt of that House."

I do not think my hon. friend took any legal opinion of my hon. friend who is sitting in front of him, when that particular note was issued by his Ministry directing everybody to consider sons as no part of a joint family.

[MR. DEPUTY CHAIRMAN in the Chair.]

Now, Mr. Deputy Chairman, I have raised certain issues and I beg of my hon. friend to reconsider this matter. I do not want my hon. friend to laugh about it. It is not a laughing matter. It is a matter of the deepest interest to four hundred thousand joint families of refugees from West Pakistan. It does not affect me only, nor does it affect him only. It affects four hundred thousand families. Sir, I have calculated the financial implications of a thing like that. Sir, my hon. friend has not given us the figures that should have been made available to us. From the figures that are available to me Rs. 8 crores would be the amount required. Taking four hundred thousand families, Rs. 10,000 is the average claim. We have calculated that figure with a variation of about 10 to 11 per cent. But in reality the figure would not be more than Rs. 4 crores to Rs. 6 crores. Therefore, Sir, is it worthwhile to break our faith with the refugees with a figure of this nature even if it is Rs. 8 crores? The total amount of compensation payable is Rs. 185 crores. That is the pool today. But properties are being sold much beyond the value that the Department has fixed. And it is anticipated that instead of Rs. 185 crores, it may even be Rs. 195 crores to Rs. 200 crores. I can quote a high authority for this without naming that authority. If that is so, where is the difficulty even if you have got, by a little readjustment, to create a little extra pool for the purpose of keeping your faith with the refugees—four hundred thousand families of them? I want my hon. friend not in a jocular mood, but in a serious vein to consider this particular proposition even at this present moment. Now that he has got the imprimatur of the lower House in regard to this particular rule, therefore it becomes an automatic matter that he will get the imprimatur of this House to that particular rule. But I want him to reconsider this matter at leisure, consult his friends, his colleagues, and then come to some definite conclusion, so that the original rule may be put into action and the new procedure that he has adopted may not operate with any hardship against the joint Hindu families. I appeal to him once again to reconsider this matter. And I have not the slightest doubt that being a refugee himself, he will reconsider this matter. In fact, I have every reason to

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believe that he will have his own way, the Finance Ministry will let him have his own way, and he will do the right thing by these four hundred thousand joint Hindu families of displaced persons. Never mind what has happened on the floor of this House, never mind what has happened departmentally, and never mind in regard to the committee whose verdict has been flouted. Never mind about the Advisory Board's opinion. But the time must come when my hon. friend should reopen this matter and do full justice to these members of undivided Hindu families.

THE MINISTER FOR LEGAL AFFAIRS (SHRI H. V. PATASKAR) : May I say a word? As a matter of fact, the whole question has arisen out of the present rule—rule 19—which is now proposed to be amended by the Rehabilitation Minister. Now as hon. Members are aware, the only idea with which probably rule 19 was inserted was to make a somewhat liberal exception from the ordinary method of paying compensation in respect of joint families, which is a peculiar feature of the law which applies to Hindus. If rule 19 or some such rule was not there, what would have happened? Supposing A was an individual person. Naturally he was entitled to get compensation on a certain basis. Now if there was a joint family consisting of a very large number of people—after all, a joint family consists of so many relations—it was thought that it was not proper that the whole joint family also should be treated as being one unit entitled to compensation on the same basis as an individual person who was not a member of any joint family. It was therefore by way of an exception in favour of the peculiar institution of joint families that rule 19 was inserted. Naturally, Sir, they must have been faced with this difficulty, because a joint family may consist of four members, may consist of five members, or may consist of ten members. Therefore they said that where a claim relates to a property left by the members of an undivided Hindu family in West Pakistan, such and such a provision shall apply.

“2. Where a joint family consists of—

- (a) two or three members entitled to claim partition, the compensation payable to such family shall be computed by dividing the verified

claim into two equal shares and calculating the compensation separately on each such share.”

Supposing a joint family consists of two or three members, it will be taken as if there were only two. There is this restriction. This is not a particular feature of the Hindu Law. They wanted to restrict the scope of what they wanted to do; that is all.

