thing, kept among the Members themselves.

SHRI SATYANARAYAN SINHA: Sir, as I have pointed out, the only difficulty is one of time. As it is, we are going to have this Planning Commission's Report placed before the House on the 15th or 16th and we want to take it up by the 22nd. So, there is hardly a period of five days. If we allow some Members to serve on two Committees, there will be difficulty, as most of the Committees will be sitting simultaneously. Otherwise we will not be able to finish the work. If we had the time at our disposal, we would have no objection, on principle. With regard to the proceedings of these Committees, of course, they will be available; I do not think it is going to be secret.

SHRI BHUPESH GUPTA: Will the Press be admitted?

SHRI SATYA NARAYAN SINHA: No.

DR. SHRIMATI SEETA PARMANAND: May I point out that even with the difficulties as made out by the hon. Minister for Parliamentary Affairs, it would be possible for Members when they choose to sit on more than one Committee to attend particular sections of one group in which they are interested? For example, there is this group on Public Administration in Class I and if a Member belonging to Class IV wishes, it should be possible for him to attend the discussion on that subject, if the timetable is put on the notice board of both the Houses. This is not impossible of solution.

SHRI SATYA NARAYAN SINHA: I cannot say just now how it will be arranged.

MR. CHAIRMAN: He will consider it.

SHRI S. N. MAHTHA (Bihar): I want to know the names of the Committees.

MR. CHAIRMAN: It is being circulated to all the Members.

SHRI BHUPESH GUPTA: Sir, finally I would like to make a submission. I do not think it was proper on the part of the Government to have gone by the meeting of only one Business Advisory Committee. Since this discussion involves the Members of both the Houses of Parliament, it was fit and proper that a joint meeting of the two Business Advisory Committees should have been held with a view to arriving at a decision. I am as much a champion of the other House as of this, but I do not think I can champion their cause by bartering away the privileges and dignity of our House. I think, therefore, it was not proper on the part of the Government to have had recourse to such a procedure.

MR. CHAIRMAN: The Minister for Parliamentary Affairs will take note of it for future action.

SHRI S. N. MAZUMDAR (West Bengal): But he always forgets.

MR. CHAIRMAN: The question is:

> "That this House concurs in the recommendation of the Lok Sabha that the Rajya Sabha do join in the Committees on the Second Five Year Plan proposed in the Thirty-fifth Report of the Business Advisory Committee of the Lok Sabha and communicate to the Lok Sabha the names of Members of the Rajya Sabha on the said Committees."

The motion was adopted.

MR. CHAIRMAN: Members who wish to participate in any of the Committees will give their names at the Notice Office, indicating the Committee on which they wish to serve, before 1 P.M. today.

THE HINDU SUCCESSION BILL, 1955

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

> "That the following amendments made by the Lok Sabha in the Hindu Succession Bill, 1955, be taken into consideration:—

[Shri H. V. Pataskar.]

Enacting Formula

1. Page 1, line 1, for 'Sixth Year' substitute 'Seventh Year".

Clause 1

2. Page 1, line 5, for '1955' substitute '1956'.

Clause 3

3. Page 2, line 13, omit '(*gotraja*)'.

4. Page 2, line 21, omit '(*bandhu*)'.

5. Page 3, line 14, after 'Cochin Nayar Act' insert—

'with respect to the matters for which provision is made in this Act'.

6. Page 3, line 18, after 'governed' insert—

'with respect to the matters for which provision is made in this Act'.

7. Page 3, line 24, add at the end—

'with respect to the matters for which provision is made in this Act'.

8. Page 3, omit lines 31 and 32.

Clause 5

9. Page 4, after line 19, add—

'(iii) the Valiamma Thampuran Kovilagam Estate and the Palace Fund administered by the Palace Administration Board by reason of the powers conferred by Proclamation (IX of 1124) dated 29th June, 1949, promulgated by the Maharaja of Cochin.'

Clause 6

10. Page 4, for lines 25 to 36, substitute—

'Provided that, if the deceased had left him surviving a female relative specified in class I of the Schedule or a male relative specified in that class who claims through such female relative, the interest of the deceased in the Mitakshara coparcenary property shall devolve by testamentary or intestate succession, as the case may be, under this Act and not by survivorship.

Explanation 1.—For the purposes of this section, the interest of a Hindu Mitakshara coparcener shall be deemed to be the share in the property that would have been allotted to him if a partition of the property had taken place immediately before his death, irrespective of whether he was entitled to claim partition or not.

Explanation 2.—Nothing contained in the proviso to this section shall be construed as enabling a person who has separated himself from the coparcenary before the death of the deceased or any of his heirs to claim on intestacy a share in the interest referred to therein.'

Clause 7

11. Page 5, for lines 1 to 18, substitute—

'7. *Devolution of interest in the property of a* tarwad, tavazhi, kutumba, kavaru *or* illom.—(1) When a Hindu to whom the *marumakkattayam* or *nambudri* law would have applied if this Act had not been passed dies after the commencement of this Act, having at the time of his or her death an interest in the property of a *tarwad, tavazhi* or *illom,* as the case may be, his or her interest in the property shall devolve by testamentary or intestate succession, as the case may be, under this Act and not according to the *marumakkattayam* or *nambudri law.*

Explanation.—For the purposes of this sub-section, the interest of a Hindu in the property of a *tarwad, tavazhi* or *illom* shall be deemed to be the share in the property of the *tarwad, tavazhi* or *illom,* as the case may be, that would have fallen to him or her if a partition of that property *per capita* had been made immediately before his or her death among all the members of the *tarwad, tavazhi* or *illom,* as the case may be, then living, whether

he or she was entitled to claim such partition or not under the *marumakkattayam* or *nambudri* law applicable to him or her, and such share shall be deemed to have been allotted to him or her absolutely.

(2) When a Hindu to whom the *aliyasantana* law would have applied if this Act had not been passed dies after the commencement of this Act, having at the time of his or her death an undivided interest in the property of a *kutumba* or *kavaru*, as the case may be, his or her interest in the property shall devolve by testamentary or intestate succession, as the case may be, under this Act and not according to the *aliyasantana* law.

Explanation.—For the purposes of this sub-section, the interest of a Hindu in the property of a *Kutumba* or *kavaru* shall be deemed to be the share in the property of the *kutumba* or *kavaru*, as the case may be, that would have fallen to him or her if a partition of that property *per capita* had been made immediately before his or her death among all the members of the *kutumba* or *kavaru*, as the case may be, then living, whether he or she was entitled to claim such partition or not under the *aliyasantana* law, and such share shall be deemed to have been allotted to him or her absolutely.'

Clause 10

12. Page 6, line 10, after 'daughters' insert 'and the mother'.

Clause 12

13. Page 6, omit clause 12.

Clause 13

14. Page 6, omit clause 13.

Clause 16

15. Page 7, for lines 25 to 27, substitute—

'(2) Nothing contained in sub-section (1) shall apply to any property acquired by way of gift or under a will or any other instrument or under a decree or order of a civil court or under an award where the terms of the gift, will or other instrument or the decree, order or award prescribe a restricted estate in such property.'

Clause 17

16. Page 7, for lines 32 to 35, substitute—

'(b) secondly, upon the heirs of the husband;

(c) thirdly, upon the mother and father;

(d) fourthly, upon the heirs of the father; and

(e) lastly, upon the heirs of the mother.'

Clause 18

17. Page 8, line 25 for 'clauses (c), (d) and (e) of sub-section (1)' substitute 'clauses (b), (d) and (e) of sub-section (1) and in sub-section (2)'.

Clause 19

18. Page 8, line 31, for 'sections 8, 10, 12, 13, 17, 25 and the Schedule' substitute 'sections 8, 10, 17 and 25.'

19. Page 8, omit lines 40 and 41.

20. Page 9, omit line 1.

21. Page 9, omit lines 14 and 15.

Clause 25

22. Page 10, line 30, after 'has been deserted by' insert 'or has separated from'.

23. Page 10, lines 30 and 31, omit 'whose husband has left no dwelling house'.

Clause 31

24. Page 11, line 16, for 'go to' substitute 'devolve on'.

Clause 32

25. Page 11, for lines 26 to 29, substitute—

'*Explanation.*—The interest of a male Hindu in a *Mitakshara* coparcenary property or the interest of a member of a *tarwad, tavazhi, illom, kutumba* or

[Shri H. V. Pataskar.]

kavaru in the property of the *tarwad, tavazhi, illom, kutumba* or *kavaru* shall, notwithstanding anything contained in this Act or in any other law for the time being in force, be deemed to be property capable of being disposed of by him or by her within the meaning of this sub-section.'

26. Renumber clause 32 as sub-clause (1) and after sub-clause (1) add—

'(2) For the removal of doubts it is hereby declared that nothing contained in sub-section (1) shall affect the right to maintenance of any heir specified in the Schedule by reason only of the fact that under a will or other testamentary disposition made by the deceased the heir has been deprived of a share in the property to which he or she would have been entitled under this Act if the deceased had died intestate.'