“(b) four or more members entitled to claim partition, the compensation payable to such family shall be computed by dividing the verified claim into three equal shares and calculating the compensation separately on each such share;”

In excess of four, it will be treated as if it consisted of three equal shares, and then compensation would be paid on that basis. Now, there is no dispute about this. It is not an incidence of the joint family as such. There is no point in dispute about this.

“Provided that in the case referred to in clause (a) none of the members and in the case referred to in clause (b), none of the minimum number of four members—

(i) is less than 18 years of age;”

Now, they started to make this exception again. Supposing there were two or three brothers or a father and a son, if we want to include minor children, that would not be fair to do so. Therefore, they decided that while making this calculation of the number of members in the family, they will not take into account the minors. Then, I come to the next controversial clause, which reads thus:

“(ii) is lineally descended from another member.....”

A joint family may consist of a father and a son, or a joint family may consist of the father, his brother, his sons and so many other relations. So, the rule says, “is lineally descended from another member”. That was another restriction. Supposing A, B and C are brothers. A may have two lineal descendants, B three and C four. So, they decided that they would exclude all these, who are lineal descendants from another member, “or along with another member is lineally descended from any other living member of the joint family not entitled to

claim partition". This is a matter about which there has been some argument in the other House. Supposing there is a family of three brothers, and there is someone who is probably insane or perhaps was born an idiot, but he has got his sons or somebody. That is why it is said here, "or along with another member is lineally descended from any other living member of the joint family not entitled to claim partition". As I said, one of the brothers was born an idiot. He was not entitled to a share, but his son may be there who is not himself disqualified, and is a lineal descendant. He shall not be entitled to claim partition. This is clause (ii), which any reasonable person will agree is correct. With respect to Punjab it has been stated that there a person was not entitled to claim partition because the son was not entitled to claim partition by way of customs. That is why Explanation II is there.

The whole point is that it is not as if the incidence of a joint family is made more complicated for this purpose of compensation, but the idea underlying rule 19 was to make some exceptions. These were more or less *ad hoc* provisions which, they thought, they would have for purposes of giving compensation and for the purpose of calculating the number of members who could get compensation. The rule is very clear and it is not ambiguous. The rule makes it perfectly clear that lineal descendants are excluded. It may be that a joint family consists of only the father and the son and in that case there may be some hardship, but it is not as if Government has tried to introduce something which never existed before. The whole idea was to exclude lineal descendants.

As regards the point raised by my hon. friend—he is not here—whoever might have been the Under Secretary, I understand from my colleague here that the Government, according to him, have been always acting on the basis of the interpretation which they have put upon it and they wanted to clarify it by amending the rules which they are now trying to do. I would suggest one thing: Even if the Under Secretary had done this, it is not as if he wanted to do something which was in violation of or against something that Parliament has done. He thought that that was the interpretation which he was rightly entitled

to put, and he had done it. Whether it is right or wrong is a matter for the House to decide.

Similarly I am told that a matter of breach of privilege has been raised on two counts: Firstly, there is an Advisory Committee. I am not concerned whether the advice of the Advisory Committee should be preferred or the advice of the hon. Minister or of the Government should be preferred. An Advisory Committee is constituted. . . . .

SHRI H. N. KUNZRU: By whom?

SHRI H. V. PATASKAR: By the Minister himself, so that he may get their advice in connection with this matter. This is not a problem which arises from time to time. This has arisen only once in the history of this country and I hope it will never arise again. Naturally it was thought that in dealing with such a matter he should have the benefit of the advice of an Advisory Committee. It was not as if, if any advice was given, it was not heeded. To say that if it is not heeded, it becomes a breach of privilege of this House is something which is not justified.

SHRI H. P. SAKSENA (Uttar Pradesh): It has also been approved by the Parliament.

SHRI H. V. PATASKAR: Parliament does not come in the way at all. The Act laid down that the Minister or the Government shall appoint an Advisory Committee. We appoint so many Advisory Committees. If the Government appoints an Advisory Committee but does not act on the advice of the Advisory Committee, how can you say that it is a breach of privilege? Supposing there is some direction from the Parliament itself, it is a different thing. They are not representatives of the Parliament in that sense, that, if they give an advice, the Government is bound by it.

Another ground is that there is a Subordinate Legislation Committee. It is no doubt true that there is a Committee called Subordinate Legislation Committee appointed, I do not know whether by this House or the other House, probably by the other House. The primary purpose of that is this: Whenever Parliament passes an Act, we give what we call rule-making powers to somebody. In England it was found, particularly during times of war, emergencies, etc. that

[Shri H. V. Pataskar.]

at the time the rules were framed, they went far in excess of the powers that were sought to be given by Parliament and tried to do something which ought to have been legitimately done by Parliament. This has come to be known as delegated legislation. It has got to be looked into to find out whether it is in excess of the powers given and whether, in the name of making rules, they are actually trying to usurp the functions of the Parliament itself. But what is the present case about? There is a Subordinate Legislation Committee appointed by the other House. Naturally it looks into so many other matters because it looks into the rules. I was myself once Chairman of that Committee before I became a Minister and I know that is a very good Committee and it tries to function with the intention of seeing that the powers which are really given by Parliament are not going to be exceeded so much to do some things which they had no authority to do but what is it that they have done? They have only said that after examining these rules they find that this interpretation will be preferable. It is open to anybody to say that. It might even be open to them to say that you admit the minors also. Under the Hindu Law, even minors are entitled. Why should it not be liberal because minors are going to become majors. But these are matters of opinion on which people might differ and therefore what they have done is, they have given that, according to them, after examining these rules, they find that this rule should be interpreted in such a way that the son in a joint Hindu family should not be excluded as they are tried to be done by this rule. They have suggested, I am told, that this rule 2 should be deleted. Whatever advice it is, it is not correct to say that supposing that Committee makes some recommendations and Government does not carry out those recommendations, it is not to be regarded as a breach of the privilege of the House. My friend read out from May's Parliamentary Practice the object of which is that if there is a direction given by Parliament, which the Government on anybody does not carry out, then it becomes a breach of privilege but that is not the object with which this Subordinate Legislation Committee was formed, like any other Committee in England on which it is based. That Committee is to examine and make recommendation. Those mat-

ters may be considered. In this case, not only that but that Committee was appointed by the Lok Sabha and when this matter went there, the Lok Sabha itself has now passed this amended rule and which has come before this House for confirmation. How can it be any breach of privilege so far as that other House is concerned because that Committee said something but the House is superior to that Committee. So I submit that both these points with respect to the breach of privilege, are not valid.

I can understand the feeling of the hon. Members particularly those who come from that area, who have to suffer on account of partition. I don't know the capacity of the Government to pay and what are really the difficulties or the amounts with which they would be satisfied. That is a matter for negotiation and settlement between the two concerned. But as these points, somewhat of a technical nature, were raised, this is the present position. Even while looking at it, I don't think there need be any long arguments about the incidence of joint Hindu family because not all of them will be getting it. They want to make some exemption in order to mitigate some hardship. From that point of view, they started giving help as much as they could. If Government had the means, I don't know what they would have done. That is the position so far as the rule is concerned.

Dr. ANUP SINGH (Punjab): Mr. Deputy Chairman. I don't want to go into legal subtleties either of the original rule as I understood it as a Member of the Advisory Board incidentally nor am I going to plead for the point of view of the Board. But I will be failing in my duty if I do not put the thing on record as to what the Advisory Board did and what its position was *vis-a-vis* the Ministry. I think the hon. Minister's remark that he made two interpretations to clarify a certain point which the Advisory Board has raised is liable to lead to some misunderstanding. I will take the most charitable view and say that he made that remark perhaps more in a fit of absent-mindedness than to deliberately deceive this House because he is not that type. I am not praising him when I say that whatever he is, good, bad or indifferent, he is not humbug.