The Schedule

27. Page 12,—

(i) line 5, after 'widow;' insert 'mother;'; and

(ii) line 11, omit 'mother'."

Sir, I will briefly explain what these amendments are.

Amendments Nos. 1 and 2 are merely formal, inasmuch as they change the year "1955" in the Bill to "1956" and the "Sixth Year" to the "Seventh Year". These are the amendments to the Enacting Formula and clause 1. I think they need no further explanation.

Amendments Nos. 3 and 4 relate to clause 3. This clause is the definition clause and the amendments are also formal inasmuch as they omit the words *"gotraja"* and *"bandhu"* which have been put in brackets in sub-clauses (a) and (c) of clause 3(1). These sub-clauses define the "agnates" and the "cognates". It is not necessary to have a phrase in Sanskrit equivalent to the "agnates" or the "cognates" as these words are all defined. It is thought that the use of the words *"gotraja"* and *"bandhu"* may lead to some confusion. The meaning of these words as used in the different Hindu law texts may not always be interpreted to have necessarily the same meaning as is given to the "agnates" and the "cognates" as defined in the Bill and this may lead to some difficulty in interpreting the definitions given in sub-clauses (1) (a) and (c) of clause 3. I am sure the House will agree with these formal amendments.

SHRI H. P. SAKSENA (Uttar Pradesh): Does it mean that the words henceforth to be used will be "agnates" and "cognates" and not *"bandhu"* and *"gotraja"*?

SHRI H. V. PATASKAR: These words, "agnates" and "cognates", are defined and after "agnates", we have put the word *"gotraja"* and after the word *"cognate"*, the word *"bandhu"*. Probably, as the lawyer friends and those who are conversant with the different texts of Hindu law will find, the equivalents of *"gotraja"* and *"bandhu"* may not necessarily be the same as we want the words agnates and cognates to denote. Therefore, to avoid any confusion, we want to remove them. It was thought that if we left these Sanskrit words, in practice somebody might argue later on that probably something different from what was defined or was intended was meant. It is purely from this point of view that these Sanskrit equivalents of these words which have been put in brackets have been deleted. I think this is more or less a formal amendment only.

SHRI H. P. SAKSENA: How will the sense and the purport of these words in English, "agnates" and "cognates", be conveyed to those who may not understand the English language?

SHRI H. V. PATASKAR: I think the word "agnate" has been very clearly defined. "One person is said to be an 'agnate' of another if the two are related by blood or adoption wholly through males". Similarly,

"One person is said to be a 'cognate' of another if the two are related by blood or adoption but not wholly through males". I think it will be found that this is much simpler and less capable of being misunderstood than the use of the other words which may in certain texts have a different meaning.

Amendments Nos. 5, 6 and 7 are also formal and bring out the phraseology adopted in the sub-clause concerned in line with the phraseology that we have adopted in sub-clause 3(1) (b). These amendments say that the words "with respect to the matters for which provision is made in this Act" be added. There is a Cochin Nayar Act which is referred to in that clause, but, naturally, the whole of the Cochin Nayar Act is not meant and has no connection with the matters contained in this Bill but only with respect to the matters for which provision is made in this Bill. Similar is the case with amendments Nos. 6 and 7. This is the phraseology used in connection with clause 3. Probably, at the time of the drafting this was not noticed. This also is more or less a formal amendment which has been made in the Lok Sabha.

Amendment No. 8 contains the definition of a son. This is not necessary because the word "son" is defined in the General Clauses Act where it is, I think, item No. 57. A suggestion was made that if a definition of the son was given, why not a definition be given for the father. Father is also defined in the General Clauses Act, item No. 20. Therefore, it was decided to drop the definition of the son as it was unnecessary. As the son was defined in the General Clauses Act, it was thought that it was not necessary to define this word so far as this Bill was concerned and, therefore, this definition is deleted.

Amendment No. 9 relates to clause 5. As will be seen, sub-clause (ii) of clause 5 says:

> "This Act shall not apply to any estate which descends to a single heir by the terms of any covenant or agreement entered into by the Ruler of any Indian State with the Government of India or by the terms of any enactment passed before the commencement of this Act'.

As we all know, this provision was intended to safeguard cases in which, at the time of the merger of those States, there was either an agreement or a covenant entered into to the effect that the first male heir will be recognised for the purpose of inheritance. As was mentioned at that time, having entered into agreements with those States at the time of the merger, it is desirable that we adhere to the terms already agreed to so far as that matter is concerned and so we introduced this clause. This has been done in order that the provisions of this Bill may not interfere with the agreement or covenant entered into by the Government of India with the Rulers of the different States at the time of the merger. At the time of the merger of Cochin State, negotiations were going on between the Ruler of that State and the Government of India. On account of the peculiar system of inheritance and family prevailing in Cochin, the Maharaja suggested to the Government of India that he should be allowed to create a Trust in respect of the Valiamma Thampuran Kovilagam Estate and the Palace Fund and the Government of India agreed to it. It is not a question of sons and daughters, but it is a very large family consisting of so many members. They have got a peculiar system of inheritance so far as that family is concerned. The Maharaja, therefore, suggested that prior to the merger, he would like to create a Trust of all those estates which could be shared by the numerous members of that family. I made enquiries and found that about 200 members of that family at the present moment draw some allowance out of that Trust money. The Maharaja then created such a Trust on the 29th January 1949—one day before the merger—by a law duly promulgated by him. The Govern-

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ment of India consented to such a Trust being created by him. After the passing of this Bill in this House, the Maharaja of Cochin made a representation to Government in this connection and stated that on the same basis on which descent to a single heir was preserved by sub-clause (ii), his Trust also should be exempted from the application of this Bill. I have examined the papers relating to this matter at the time of the merger and personally met the representative of the Maharaja of Cochin. The beneficiaries of the Trust property are about 200 in number and as this Trust was one of the conditions which led to the merger of the State in 1949, it is thought desirable that this Trust should be included in sub-clause (ii) of clause 5. It is to be further noted that at the time when the last Hindu Code was considered this matter had been raised that is, in 1950 and 1951, and such an amendment formed part of the several amendments that were suggested by Government. I hope that this amendment will commend itself to the Members of this House as it is consistent with the spirit underlying sub-clause (ii) of clause 5.

The most important amendment is amendment No. 10, which relates to clause 6. As you are aware, an amendment was made to this clause, the first part of it, by the Rajya Sabha which has also been accepted by the Lok Sabha. That part, which is common, reads as follows:—

> "When a male Hindu dies after the commencement of this Act, having at the time of his death an interest in a Mitakshara coparcenary property, his interest in the property shall devolve by survivorship upon the surviving members of the coparcenary and not in accordance with this Act:".

Hon. Members are aware that we had to put it in this form so far as the present Bill was concerned, because we are trying to deal only with the law of succession. So far as the general law dealing with family and other parts of the Hindu Code is concerned, it has yet to come. Those parts are not tried to be codified for the present. That is why the Select Committee started with this clause 6 in the manner in which it did, so far as that first part is concerned. I shall briefly explain the position. The idea was that though we did not want to see that the joint family was immediately broken, we wanted to see that wherever there was a female heir entitled to succeed under the provisions of this Act, she should be in a position to get her share in spite of the fact that the joint family was not being immediately abolished by this Act. Therefore, there what we did was.....

SHRI V. PRASAD RAO (Hyderabad): Will the hon. Minister please illustrate how this new amendment is going to affect a woman's share in a coparcenary?

SHRI H. V. PATASKAR: I am coming to that. My learned friend may have a little patience till then. I will first try to compare the two. It is the only important amendment so far as that is concerned, that has been made by the other House; the rest of them are not very material. Then we started on the proviso which the Select Committee had made, namely,—

> "Provided that, if the deceased had left him surviving a female relative who is an heir specified in class I of the Schedule, such female relative shall be entitled to succeed to the interest of the deceased to the same extent as she would have done had the interest of the deceased in the coparcenary property been allotted to him on a partition made immediately before his death."

The idea was that in spite of the fact that to the rest of the coparceners the property went by survivorship. So far as the female heir mentioned in class I was concerned, the share of the deceased was to be treated as if immediately before his death he

had effected a severance of his interests in the coparcenary property, and on that basis the Select Committee said that the female heir would be entitled to a share in that property. Then in order to have an equitable distribution the two Explanations were added by the Select Committee. Explanation (a) was this:

> "For the purpose of the proviso to this section, the interest of the deceased shall be deemed to include the interest of every one of his undivided male decendants in the coparcenary property."

That was one thing. Supposing there was a father, two sons and one daughter, according to the scheme envisaged by the Select Committee, if there was one son who was undivided and the other son had been divided, then the interest of every one of his undivided male descendants should be included for the purpose of determining the share of the female heir, that means, the undivided son and the daughter, that is, his sister, would share equally in the property that was left. That was the effect of Explanation (a). The Explanation (b), which was also put in by the Select Committee, read:

> "For the purpose of the proviso to this section, the interest of the deceased shall be deemed to include the interest allotted to any male descendant who may have taken his share for separate enjoyment on a partition made after the commencement of this Act and before the death of the deceased, the partition notwithstanding."