SHRI MEHR CHAND KHANNA: May I submit that what I said and meant to convey was that the rules were passed

in this House some time towards the end of September 1955? In the middle of October 1955, that is, between 15 and 20 days, I received a reference from the Advisory Board to the effect—I don't remember the exact words—that in the interpretation of the rule that is being given by the Ministry, there is some kind of confusion and that they would advise me that the rule should be interpreted in the following manner. Then I got into correspondence with the Chairman of the Board, with even some Members of the Board and this thing went on for quite a long time, say for a period of 2 to 3 months. I explained to the Board that this is the intention of the Government, this is what I wished to convey through our Executive Orders and that is how this rule is to be implemented. But the view-point of the Advisory Board is entirely different to the interpretation that we have given and the intention of the Government when it framed the Compensation Rules and rule 19.

DR. ANUP SINGH: May I proceed and put down the things as I have viewed them? When the Board came to know that the same rule which was recommended and drafted in consultation with the Ministry was about to be changed or some new interpretation was to be put upon it, naturally the Board in its very first meeting, requested the Minister to clarify as to what exactly the new interpretation means. I may also say that when we received the communication, not one but several, I am sure that we invariably and consistently and unanimously said that fortunately or unfortunately the Board does not agree with the Minister. I am not taking the position that the Minister is under any obligation to always accept the opinion of the Board but I say "Don't accept the position that it is merely an Advisory Committee". It is a Statutory body composed of seven Members appointed by the President on the recommendation of the Minister and if and when that Board makes certain recommendations unanimously—by seven Members, all belonging to different parties, some from Parliament, some from outside—it may be that they are guilty of collective-phobia. I am not saying that they were right but I do want this House to know that the Board took the position as the Committee of the other House has taken and the Board subscribes to the position that Diwan Chaman Lall, my colleague, has done also.

Once again I would say that this controversy so far as the Board is concerned is not ended. We feel that the whole meaning of the original rule has been changed. I for one, feel that it would have been more candid to come forward, take both the Houses into confidence and say that we have not got the funds. It involves Rs. 4 to 8 crores. Therefore we have got to put a halt somewhere. But I cannot, for the life of me, reconcile these two points of view. On the one hand, it is being said by the Minister and by the Law Minister that this is more liberal or that we have given more. Then we are told by certain Members of the Government that the real difficulty and the only difficulty is that we have not got enough money. If the Minister were to come forward to this House and the other House and say that this is the amount that we have at our disposal and the rule has to be interpreted to fit that money with our requirements and needs, I for one, and I am sure all the Members, would have fully appreciated the position but I cannot subscribe to the view that this is more liberal and this has given more or we will pay the people more and at the same time say that we have not got the money. You cannot have it both ways.

Thank you.

SHRI H. P. SAKSENA: I also want to say something.

MR. DEPUTY CHAIRMAN: The time allotted is one hour and we have already taken 1½ hours.

SHRI MEHR CHAND KHANNA: Sir, I have listened to the speech of my hon. friend Diwan Chaman Lall with great attention. He is one of my very old friends and anything that comes from him I take in very good spirit. I said so in the other House the other day and I have no hesitation in repeating that—

”ہرچہ از دوست می آید - نکو است“

†[हर के अजदोस्त मी आयद निकोस्त]

Whatever comes from a friend is welcome, I feel, Sir, he was carried away by certain sentiments and regard for the unfortunate displaced persons. He is one of them and I am also one of them. We have both come from West Pakistan and he felt that if he could help them by getting them a little more, it is something which is laudable.



[Shri Mehr Chand Khanna.]

I have also the same thing in my heart and I believe that is also the intention of the Government, not only the intention, but the Government has interpreted it during the last year and a half, not only by empty words but by acts. I will only cite a few instances.