They not only for the purpose of determining the share of the female heir wanted to take into account the share of the undivided male coparcener, but also they said that for the purpose of determining that share, the share of the divided son also should be taken into account. When the Report of the Select Committee came before this House, this House naturally and rightly thought that, in that case, the anomaly would have been that, if the other clause (b) of the Explanation had remained, in certain cases, because his right to have a partition was there and because the other son had already separated, the result would have been that the daughter would have got more than the unfortunate undivided son himself because the other son had already taken away his share; and if for the purpose of division that was to be taken into account, naturally the result would have been, under the scheme as it was then promulgated by the Select Committee, that the undivided son would have been penalised for continuing to remain undivided. Therefore, this House rightly deleted this Explanation 2. So, what the House passed was the clause 6 as reported by the Select Committee with their Explanation, only forming part of the Explanation and with Explanation (b) deleted. Now, when this matter went before the Lok Sabha they thought that even this, namely, the Explanation which reads:

> "For the purpose of the proviso to this section, the interest of the deceased shall be deemed to include the interest of every one of his undivided male descendants in the coparcenary property, and the female relative shall be entitled to have her share in the coparcenary property computed and allotted to her accordingly."

did not meet the case. Supposing there was a father and he had an undivided son and he had a daughter and the father died. One of the main reasons urged was that so far as the undivided son was concerned, he had got the interest in the joint family property by birth and that interest had become vested in him. The result of allowing even that Explanation, clause (a), to remain as it was was that the daughter or the sister or the other female heir would get a share not only in the interest of the father in the joint Hindu family property but also in the interest which had become vested in the other coparceners, in this case the son. That was the main line of argument and it was, therefore, suggested that the best

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thing to do would be to give a share to a female relative only in the interest of the father himself and that is what has led to the basis of the present clause 6.

Now, while considering this matter there were certain other things which were brought to our notice. For instance, if there was a divided son and we allowed clause 6 as it was passed by the Rajya Sabha then to remain, it might be argued like this. The divided son might have become divided, but yet as soon as inheritance to the interest of the father opened, then like any other daughter or son, he himself might, under the provisions as they stood then, try to claim a share in that property. It was, therefore, thought necessary to make it clear that a divided son, naturally having once got his share, should have nothing to do with that property and, therefore, the section was redrafted from that point of view to make it clear that a divided son can in no case claim a share in the property, even in the interest of the father. Therefore, it was thought it was much better to redraft that clause 6 making the provision that a divided son should in no case get an interest. That is one thing.

It was also pointed out—I would like to explain the same to my lawyer friends here—that even the Mitakshara law which we thought was the same in its application all over the country was not really so and it was brought to our notice that there were rulings, which have been followed consistently by the Punjab High Court, which say that even in a Mitakshara family the son has got no right to claim a partition, so long as the father is alive, even in respect of the joint family property. Therefore, they thought that something must be done to safeguard them also, because what would happen is the daughter would stand to benefit to the detriment of the son simply because the son had no vested interest in the coparcenary property, because he had no right to partition, and therefore it was, in order to bring also uniformity so far as this law is concerned with respect to all those families who followed the Mitakshara school of law, that some change has been made and, therefore, I would again like to read that section in view of what I have said. You will, therefore, find, Sir, that it would read like this:

> "When a male Hindu dies after the commencement of this Act, having at the time of his death an interest in a Mitakshara coparcenary property, his interest in the property shall devolve by survivorship upon the surviving members of the coparcenary and not in accordance with this Act:"

that remains. Then we have split up that original proviso into two for the sake of convenience of drafting as this:

> "Provided that, if the deceased had left him surviving a female relative specified in class I of the Schedule or a male relative specified in that class who claims through such female relative, the interest of the deceased in the Mitakshara coparcenary property shall devolve by testamentary or intestate succession as the case may be, under this Act and not by survivorship."

The addition of the word "testamentary" has been made because, as hon. Members are aware, we have now provided in this Bill for the testamentary powers being exercised by a member of the coparcenary even with respect to his share or his interest in the coparcenary property. It was, therefore, thought while we were trying to put the new section in a proper form, the word "testamentary" also should be used and, therefore, you will find that word in the first part of the proviso. I think it is an improvement on what we had laid down in the proviso in the Bill as it was passed. We said that "such female or male relative shall be entitled to succeed to the interest of the deceased to the same extent"—we had put it in that form that she will be entitled to succeed to the interest but not to the whole of the interest

that the deceased had thrown open to all the heirs—"as she or he would have done had the interest of the deceased in the coparcenary property been allotted to him on a partition made immediately before his death." Now it has been put in this form: "The interest of the deceased in the Mitakshara coparcenary property shall devolve" etc. This was thought as much better than the other one, and what would happen under this scheme is that as soon as a person belonging to a coparcenary property dies, then his interest shall devolve upon all the heirs that are mentioned in this Act. At that time instead of saying as now "the interest of the deceased in the Mitakshara coparcenary shall devolve by testamentary or intestate succession" etc. we had put it the other way that "a female relative shall be entitled" to claim a share. It was thought that this would be a more appropriate way of dealing with that matter.

SHRI H. N. KUNZRU (Uttar Pradesh): Will the hon. Minister make the position clear by giving an illustration?

SHRI H. V. PATASKAR: For instance, there is a father and there are two sons and one daughter. Now, what we had stated was: when a male Hindu dies after the commencement of this Act, his interest in the property shall devolve by survivorship upon the surviving members of the coparcenary provided that if the deceased had left him surviving a female relative as specified in the Schedule she shall be entitled to the interest of the deceased to the same extent as she would have had there been a partition. It dealt with the question of devolution of the interest of the deceased father but only with respect to what the female relative will be entitled to succeed.

SHRI H. N. KUNZRU: May I say again that this is all theoretical? Will the hon. Minister take an illustration?

MR. CHAIRMAN: He started with two sons and one daughter.

SHRI H. N. KUNZRU: Yes; what is the value of the property and what will be the share in each case?

SHRI H. V. PATASKAR: Supposing the property is worth Rs. 1,500. The father's interest will be Rs. 500 and the two sons and daughter will naturally share in that. Previously, we had left untouched the other two-thirds of that Rs. 500. We had said that the female heir would be entitled to get one-third of that Rs. 500. Now, what has been done is that so far as that Rs. 500 is concerned that will be open for distribution between the sons and daughters. That is only a different way of putting it; so far as the amount is concerned there will be no difference. (*Interruptions.*)

MR. CHAIRMAN: They don't seem to be wiser.

SHRI P. N. SAPRU (Uttar Pradesh): Supposing there are three sons and a daughter and the three sons separated from the father before his death. And the father dies leaving considerable accretions to the original estate which was partitioned. Will the entire estate go to the daughter or will the sons also be entitled to a share?

SHRI H. V. PATASKAR: So far as separated sons are concerned, it is now specifically made clear that after once having taken their share in the coparcenary property, they will not again be entitled to any share with whatever other relatives there are. Of course, we can visualise cases of the type mentioned by my hon. friend where it may be that the property has increased. There may be cases where the property has decreased also. The general principle is that if a man has once taken his share and separated himself from the joint family property then he should not again be enabled to claim a share along with the rest of the people.

SHRI P. N. SAPRU: Will the son be able to get a share in the self-acquired property of the father?

SHRI H. V. PATASKAR: I was just going to say that all the heirs would share equally the self-acquired property. This is only with respect to joint family property.

SHRI H. N. KUNZRU: May I ask him another question? Had the Lok Sabha agreed to clause 6 as it was passed by the Rajya Sabha what would have been the share of the daughter in the case assumed by the hon. Minister? There is property worth Rs. 1,500. There are two sons and one daughter. The interest of the father would have included the interest of everyone of his undivided male descendants and the daughter would have had an equal share with the sons. Would not the daughter's share have amounted to Rs. 500? Now, if we agree to the amendment passed by the Lok Sabha, would not the daughter's share amount to one-third of Rs. 500 and not Rs. 500?

SHRI H. V. PATASKAR: It was rightly pointed out that the undivided son would be penalised when compared to the divided son. And the effect will be that as soon as a son is born he will naturally get his interest separated. There is no difficulty about it at all under the law as it stands. This would inevitably lead practically to the disintegration of the family. On the contrary if we give a share only in the interest of the father, there will be no such tendency and particularly because we are going to say that the divided son will not get a share in the property along with others. Naturally, the tendency will be not to disrupt the joint family.

SHRI BHUPESH GUPTA (West Bengal): That was not the question. The question was whether under the new clause the daughter will be getting much less than what she would be otherwise getting.

SHRI H. V. PATASKAR: She was getting a share in an interest which had become vested in somebody else already by birth. That was the point. I will now turn to.....

SHRIMATI CHANDRAVATI LAKHANPAL (Uttar Pradesh): Under the present amendment as passed by the Lok Sabha, I want to know what exactly the daughter will get; whether she will get one-third of Rs. 1,500 or one-third of Rs. 500.

SHRI H. V. PATASKAR: She will get an equal share along with the sons in the property of the father, that is, the self-acquired property. It is only with respect to the coparcenary property that she will get a share in the interest of the father in the coparcenary.

SHRI C. P. PARIKH (Bombay): What happens if no son had separated?

SHRI H. V. PATASKAR: I am unable to follow all this vehemence. The position is.....

MR. CHAIRMAN: He will answer all the questions in his concluding speech.

SHRI H. V. PATASKAR: I know this is the only clause that is going to be discussed.

However, I will now try to explain the most important amendment which has been made by the Lok Sabha in clause 6. At the time of the discussion of clause 6 in this House, there was a large body of opinion that wanted to delete both the explanations that found place in clause 6 of the Report of the Select Committee. This House agreed to the deletion of Explanation 2 which made the share of a divided son also liable for being taken into account for the purpose of determining the share of a female heir. It then became apparent that this would put the undivided son to such a disadvantage that division of property would be inevitable almost in every case and if, unfortunately, there was an undivided son at the time of death of the father then in certain cases he would get a share less in extent than the share his sister for instance would get. Explanation 2 was, therefore, omitted by this House.

[MR. DEPUTY CHAIRMAN in the Chair.]

As regards Explanation 1, it laid down in the original clause 6 that for the purpose of computing the share of the female relative, the share of the undivided male descendant in the coparcenary property should be taken into account. Even then it was argued that Explanation 1 was inconsistent with the basic idea underlying clause 6 wherein we did not want to abolish the joint family of the Mitakshara type immediately. We merely wanted to give a share to the female relative in the estate of the deceased. At this stage I would like to bring to the notice of hon. Members that this Bill is not dealing directly with the question of the abolition or otherwise of the joint family system. It had not been possible for us to abolish the joint family; if that was possible, probably many of these difficulties could have been avoided. So, when we deal with that question of the joint Hindu family, whether of the Mitakshara or of other types, I think that would be the proper time to make any adjustments if they are found necessary. It was felt that with Explanation 1 we would be giving a share to a female relative, say, a daughter, not only in the interest of the father but also in the interest of the brother, an interest which had already become vested in him by reason of his birth. The same point was also urged in the Lok Sabha. It is true that if this provision had remained in clause 6 as it was, there would be temptation almost inevitably to separate the interest of male descendants who are not only major but minors also, and though it was not our intention to do so, it would have led to almost immediate disintegration of every joint family. It was, therefore, thought that the daughter or the female heir should be given a share only in the interest of the deceased in the coparcenary property. It should be remembered that so far as this Bill is concerned the crux of the matter is that there was a desire not to effect immediate abolition of the joint Hindu family as it was thought that it would lead to consequences and upheavals which could not be anticipated. Consistently, therefore, with this idea it was thought not to include the interest of an undivided male descendant in the coparcenary property for the purpose of determining a share of the female heir so that there would be no desire on the part of such a male descendant to effect severance from the joint family status, merely to safeguard his vested interest. It was, therefore, decided to delete this Explanation also. This is the main feature of the amendment. However, when this clause was redrafted to carry out this purpose it was thought also to make it clear that a separated son should not have any right to claim a share in the interest of the father from whom he has separated. That is why the present Explanation 2 in clause 6 is added. While redrafting this clause 6, it has, however, been made clear that the interest of the deceased in such a case shall devolve not by survivorship but by testamentary or intestate succession as the case may be under the provisions of this Act. This is intended to remove all possible anomalies.

Another point that was brought to the notice of Lok Sabha was that there were parts like Punjab where in the Mitakshara family the sons had no right to claim a partition during the life time of the father. In order that this clause should apply uniformly to all Mitakshara families, in Explanation 1 it has been made clear by the addition of suitable phraseology that the fact that a person is not entitled to claim partition is not material for the purpose of determining succession as envisaged in clause 6. I hope this amendment will find favour with this House.

Amendment No. 11 is in respect of clause 7. It relates to persons governed by *marumakkattayam, aliyasantana* or *nambudri* law. Now, the words *'tarwad, tavazhi* or *illom'* are peculiar to *marumakkattayam* and *nambudri* laws. The words *'kutumba'* or *'kavaru'* are peculiar to *aliyasantana* law.....

SHRI R. B. SINHA (Bihar): Sir, I wanted to know one thing regarding Mitakshara law. Suppose the father dies.....

SHRI H. V. PATASKAR: Sir, I have gone to clause 7. He can put the question later on.

MR. DEPUTY CHAIRMAN: You can put it later.

SHRI R. B. SINHA: Only one question. Suppose the father dies leaving no son. Is there any provision that the portion of the father will go to the daughter?

SHRI H. V. PATASKAR: It is bound to go to her.

SHRI R. B. SINHA: Is that clear in the law or not?

SHRI H. V. PATASKAR: That is clear.

Amendment No. 11 is in respect of clause 7. It relates to persons governed by *marumakkattayam*, *aliyasantana* or *nambudri* law. Now, the words *'tarwad' 'tavazhi'*, or *'illom'* are peculiar to *marumakkattayam* and *nambudri* laws. The word *'kutumba'* or *'kavaru'* is peculiar to *aliyasantana* law. It was, therefore, thought desirable that clause 7(1) should be split up into 7(1) and 7(2) and the Explanation which was common to both should figure separately as Explanation to 7(1) and 7(2). This is more or less a formal amendment made with the purpose of accurately describing the provisions contained in clause 7 from the point of view of better drafting. The names of these families which are described as *tarwad*, etc. are peculiar to some systems of law. It is only from the point of view of a better drafting that clause 7(1) has been split up into 7(1) and 7(2).

Amendment No. 12 relates to clause 10. It is also connected with amendment No. 27 to the Schedule. As hon. Members are aware, next to amendment No. 10, this is another amendment which has really got some importance. As hon. Members are aware, the Select Committee had put mother in class I of the Schedule. However, this House thought it better to put her in class II along with the father. As you are aware, the mother in Hindu society has a special place of respect and devotion and in the matriarchal system of law she holds a pivotal position besides the position of respect and sentiment. It was, therefore, thought that the mother should be placed in class I of the Schedule. There really will be very few cases in which the mother will be inheriting the son because generally it is the children who survive their parents. Another consideration which I would place before the Members of this House is this. After all if a share goes to the mother it is not likely to go out to any one excepting her own children. At the same time in certain hard cases it might give a feeling and a sense of security to an unfortunate mother. There might be cases where the son dies leaving a widow and the mother. Now, the widow will inherit. Supposing the father had left no property, in that case the mother will be hard hit. As long as the son was alive, probably there would have been no difficulty so far as the mother was concerned. But when the property passes on to the widow and through her only to the mother, the mother would be really in a helpless position. It was thought that nothing would be lost by placing the mother in class I. Even from practical considerations, if the mother was there to share along with her children, etc., I think it is not likely that her property would in any case be given to any one other than her own children. It was from that point of view this change was urged. Now, there was a proposition that the father also should be put in class I along with the mother. But it will be rightly seen that the position of father is entirely different to that of mother not only from the point of view of sentiment, but also from the point of view of material considerations. In many cases, the father would be the earning member of the family, unlike the mother who is likely to be a helpless member of the family. There-

fore, it was thought that the father might be allowed to continue in class II, where he is now, but that the mother may be transposed to class I. And that is one other major change which has been made by that House. I hope this change both in amendment Nos. 12 and 27 will meet with the approval of this House.

Amendments 13 and 14 relate to omission of clauses 12 and 13. Even this House had passed clause 8 of the Bill which relates to general rules of succession in the case of males and that clause contains sub-clauses (c) and (d) which lay down that in the absence of any heirs of the first two classes the property will devolve on the agnates of the deceased and in the absence of the agnates it will devolve on the cognates of the deceased. Clauses 12 and 13 are thus merely a repetition of the rules laid down in sub-clauses (c) and (d) of clause 8. They are, therefore, omitted as being unnecessary. Because you will find on comparison that it practically reproduces what has been laid down in sub-clauses (c) and (d) of clause 8. It was, therefore, thought that they should be deleted.

Then, amendment No. 15 relates to clause 16. Sub-clause (1) of clause 16 makes the property possessed by a female Hindu absolute. Sub-clause (2) provides that this shall not apply to any property acquired by way of gift or under a will, where the terms of the gift or will prescribe a restricted estate in such property. It was, however, thought that apart from gifts or wills there might be other instruments or decrees or orders of a civil court which might lay down that the estate given to the female was a restricted one and on the same principle on which such restricted estate, under a gift or will, is saved from the operation of sub-clause (1) of clause 16, such restricted estate conferred by an instrument or under a decree or order of the civil court should also be saved from the operation of sub-clause (1) of clause 16. It will be seen that this is a necessary and a desirable amendment as there is no desire to interfere in matters which have been already settled either by instruments between parties or by decrees and orders of civil courts. Probably, my lawyer friends will be aware that in many cases there is litigation about partition and about so many other matters and at that time parties enter into a compromise and a decree is passed which gives some estate to a woman for enjoyment in her lifetime. In that case during her lifetime some more estate may come to her. Suppose there is an arbitration or award, or a person may make a gift or will, or there might be other instruments by which a property is conferred to a female. In such cases, it is not desirable to interfere or try to extend the rights of the woman which have accrued to her under specific terms of instruments, decrees or awards. Because we have already made such an exception in the case of gifts and wills, it is desirable that there should be an exception to documents of this nature.