Under the interim compensation scheme, there was a certain scale. Under the final scheme, Sir, that scale was raised. It involved a very large financial implication. It may be remembered, Sir, that the value of the evacuee property left in India is only worth about Rs. 100 crores. The claim invited are of the value of Rs. 500 crores. With a view to helping the displaced persons and to see that they get something substantial, Government started with a contribution of Rs. 85 crores to the pool. Otherwise the *pro-rata* rate would have been only 20 per cent. and nobody would have got more than 20 per cent, that is to say, Rs. 100 crores against Rs. 500 crores. But while making a contribution of Rs. 85 crores, the Government laid down very specifically that this money is to go to the relief of the needy, to the small claimants. In the rules as they were passed by this House it is clearly laid down that no one with a claim of more than Rs. 50,000 shall be entitled to any rehabilitation grant. Where normally the small claimant would be entitled to only 20 per cent. under the scheme today, he is getting 66  $\frac{2}{3}$  per cent. as compensation. He should have got only 20 per cent. against the evacuee property left by the Muslims in India. But Government has made a contribution of over 44 per cent, to the small claimant so that he gets something substantial. And where did that money come from? That came from the general revenues.

Further, Sir, when this scheme was announced, there were certain categories of displaced persons who had been left out. Those who came to India after August, 1952, under the Act they were not entitled to receive any compensation. But under the rules, provision has been made and their applications have been invited. Then came to our notice cases where it was felt that the man might have been abroad, or might have been on active service, or a minor, or might have been in difficulties and so on. And so for legitimate reasons he may not have been able to file his claim. Under the rule and the Act as passed by Parliament—I am speaking from memory—

we made an exception and under that exception applications had been invited. They were invited not very long ago. And their number is 40,000 and to all of them we propose to make rehabilitation grants.

You see, when the compensation scheme was visualised, when it was introduced in 1953, there was a specific pool of Rs. 185 crores. There were a certain number of displaced persons here—about 4.5 lakhs—and there was a certain scale and there was a certain ceiling. I am only trying to tell you and through you the hon. House that Government have been trying to do their best and they did not even stop there. Under the old scheme, for the rural houses for which claims had been invited you will be pleased to hear we got claims from 1,55,000 people and their claims are of the value of Rs. 105 crores, I mean the assessed claims. I believe under our scales they might be getting anything like Rs. 30 to 40 crores. In our original scheme, for these rural claims, payment was to be made at half the rate, and that was for a very good and strong reason. Rural houses are appurtenants to the land and have hardly any market value. But due to great pressure from the displaced persons, Government agreed to pay them at full rates. My own feeling is that this will involve at least an additional financial implication of anything between Rs. 15 to Rs. 20 crores. Previously, the value of the standard acre was only Rs. 350, and the number of standard acres of land is in the vicinity of 25 to 30 lakhs, we have raised the value to Rs. 450 an acre.

What I am trying to tell you and this hon. House is that there was no intention on the part of the Government to do anything which would take away the grace, and the magnanimity of the thing and that Government wanted to do all it could to help the displaced persons from West Pakistan. My hon. friend would say that we should have paid them cent. per cent. compensation. Well I am at one with him. I would also like to give them cent. per cent. But how many countries are there in the world today where that has been possible? I have seen the rehabilitation reports and the relief reports of Germany and other States where rehabilitation has been accepted as a charge on the State but up till now I have not come across one compensation scheme. And here is our

Government which is going to the length of paying up to Rs. 6 lakhs to a family. So how can you impute motives to Government, or impute motives to the Minister that with a view to saving a few crores of rupees he .....

SHRI BHUPESH GUPTA: How many families would be getting Rs. 6 lakhs each?

SHRI MEHR CHAND KHANNA: I am coming to that, if you will just bear with me a little while. But I think I will answer that now, for Mr. Gupta seems to be over-anxious. My hon. friend Diwan Chaman Lall gave the number of families as 4 lakhs in Punjab, who are going to be hit very hard. I am not prepared to accept this figure of four lakhs, according to any calculation. But one thing I may tell my hon. friend Diwan Chaman Lall who said that the number of claims from Punjab is four lakhs, that the total number of displaced persons who have come from West Pakistan is about 50 lakhs. Of them about 24 lakhs are in Punjab, and 26 lakhs are outside Punjab. The total number of claims today is about 4.5 lakhs. So I cannot contribute to his assertion or his implication that as many as 4 lakhs come from Punjab, because the population in Punjab, though it is very substantial.....

DIWAN CHAMAN LALL: I said West Pakistan, not Punjab.

SHRI MEHR CHAND KHANNA: I thank you. I understood you to say Punjab.

DIWAN CHAMAN LALL: We are dealing here with West Pakistan displaced persons.

SHRI MEHR CHAND KHANNA: But I thought I heard him use the word Punjab. Now he has removed that impression. But if lineal descendants are going to be excluded in the Punjab, then the sons and all the male descendants in Sind, Bahawalpur and the Frontier Province will also be excluded.

SHRI P. N. SAPRU: But how will it be a joint family?

SHRI MEHR CHAND KHANNA: I will come to that. I will answer it.

Diwan Chaman Lall said that the total number of families which have come from West Pakistan is about four lakhs. He further said that their claim could be put at about Rs. 10,000 each. You will need only a few hundreds more, may be eight hundred or a thousand in each case. But when you multiply one thousand by four lakhs, though the figure, according to him, was four crores. I submit, Sir, that the figure will be Rs. 40 crores. I may not be a legal luminary; I may have a weak case according to him. I admit that my friend, Diwan Chaman Lall is one of the leading advocates and the way that he has placed his weak case today—I congratulate him on that—but as far as arithmetic is concerned, it is going to have a greater financial implication.

DIWAN CHAMAN LALL: May I interrupt my hon. friend for a minute, if you would allow me? I want to correct the impression that he has got. In order to save time, I did not go into the details. If you take 40 per cent. of all the claimants who would be entitled to this particular relief, 40 per cent. of 160 crores would come to Rs. 64 crores. Therefore, 60 per cent. of disbursements still remain unaffected. Taking the average claim to be Rs. 10,000 and splitting it into two, it would mean an increase of only 9 per cent., splitting it into three would mean an increase of 18 per cent.—an average of 13 per cent on 64 crores comes to 8.5 crores.

SHRI MEHR CHAND KHANNA: Very well, Sir. I will not dispute that. His figure is 4 crores, 5 crores or six crores but my figure is much more.

DIWAN CHAMAN LALL: The hon. Minister's figure was eight crores of rupees.

SHRI MEHR CHAND KHANNA: My figure may be exaggerated; I am prepared to accept that but I say that if the Government could go to the length of revising the scheme, putting the rural houses at par with urban houses, increase the value of the standard acre from Rs. 350 to Rs. 450, invite claims from these persons who are not legally entitled to claim any compensation under the Act, shall we go back now on our word for the sake of three of four or five crores of rupees? I am glad that Diwan Saheb says that the figure is

[Shri Mehr Chand Khanna.]

small. If it is a small one, will it be in the interests of the Ministry, or the Government of India for the matter of that, especially when they have spent nearly rupees three-hundred crores on the rehabilitation of displaced persons, to go back on the word given? The budget of this Ministry for this year is Rs. 33 crores which is over and above the budget of Rs. 54 crores set apart for compensation. The conditions in East Pakistan are fully known to my friend, Mr. Bhupesh Gupta, and others. Government has never thought in terms of money in solving this human problem. I never had any difficulty in finding money to meet the problem, the human problem of the rehabilitation of the displaced persons. This problem has always been measured by the human yardstick, not in terms of money. I refuse to have words put into my mouth which never was the intention of the Government of India. I have great respect for the Advisory Board. They are all my friends; I invited them to become Members of the Advisory Board and I would like to tell this august House that nearly 80 per cent. of the recommendations of the Advisory Board have been accepted. If today, the position is that by repeating an argument once, twice and three times, the Advisory Board feels that we should go into the narrow interpretations of the Hindu joint family or the undivided family, well, Sir, on behalf of Government, I am prepared to say that I am not prepared to accept that position. We brought in the Hindu joint family or the undivided family not with a view to have this legal interpretation but with a view to help the displaced persons, to give the families a little more than they would have been normally entitled to under the compensation scheme.