Amendment No. 16 relates to clause 17. This clause relates to general rules of succession in the case of a female Hindu and it lays down that in the first instance the property of a female Hindu shall devolve upon the sons and daughters and the husband of the deceased; socondly, upon the mother and father; thirdly upon the heirs of the father; fourthly, upon the heirs of the mother; and lastly, upon the heirs of the husband. It was urged that in the case of a woman dying but leaving no children or her husband behind, it is but natural that the heirs of the husband should succeed in preference to the mother and the father or their heirs. As regards properties inherited by a woman dying childless, if such property has been inherited by her from her father, sub-clause (2) has been retained and under that sub-clause such property will devolve upon the heirs of her father; and similar provision has been made in the same sub-clause regarding property inherited by such a woman from her husband. Sub-clause (2) is retained as it is and sub-clause (1) is

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so amended as to put the heirs of the husband in the second category, the rest of the categories following in the same order.

If hon. Members turn to this clause 17, they will find that we have not touched it.

SHRI H. N. KUNZRU: What is the ground on which.....

SHRI H. V. PATASKAR: I will just refer to this clause itself. What we will say here is:

> "The property of a female Hindu dying intestate shall devolve according to the rules set out in section 18,--
>
> (a) firstly, upon the sons and daughters (including the children of any pre-deceased son or daughter) and the husband;
>
> (b) secondly, upon the mother and father."

So, immediately after "(including the children of any pre-deceased son or daughter) and the husband" we say that secondly, in the absence of these heirs, the property shall devolve on the mother and father. Then "(c) thirdly, upon the heirs of the father" and so on and then "(e) lastly, upon the heirs of the husband." It was thought, now that we were giving inheritance not to the daughter, but to the widow, the mother and such people, while we retained the proviso in sub-clause (2), we should not interfere with it so far as the daughter was concerned. If a woman dying childless inherits property from the father, it will go to the heirs of the father However, if a widow who is childless and inherits property from her husband dies, then whatever property remains will go back to the heirs of the husband. That is sub-clause (e) of clause 17. In the case of women who are married, there are likely to be persons who are the heirs of the husbands, apart from the heirs we have provided. They have been interposed—(e) in the place of (b) and (b), (c) and (d) have been made as (c), (d) and (e). This is the only change that has been made. I do not think they are all remote heirs.

DR. W. S. BARLINGAY (Madhya Pradesh): My only difficulty is with regard to amendment No. 16. It does seem to me that there is no justification for interposing the heirs of the husband in between sub-clause 1(a) and 1(c). Those heirs now come under sub-clause (1)(b). What is the justification for it? Obviously, the mother and the father are closer to the childless widow.

SHRI H. V. PATASKAR: Let us take a concrete list of heirs who are likely to be there—the daughter, widow and the mother in sub-clause (1). What happens to a childless widow is separately provided. There is an aged widow who succeeds to her share in the family property. Who are likely to be her nearer heirs? They should be her children or the grand children. Then about the husband, there is no difficulty. If she is a widow who has inherited property, I think the nearer heir will not be the mother or father, but the heir of her husband.

DR. W. S. BARLINGAY: From whom does she get the property?

SHRI H. V. PATASKAR: We have taken sub-clause (2). Normally, if we look at the society as it is, who are likely to be the heirs of a mature woman who, after the middle-age dies? Are the relatives of the husband so distant that the father, mother and the heirs of the father or mother all should come up and be made heirs?

DR. W. S. BARLINGAY: That is the whole point. The woman concerned is first of all a widow. Then she has no children. Now the point is, normally she will inherit not from the husband, but from the father and the mother. What I suggest is that their inheritance should go back to the father and the mother.

SHRI H. V. PATASKAR: Of course. As a matter of fact, my own view is that so far as the question of inheritance on behalf of remote heirs is concerned, I do not know how many cases are likely to arise. It is a mat-

ter on which there can be—and there is—scope for difference of opinion. But, at the same time, normally we have got married women so far as the present state of the society is concerned. Now, when they are entitled to inherit not only as daughters, but as widows and mothers, I believe that the heirs of their husbands need not be put almost in the last.

DR. W. S. BARLINGAY: May I further point out that this is again in conflict with sub-clause (2) of clause 17? That clause is as follows:

> "Notwithstanding anything contained in sub-section (1),—
>
> (a) any property inherited by a female Hindu from her father or mother shall devolve, in the absence of any son or daughter of the deceased (including the children of any predeceased son or daughter) not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the father."

That is to say even where the husband lives, but she has no children in that case.....

SHRI H. V. PATASKAR: The hon. Member will remember that that clause has been put in with another different purpose. Suppose there is the father who has a daughter married. She dies without any issue and she has inherited her father's property. It was thought that the husband might marry again and might have children by another wife. And there is no reason why that property which she had inherited from her father should not go to the father. That was the object underlying sub-clause (2).

DR. W. S. BARLINGAY: Will the same logic not apply here?

SHRI H. V. PATASKAR: All that has been observed. And apart from that, if there were cases in which the inheritance was to go in the order in which it had to be specified in sub-clause (1) of clause 17, then it was thought that the heirs of the husband need not be put in the last lap of the list. I do not think that the matter can be taken further than what I have tried to do.

Then, amendments Nos. 22 and 23 relate to clause 25. As hon. Members are aware clause 25 incorporates a special provision with respect to a dwelling house wholly occupied by the members of a family. In such a house, the right of a female heir to claim partition of a dwelling house is not to arise until the male heirs choose to effect partition of the same. But clause 25 asserts that such a female heir has got a right of residence therein. In the Rajya Sabha, however, we added a proviso that:

> "When a female heir is a daughter, she shall be entitled to a right of residence in such a dwelling house only (1) if she is unmarried; (2) if she has been deserted by her husband and (3) is a widow whose husband has left no dwelling house."

In the Lok Sabha, they thought that as regards condition (2), to entitle a daughter to right of residence, it is not necessary that she should have been deserted by her husband, but it should be enough that she is separated from him. Because, now we have passed the Hindu Marriage Act. She may not have been deserted by the husband, but she might be living separately. And it should be enough that she is separated from him. If she gets separated from him, then naturally she would require some other place to live. If she has got the right of inheriting her father's house, naturally, even in such a case, she will be in a position to go and reside in that house.

As regards condition (3) that she is a widow and her husband has left no dwelling house, the other House thought that in the case of a widow, there should be no such restriction and that she should be allowed to exercise her right if she chose to do so. The main reason was that it may be that even if the husband had left a dwelling house, the widow may not in many cases find it either convenient, desirable or proper to live in

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the husband's house only and, therefore, in the case of a widow, apart from these restrictions, she should be allowed to exercise the right to reside in the father's house if she so wanted to do.

Another thing which I may point out in this connection is that in the case of a daughter who has inherited in her father's property a share in the dwelling house, if she becomes a widow, she may have a share in a dwelling house in which either the husband had a share or he owned it. But as we know, in many such cases, the widow will find it hardly congenial to live in that house, and probably there may be so many difficulties there. She may choose, more or less, to go and occupy the house where she is entitled to her share. (*Interruption.*) I think, it cannot be denied that many of these unfortunate widows are not very happy there, particularly after the loss of their husbands. A widow may prefer that she should go and live in the house of her father where she has got her share. Therefore, we thought that we need not have too much of a restriction. In many cases, she may be quite well-cared for and quite happy in her husband's family. It was thought that we need not put any restrictions and the widow should be left with that choice to decide for herself, in case she unfortunately becomes a widow, whether she would like to go to her husband's house or to the house of her father. That was the idea with which it was done.

SHRI H. C. DASAPPA (Mysore): I thought the hon. Minister had discussed it at very great length that if she has a dwelling house by her own right in her husband's property, she should not go back into the family of her parents, and that may not conduce very much to the happiness of the people there. That was the idea with which the hon. Minister himself accepted the amendments. I am wondering, Sir, how he is going back on that stand.

SHRI H. V. PATASKAR: I have explained that there is no going back, and I believe it is really a hard case and that we should not have such a restriction on that unfortunate widow. (*Interruption.*)

MR. DEPUTY CHAIRMAN: We shall discuss it later.

SHRI H. V. PATASKAR: Then, Sir, amendment No. 24 is only a formal amendment.

Amendments Nos. 25 and 26 relate to clause 32. In the Explanation to clause 32 there is a reference to interest of male Hindu in the Mitakshara coparcenary property which shall be deemed to be a property capable of being disposed of by him but there is no reference to the property or the interest of a member of a *tarwad, tavazhi, illom, kutumba* or *kavaru,* which are also joint families in the matriarchal system of law. Amendment No. 25 only corrects this omission by mentioning along with the Hindu Mitakshara coparcenary similar joint families under the matriarchal system of law.