I am sorry, Sir, a reference has been made to one of the officers of my Ministry. That was the last thing that I expected from my friend, Diwan Chaman Lall. He had absolute right to attribute full responsibility to the Minister in charge of the Ministry of Rehabilitation for any orders issued in this Ministry but to quote the name of a junior officer in the Ministry, one who is one of my best officers, an honest officer, a loyal officer, was not proper. An officer merely interprets the orders of the Ministry, not that he takes any

action on his own. The remarks of Diwan Chaman Lall are not fair. I do not think I should say more on this matter.

There is no question of reconsidering this matter. I would like to reconsider the matter provided I felt that there was any issue for reconsideration, provided I felt that there was any doubt in my mind, provided I felt that I was not correctly interpreting my intentions or the intentions of the Government. So, I cannot agree to a reconsideration of this matter. I would, however, like to say one thing. Diwan Chaman Lall gave notice of an amendment but he has hardly said anything about it; I do not know why. I have looked into this amendment very carefully. He says:

"Where a joint family consists of—

(a) four members entitled to claim partition, including sons..."

I do not know whether I have grasped his amendment correctly. I do not know whether the sons are major sons or minor sons or both because in rule 18(1) minor children are excluded. I have no idea and I do not know what is meant by this amendment.

DIWAN CHAMAN LALL: Since he does not know, shall I explain?

SHRI MEHAR CHAND KHANNA: Let me finish.

Let me come to (2) (b) wherein he says, "five or more members entitled to claim partition". Where Diwan Chaman Lall starts with four members entitled to claim partition under (a), under (b) it is five or more members entitled to claim partition. He may laugh; I have no objection.

DIWAN CHAMAN LALL: I am sorry. I am not laughing. I am almost on the verge of tears at your interpretation.

SHRI MEHR CHAND KHANNA: I am after all a layman and the layman is looking at something which has been put down by a legal luminary. I quite appreciate.....

DIWAN CHAMAN LALL: It says, "entitled to partition".

SHRI MEHR CHAND KHANNA: I am only trying to tell you that there is no reference. Whereas in (2) (a) there

is reference to sons, in (2) (b), there is no reference to sons at all. What is the difference between the two? I do not know. Then, Sir, I go further down. There is mention about "the relevant date". I have no idea what the relevant date is and what is it that Diwan Saheb has in mind. I have not been able to follow one thing and it is this. Having said that much in (2) (b), Diwan Saheb goes on to say, in the proviso,

"Provided that for the purpose of calculating the number of members of a joint family under sub-rule (2) a person who on the relevant date was a lineal descendant in the male line of another living member of a joint family or a lineal ascendant in the male line shall be excluded".

DIWAN CHAMAN LALL : I have already said that some words are missing and those words had been accepted by the Chair. My hon. friend ought to have a little patience. He should have listened to what was said; four words, "not entitled to partition" were inserted with the special permission of the Chair and my hon. friend was not listening at that time.

SHRI MEHR CHAND KHANNA: I want to know whether he missed it or I.

DIWAN CHAMAN LALL : I missed it.

SHRI MEHR CHAND KHANNA: I am sorry. When I got the amendment, I started reading it as a layman. I had to call for the legal luminaries and ask them to explain the position to me.

DIWAN CHAMAN LALL : It was inserted here and so the question does not arise.

SHRI MEHR CHAND KHANNA: I am only telling you about my ignorance of law. Not knowing law, I had to send for the legal luminaries to find out from them. I had to ask them, "Will you tell me what is the implication of the amendment of which my hon. friend, Diwan Chaman Lall, has given notice of?" They told me that it was vague, very confusing and was contradictory in character. I only wish to say that the Motion as given notice of by me may be passed by the House.

MR. DEPUTY CHAIRMAN: What about your amendment?

DIWAN CHAMAN LALL : Well, Sir, in view of the categorical nature of my hon. friend's reply and his not wanting to accept any change in the procedure that he has adopted, I do not think there is any use in pressing my amendment.

The \*amendment was, by leave, withdrawn.

SHRI H. P. SAKSENA : May I request you to permit me to ask for a clarification?

MR. DEPUTY CHAIRMAN: At this stage?

SHRI S. P. SAKSENA: I won't take more than two minutes.

MR. DEPUTY CHAIRMAN: Just put a question.