Amendment No. 26 proposes to add another declaratory provision to clause 32 as had been done already in respect of another matter in clause 4 of the Bill. It will be seen that this Bill deals with the question of succession amongst Hindus. The question of maintenance is not being dealt with here. That will be dealt with in another Bill while dealing with the rest of the original Hindu Code. Clause 4(1) (a) clearly lays down that any text, rule or interpretation of Hindu law or any custom or usage or part of that law in force immediately before the commencement of this Act shall cease to have effect with respect to any matters for which provision is made in this Act. This necessarily implies that only those matters for which provision is made in this Act will cease to have effect. And as maintenance is not the matter with respect to which any provision is made in this Act, the present law on that subject will continue to operate. However, it was thought proper that

this should be made specifically clear in order to remove any doubts. The Lok Sabha, therefore, added sub-clause (2) to clause 32 which runs as follows:

"(2) For the removal of doubts it is hereby declared that nothing contained in sub-section (1) shall affect the right to maintenance of any heir specified in the Schedule by reason only of the fact that under a will or other testamentary disposition made by the deceased the heir has been deprived of a share in the property to which he or she would have been entitled under this Act if the deceased had died intestate."

SHRI P. N. SAPRU: How will this maintenance be determined? What exactly will be the amount of maintenance to which a person may be entitled?

SHRI H. V. PATASKAR: The position is like this. As the hon. Member will see, we have made a provision in clause 32 enabling a Hindu coparcenary to make a will in respect of his share in the coparcenary property. Now, one of the arguments advanced in the other House was that he may so make a will as to defeat the very right of maintenance. But we have made it clear in clause 4 that by this Bill we are not going to affect any of the provisions of the Hindu law which exists at present. Now, in order to leave no doubt in respect of those rights of maintenance, which we will deal with when we come to other parts of the Hindu Code, we have added this provision which I would like to repeat. It runs as follows:

"(2) For the removal of doubts it is hereby declared that nothing contained in sub-section (1) shall affect the right to maintenance of any heir specified in the Schedule by reason only of the fact that under a will or other testamentary disposition made by the deceased the heir has been deprived of a share in the property to which he or she would have been entitled under this Act if the deceased had died intestate."

SHRI P. N. SAPRU: My point was this. The civil courts usually take different views. At one time the view taken was that she should be entitled to maintenance. Now the courts have taken a more liberal view. I remember a case in which the court took the view—the Allahabad High Court—that certain conditions must be taken into account while fixing the amount of maintenance. Now, if I am about to make a will, then what is to be the maintenance level which I must keep in mind, so far as the members of the family who are entitled to maintenance are concerned?

SHRI H. V. PATASKAR: I think, just as we are now codifying this part of the Hindu law, we must also codify at no distant date the law relating to maintenance, because as you have rightly pointed out, there are some courts which have been taking different views with respect to the right to maintenance. I think, whatever we are doing here or whatever we are laying down here, does not affect this question. But I do realise my hon. friend's argument that at no distant date we must also codify the remaining portions of the Hindu law in order that the whole thing may work properly. Just for the time being, however, we thought that the rights which may be in existence at present, whatever they may be, should be preserved. And that is tried to be done by the necessary provision made in this Bill. In this Bill we could not go any further. There were proposals in the other House that we might make some provisions for maintenance also in this Bill, but I thought that it would be much better to deal with that question separately.

It will thus be seen that out of 27 amendments made by the Lok Sabha as many as 18 are either formal, of a drafting nature or consequential. They are Nos. 1, 2, 3, 4, 5, 6, 7, 8, 11, 13, 14, 17, 18, 19, 20, 21, 24 and 25. Two, *viz.*, Nos. 9 and 15 merely fill in certain omissions. No. 16 merely effects a change in the order of a category of remote heirs. No. 26 is merely a declaratory proviso added to

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remove doubts. Two of them, *viz.*, 12 and 27 are intended to transpose mother from a class II heir to class I heir. Nos. 22 and 23 make a small change with regard to a separated daughter or a daughter who has become a widow.

The only important amendment is amendment No. 10. As I had said in the other House, clause 6 is a crucial clause in this Bill. The amendment has been criticised by some as not restoring full justice to a female heir. It should be noted that in respect of all properties of persons who do not belong to a Mitakshara family, as also in respect of all separate and self acquired properties of persons who belong to such a family, the female heir will be entitled to the same share as a male heir. Even as regards coparcenary properties she will have a share equal to that of a male heir in the interest of the deceased in such a coparcenary. By the new provision the fear of almost universal partitions by male members has to a large extent been allayed. As I have said more than once, legislation is a process of evolution; it cannot create revolutions; nor is the process of revolution always a happy one. Non-violent revolutions by legislative enactments are only evolution speeded up. I am sure as a result of political and economic changes the joint family of the Mitakshara type has largely disappeared and whatever might have remained is fast disappearing.

This important piece of legislation originally formed part of the Hindu Code. It has gone through various vicissitudes. It first emerged in this House some time in the month of May 1954 and, with your permission, published in the Gazette. With the tender care and sympathetic consideration by all sections of this House this Bill was first passed in this House. The Lok Sabha has maintained intact the substance and structure of this Bill. To this House will ultimately go the credit of putting this important piece of social legislation on the Statute Book. I will, therefore, appeal to hon. Members of this House to facilitate this task by agreeing to the amendments passed by the Lok Sabha without delay.

This is a piece of legislation in which, regarding some minor matters, there are bound to be two opinions. Ultimately, these have to be decided one way or the other. There are only two important matters to my mind. They are clause 6 which restricts the share of the daughter only in the interests of the coparcenary. This is one, and the other is the item where we put the mother in the class I list of heirs instead of in class II. In such matters two opinions are always possible, and I would appeal to hon. Members of this House not to make too much of these small matters. Petty differences, minor differences, there are bound to be in a legislation of this type. There is bound to be a difference of opinion with respect to what should happen to a widowed daughter, whether she is separated from or discarded by the husband, etc. These are all minor things. The most important part of this social legislation is that for the first time, so far as Hindu law is concerned, uniformly throughout India, whether people are governed by the Mitakshara or any other system of law, with respect to separate property, with respect to self-acquired property, the daughter will be entitled to an equal share with the son. This is no small achievement. With regard to coparcenary property, with the efforts, with the co-operative efforts, of the Members of this House as well as the other House, an attempt has been made to solve this very difficult question, difficult on account of the differing sentiments that prevail in several parts of the country. Ultimately, we had to come to a certain decision. This House came to a decision giving an equal share to the daughter in all property, which was no doubt advantageous to the daughters. After all, it must be remembered that a legislation of this kind must come by adjustment, by mutual cooperation, and it is the only way of solving such social questions. It can-

not be merely by legislation. This House, as my experience has shown, is well fitted to deal with such matters on account of their mature reasoning and on account of several other factors. I am sure it is not in the interests of anybody to try and delay this matter any further. On the contrary, it may be playing into the hands of those who do not want that there should be any progress at all in such matters, for whatever reasons it may be. I would not go into them here. But for the two small points I have mentioned, the Bill is practically the same as it was passed by the Rajya Sabha; and it is in the interests of women themselves that we should accept both these changes. I am sure that, so far as the mother is concerned, everyone of us feel that mother is next only to the Creator and in fact slightly higher than Him even. Putting her in class I is not going to dislocate or disturb the Bill. As regards the share of the daughter, for the first time, by whatever law people may be governed, they will get an equal share along with the sons in separate property or self-acquired property. We all know that in our society the joint family is fast disappearing. As soon as some members of the family become lawyers or doctors and begin to earn something more than the others, they get separated. In all these properties, the daughter of the family will be entitled to get an equal share with any other male relative. It is only in the very small number of cases of joint family property, her share is restricted. I say "small number of cases" because I know that even in the case of big business families, the Income-tax Act has brought about division. I know that they are all converted into partnerships. Look at it from a practical point of view. From a practical point of view you will find that by the passing of this measure, for the first time Hindu women attain a status of equality along with the men. Let us not try to deal with it by merely asking as to why the other House modified certain things which were passed by this House. After all, in such minor matters two views are possible. I would therefore, make this appeal to this House. To this House goes the credit primarily for the structure of the Bill, and to this House will go finally the credit of placing this measure on the Statute Book.

SHRI BHUPESH GUPTA: We are sorry for the injury caused to the Bill in the other House.

SHRI H. V. PATASKAR: I would, therefore, appeal to hon. Members to put this on the Statute Book without any further delay. Both these Houses are wings of the same Parliament, which is a sovereign body, but I look upon primarily this House to see that without any further delay a Bill of this importance and consequence is placed on the Statute Book and becomes the law of the land. Sir, I have done.

MR. DEPUTY CHAIRMAN: Motion moved:

"That the following amendments made by the Lok Sabha in the Hindu Succession Bill, 1955, be taken into consideration:—

Enacting Formula

1. Page 1, line 1, for 'Sixth Year' substitute 'Seventh Year.'

Clause 1

2. Page 1, line 5, for '1955' substitute '1956'.

Clause 3

3. Page 2, line 13, omit '(*gotraja*)'.

4. Page 2, line 21, omit '(*bandhu*)'.

5. Page 3, line 14, after 'Cochin Nayar Act,' insert—

'with respect to the matters for which provision is made in this Act.'

6. Page 3, line 18, after 'governed' insert—

'with respect to the matters for which provision is made in this Act.'

[Mr. Deputy Chairman.]

7. Page 3, line 24, add at the end—

'with respect to the matters for which provision is made in this Act.'

8. Page 3, omit lines 31 and 32.

Clause 5

9. Page 4, after line 19, add—

'(iii) the Valiamma Thampuran Kovilagam Estate and the Palace Fund administered by the Palace Administration Board by reason of the powers conferred by Proclamation (IX of 1124) dated 29th June, 1949, promulgated by the Maharaja of Cochin.'

Clause 6

10. Page 4, for lines 25 to 36, substitute—

'Provided that, if the deceased had left him surviving a female relative specified in class I of the Schedule or a male relative specified in that class who claims through such female relative, the interest of the deceased in the Mitakshara coparcenary property shall devolve by testamentary or intestate succession, as the case may be, under this Act and not by survivorship.

Explanation 1.—For the purposes of this section, the interest of a Hindu Mitakshara coparcener shall be deemed to be the share in the property that would have been allotted to him if a partition of the property had taken place immediately before his death, irrespective of whether he was entitled to claim partition or not.

Explanation 2.—Nothing contained in the proviso to this section shall be construed as enabling a person who has separated himself from the coparcenary before the death of the deceased or any of his heirs to claim on intestacy a share in the interest referred to therein.'

Clause 7

11. Page 5, for lines 1 to 18, substitute—

'7. *Devolution of interest in the property of a* tarwad, tavazhi, kutumba, Kavaru *or* illom.—(1) When a Hindu to whom the *marumakkattayam* or *nambudri* law would have applied if this Act had not been passed dies after the commencement of this Act, having at the time of his or her death an interest in the property of a *tarwad, tavazhi* or *illom,* as the case may be, his or her interest in the property, shall devolve by testamentary or intestate succession, as the case may be, under this Act and not according to the *marumakkattayam* or *nambudri* law.

Explanation.—For the purposes of this sub-section, the interest of a Hindu in the property of a *tarwad. tavazhi* or *illom* shall be deemed to be the share in the property of the *tarwad, tavazhi* or *illom,* as the case may be, that would have fallen to him or her if a partition of that property *per capita* had been made immediately before his or her death among all the members of the *tarwad, tavazhi* or *illom,* as the case may be, then living, whether he or she was entitled to claim such partition or not under the *marumakkattayam* or *nambudri* law applicable to him or her, and such share shall be deemed to have been allotted to him or her absolutely.

(2) When a Hindu to whom the *aliyasantana* law would have applied if this Act had not been passed dies after the commencement of this Act, having at the time of his or her death an undivided interest in the property of a *kutumba* or *kavaru,* as the case may be, his or her interest in the property shall devolve by testamentary or intestate succession, as the case may be, under this Act and not according to the *aliyasantana* law.

Explanation.—For the purposes of this sub-section, the interest of a Hindu in the property of a *Kutumba* or *kavaru* shall be deemed to be the share in the property of the *kutumba* or *kavaru,* as the case may be, that would have fallen to him or her if a partition of that property *per capita* had been made immediately before his or her death among all the members of the *kutumba* or *kavaru,* as the case may be, then living, whether he or she was entitled to claim such partition or not under the *aliyasantana* law, and such share shall be deemed to have been allotted to him or her absolutely.'

Clause 10

12. Page 6, line 10, after 'daughters' insert 'and the mother'.

Clause 12

13. Page 6, omit clause 12.

Clause 13

14. Page 6, omit clause 13.

Clause 16

15. Page 7, for lines 25 to 27, substitute—

'(2) Nothing contained in sub-section (1) shall apply to any property acquired by way of gift or under a will or any other instrument or under a decree or order of a civil court or under an award where the terms of the gift, will or other instrument or the decree, order or award prescribe a restricted estate in such property.'

Clause 17

16. Page 7, for lines 32 to 35, substitute—

'(b) secondly, upon the heirs of the husband;

(c) thirdly, upon the mother and father;

(d) fourthly, upon the heirs of the father; and

(e) lastly, upon the heirs of the mother.'

Clause 18

17. Page 8, line 25, for 'clauses (c), (d) and (e) of sub-section (1)' substitute 'clauses (b), (d) and (e) of sub-section (1) and in sub-section (2)'.

Clause 19

18. Page 8, line 31, for 'sections 8, 10, 12, 13, 17, 25 and the Schedule' substitute 'sections 8, 10, 17 and 25'.

19. Page 8, omit lines 40 and 41.

20. Page 9, omit line 1.

21. Page 9, omit lines 14 and 15.

Clause 25

22. Page 10 line 30, after 'has been deserted by' insert 'or has separated from'.

23. Page 10, lines 30 and 31, omit 'whose husband has left no dwelling house.'

Clause 31

24. Page 11, line 16, for 'go to' substitute 'devolve on'.

Clause 32

25. Page 11, for lines 26 to 29, substitute—

'*Explanation.*—The interest of a male Hindu in a Mitakshara coparcenary property or the interest of a member of a *tarwad, tavazhi, illom, kutumba* or *kavaru* in the property of the *tarwad, tavazhi, illom, kutumba* or *kavaru* shall, notwithstanding anything contained in this Act or in any other law for the time being in force, be deemed to be property capable of being disposed of by him or by her within the meaning of this sub-section.'

26. Renumber clause 32 as sub-clause (1) and after sub-clause (1), add—

'(2) For the removal of doubts it is hereby declared that nothing contained in sub-section (1) shall affect the right to maintenance of any heir specified in the Schedule by reason only of the fact that under a will or other testamentary disposition made by the deceased the heir has been deprived of a share in the property to which he or she would have been entitled under this Act if the deceased had died intestate.'

[Mr. Deputy Chairman.]

The Schedule

27. Page 12,—

(i) line 5, after 'widow' insert 'mother'; and (ii) line 11, omit 'mother' ".

We will resume the debate at 2-30. The House stands adjourned for lunch till 2-30 P.M.

The House adjourned for lunch at one of the clock.

The House reassembled after lunch at half past two of the clock. MR. DEPUTY CHAIRMAN in the Chair.

SHRI PERATH NARAYAN NAIR (Madras): Mr. Deputy Chairman, Sir, I accord my general support to this Bill, to the amendments which have been accepted by the Lok Sabha, because this is a progressive measure. With all its drawbacks, with many loop-holes which it still leaves, it is still an advance, serving in a considerable measure, to meet the needs of present day modern society. When I speak of the drawbacks and of the loop-holes, I have particularly in mind the amendments which the Lok Sabha has made to clauses 6, 25 and others. Now, in respect of our efforts to restore to women equal status in property and in regard to our efforts to see that concentration of property in particular individuals—single heirs —and in particular estates in joint families is not there and that there must be a better distribution, I am not happy because clauses 6, 25 and other clauses do not go to the extent to which I wish they had gone. Now, I am sure that those clauses relate to what is called the Mitakshara law and other things and I know hon. Members of this House, who are more competent to speak on those particular clauses, will deal with the various aspects of that question. It is just a tardy, very hesitant, recognition of the women's rights to property which we give under those clauses. I am not satisfied with that and I am definitely of the opinion that we have to go far more in advance just to restore to women their equal rights.

I come from Kerala and this Bill seeks to make some material changes in our law, the *marumakkattayam* law and the *nambudri* law and other laws, and I would like to deal at some particular length with those clauses of the Bill which affect us—how our rights under those laws are affected by those clauses—and I think I would take the amendments in the serial order. First I would refer to amendment No. 9 which the Lok Sabha has passed and which the hon Minister for Law has commended to the Members of this House for their acceptance. Sir, I am opposed to that. The hon. Minister said that that particular amendment, namely:

"That this Act shall not apply to:

'(iii) the Valiamma Thampuran Kovilagam Estate and the Palace Fund administered by the Palace Administration Board' etc.,"

which was to be added to clause 5, was in consonance with the spirit of the other two sub-clauses, and therefore, he had commended it to our acceptance. I would like to point out that the spirit of the Bill is not the spirit underlying this particular clause. This clause 5 refers to the exceptions and there are three exceptions. The first is that it does not apply to cases of persons governed under the Indian Succession Act. I have no quarrel with that. The second is that it shall not affect the property rights of a single heir guaranteed under a covenant or an agreement entered into with the Rulers by the India Government. Personally, I am against it, but in view of the fact that certain obligations have already been taken upon themselves by the India Government through convenants, proclamations etc. and if I want to disturb that particularly now, it may involve amendment of the Constitution etc., I don't want to go to that extent. Though I am opposed to that, I am not pressing for changing that. In regard to sub-clause (iii), it was not there when the Rajya Sabha passed it. It was not there when the Select Committee considered about it. All of a sudden the hon. Minister

sprang it on the House and he said that he had occasion to meet the Cochin Maharaja and some others also; that the Cochin Maharaja was governed by a peculiar system—that of course is *marumakkattayam* law— that there were 250 members in that family; and that the Maharaja was very anxious to have some Trust to govern that property. Now, I am opposed to this because the whole underlying idea of this Bill is that we must not allow such concentration of property in particular estates.