SHRI H. P. SAKSENA: The hon. Shri Pataskar while speaking on the amendment said that the Lok Sabha even did not notice any breach of privilege while rule 19 was debated in that House, and from that he deduced that since the Lok Sabha did not notice any breach of privilege in that, it should be a guide and a precedent and a light-giving lamp for this House to understand that there was nothing wrong with it, there was no breach of privilege and hence we should also treat it as there having been no breach of privilege being committed. Now I submit that this House is not a light-receiving body and it does not look upon the Lok Sabha as its guide. We have got our own faculties of conscience and understanding and therefore we do not ditto what the Lok Sabha does. Ours is a revising body. Ours is a House of Elders. These are not my interpretations but these are the common interpretations put to this House, and therefore, Sir,.....

MR. DEPUTY CHAIRMAN: Anyway you have not put him any question.

SHRI H. P. SAKSENA: It is not a question. I only wanted an important clarification whether this interpretation of the powers of this House that he put was in conformity with what has been laid down in the Constitution.

\*For text of amendment *vide* cols. 2651-53 *supra*.

SHRI H. V. PATASKAR: I need not say anything. I think that he will receive to-morrow a copy of what I have said and he will be convinced that there was nothing like that for which he should have wasted the time.

MR. DEPUTY CHAIRMAN: He only mentioned facts. That is all, nothing reflecting on the powers of this House.

SHRI H. P. SAKSENA: There was no reflection like that, but his remarks implied that since the House that has already passed this rule 19 did not see any breach of privilege, therefore it followed that this House also should not think that there was any breach of privilege. If there is a breach of the privilege of the House I am very jealous, I am very watchful about it and I will certainly raise a point.

MR. DEPUTY CHAIRMAN: The question is:

"That this House concurs in the following motion adopted by the Lok Sabha at its sitting held on the 22nd August, 1956, namely:—

That the following sub-rule be substituted for sub-rule (3) of rule 19 of the Displaced Persons (Compensation and Rehabilitation) Rules, 1955, as further amended by the Notification S.R.O. No. 1161, dated the 30th April, 1956, namely:—

'(3) For the purpose of calculating the number of members of a joint family under sub-rule (2), a person who on the relevant date—

(a) was less than eighteen years of age; or

(b) was a lineal descendant in the male line of another living member of the joint family;

shall be excluded.

Provided that where a member of a joint family had died during the period commencing on the fourteenth day of August, 1947 and ending on the relevant date leaving behind on the relevant date all or any of the following heirs, namely,—

(a) a widow or widows;

(b) a son or sons (whatever the age of such son or sons);

but no lineal ascendant in the male line, then, all such heirs shall notwithstanding anything contained in this rule, be reckoned as one member of the joint family'."

The motion was adopted.

5 P.M.

## THE HINDU ADOPTIONS AND MAINTENANCE BILL, 1956.

THE MINISTER FOR LEGAL AFFAIRS (SHRI H. V. PATASKAR) : Sir, I beg to move :

"That the Bill to amend and codify the law relating to adoptions and maintenance among Hindus be referred to a Joint Committee of the Houses consisting of 45 members; 15 members from this House, namely:—

SHRI B. M. Gupte,

SHRI T. D. Pustake,

SHRI P. N. Sapru,

Dr. Shrimati Seeta Parmanand,

Shrimati Savitry Devi Nigam,

Shri Mahesh Saran,

Shri Purna Chandra Sharma,

Shri Indra Vidyavachaspati,

Shri C. L. Varma,

Shri S. Channa Reddy,

Shrimati T. Nallamuthu Ramamurti,

Shri H. C. Dasappa,

Shri Makineni Basavapunnaiah,

Shri Satyapriya Banerjee, and

Shri Jagan Nath Kaushal;

and 30 members from the Lok Sabha;

that in order to constitute a meeting of the Joint Committee the quorum shall be one-third of the total number of members of the Joint Committee;

that in other respect, the Rules of Procedure of this House relating to Select Committee shall apply with such variations and modifications as the Chairman may make;

that this House recommends to the Lok Sabha that the Lok Sabha do join in the said Joint Committee