A most salutary provision in this Bill which I welcome and which, I know, all the Members of this House will welcome is in sub-clause (3) of clause 7 which relates to the right under *marumakkattayam* law and other laws. What is that? It relates to the properties of sthanamdars, I don't know if hon. Members quite follow who those sthanamdars are. In the old feudal set up there were chieftains with their particular social status, with their social obligations which they had to discharge in the then feudal set-up. Now, whatever may have been the merits of allowing those sthanam properties in those days, they have no such special status to maintain now and they don't discharge any social obligations under the present set-up. So, there is absolutely no purpose in allowing that concentration of property in particular individuals in the name of sthanams. So this Bill makes a salutary provision that it ought not to be there. This sthanam property must go. We don't mean to expropriate them, nor does that sthanam property go to the Government. I personally would have liked that, but that is not there and I am not pressing for that. Now, what we envisage under the provisions of this sub-clause (iii) of clause 7 is that on the death of the sthanamdar, that property must be divided equally among all the members of that family which is a salutary provision. Why? I say this concentration of property in particular individuals especially when these sthanamdars have no longer any social obligations to discharge should not be there. So that is the spirit underlying the whole Bill and this sub-clause (iii) which is sought to be added to clause 5 by giving exemption to the Valiamma Thampuran Estate goes against the spirit of that thing. I may inform the hon. Minister that like the Cochin Maharaja there are any number of sthanamdars throughout Travancore-Cochin and Malabar. There is the Zamorin of Calicut, the Charakkal Raja, Kavalapara Nair and others—a host of others—and now the whole thing is that this sthanam property must be disintegrated not only in the interest of the general society but in the interests of the rest of the many members of the families of the sthanamdars. That is why I welcome sub-clause (iii) of clause 7 and while I welcome that, I am opposed to this sub-clause.

The hon. Minister said that the Cochin Maharaja had occasion to speak to him about management of the property by a Board. I would like to put him a simple question. When he took so much pains to consult the Maharaja and perhaps also the Valiamma Thampuran—who is the senior-most female member of the family—did he consult the opinions of the 250 other members of the family? Now they are interested in the property. If there is not that sub-clause (iii) added to clause 5, then that property will be governed by sub-clause (3) of clause 7, namely, on the death of the present Valiamma Thampuran the property will be divided equally among all other members of the family. So nobody stands to lose. The members of that family will enjoy that. The only thing is there will not be concentration. I may also point out that once the hon. Minister concedes this concession, to one particular family, he cannot refuse it to other families and I know any number of representations will be received by him hereafter. Our experience in Malabar and Travancore-Cochin is that though under the Marumakkattayam Act and the Nambudri Act, we left some estates as impartible, the feeling against this impartibility is so much

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that all the junior members of the impartible families have begun to clamour for partition and so changes are being made and are being sought to be made in the existing Marumakkattayam and the Nambudri Acts conceding the right of the junior members to their separate rights to property. This is the general trend and this is how things are moving in Malabar. So, I do not know why there should be this softness to this system when we are going ahead in the interest of general society. And to make this exception here, in my opinion, is not something that is called for. So, I have given notice of my amendment to delete the proposed sub-clause (iii) from clause 5.

Now, I come to amendments proposed to clause 7. They relate to the *marumakkattayam* law and the *nambudri* law. I generally, welcome the suggestions made in the amendments. I have no amendments to suggest. By means of the amendment made by the Lok Sabha, this particular clause has just been split into two, because there are really three laws, namely, the *marumakkattayam* law, the *nambudri* law and the *aliyasantana* law. The *marumakkattayam* law and the *nambudri* law extend to the areas in Travancore-Cochin and Malabar and the *aliyasantana* law generally relates to the area covered by South Kanara. There are certain differences in the expressions. We use the terms *tarwad*, *tavazhi* etc. What these mean I will explain presently. And those people who are governed by the *aliyasantana* law have their own corresponding terms like *kutumba*, *kavaru* or *illom*. So, as I said, for the purpose of clarity, this particular clause has been split into two. I have no objection to that.

I submit that the main provisions which affect large number of people in Kerala are covered by this particular clause. What does this clause say? It says that with the commencement of this Act, property rights in case of Hindus to whom the *marumakkattayam* law would have applied if this Act had not been passed, will hereafter devolve by succession under this Act and not according to the *marumakkattayam* law. This, Sir, is a big change that is being made. Hon. Members of this House may not be quite well-versed with what the hon. Law Minister was pleased to term the peculiar system of *marumakkattayam*. Yes, it is a peculiar system and within the limited time at my disposal I will not propose to deal with all the peculiarities of this system. I will only refer to what I may call the three essential features of this system. Among these three essential features, there are, in my opinion, two which are of a reactionary nature; and the third one is a progressive one and it is a very welcome feature. This clause seeks to incorporate into the law all these various features; to what extent and in what respect, I will explain presently.

The first feature of the *marumakkattayam* law is that the lineage is not from the father to the son, as is the case in the rest of India, but from the mother to the daughter. Well, in olden days, whatever might have been the necessity for this sort of system, the justification for this system, at the present time, public opinion in our areas is that this system is a bit outmoded and that this system mitigates against the natural law of affection. Therefore, even before Parliament thought of bringing this legislation, in the Travancore-Cochin and in Malabar too, enlightened opinion had already had recourse to legislation and already some changes had been made. Formerly it was exclusively the female who inherited property. Now, under the *marumakkattayam* law in Travancore-Cochin and to a limited degree in Malabar too, the male is also allowed certain right to bequeath his property to his sons and daughters. So, that change is being made and the trend all along has been that this matriarchal system, if it is to be retained in Kerala, must be made to conform to natural law

of affection. So, we are already moving in this direction and this Bill in clause 7 seeks to bring us into line with the system obtaining in the rest of India. The *marumakkattayam* law leaves aside its reactionary feature, namely, lineage only from the female, and it is being brought to conform to the system prevailing in the rest of India. To that extent, I welcome the change.

There is another feature of the *marumakkattayam* system which is of a reactionary nature, because this system in its old form is a sort of joint family system. That is also gradually changing as in the rest of India. Here also, by bringing us under this Act, that joint family property system is being attacked. Especially the Explanation says that though as it is under the *marumakkattayam* law, especially in Malabar, any member of a *tavazhi* is not entitled to claim individual partition, this clause 7 now gives us the right, because it recognises the right of *per capita* division and separate enjoyment of property. To that extent this is an advance. So, leaving aside the other features of the *marumakkattayam* system, we accept this change.

Next, I would like to refer to what I may call the welcome and progressive aspect of this *marumakkattayam* system. What is that? We have given an equal, even a superior, status to our women all along. We have allowed them independent property rights, both in enjoyment and in management. That has been the peculiar system which we want to retain. On the other two aspects, on the lineage question and on the general property disintegration question we, who have been governed by the *marumakkattayam* law are prepared to fall in line with the rest of India but on this particular question of the property rights and status of women, we very much like the rest of India to fall in line with us. The whole purpose of this Bill is to have a sort of uniform law to govern Hindu society instead of the various texts. On the two particular questions, the particular features, we fall in line with the rest of India but here is the merit of our old system. All along, through the centuries, we have given not only an equal status but even better status to our women. This thing has been reflected in our marriage laws, in our divorce laws and in the property rights and other things. The rest of India needs much to study and to copy from our system. When I come to this third aspect, the property rights and the status of women, I am not satisfied with the provisions made in this Bill. Other Members who have more time and are also more conversant with the Mitakshara and other systems will speak on this, but I can only say that the female has not been dealt with fairly by this provision. I want hon. Members to remember that it will be a good thing for India, it will be a good thing for the Hindu society, if the provisions of this *marumakkattayam* law relating to property rights of women, relating to the status of women, are incorporated in this Bill. That is my opinion about that.

Though clause 6 does not go far enough, though there are other loopholes over which I do not want to dilate now, I am happy that one change has been made in this Bill and that relating to class I of the Schedule wherein the mother has been brought in. It was not there when the Rajya Sabha originally passed this Bill. Of course, I was not a Member then and I had no occasion to follow the proceedings or to follow the line of reasoning of the Members. It was not there originally and I am glad and happy now that the mother has been included in class I of the Schedule. Under the *marumakkattayam*, law, the mother is given that right; it is through her that the lineage follows. I am happy at the inclusion of the mother in class I for two reasons. Firstly, of course, as the Law Minister explained, if the husband leaves no property and if the son dies, all the property would go to the widow of the son thus leaving the mother helpless. I want the mother to be given her right as an

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independent woman. Apart from this, in regard to the other aspect following this matriarchal system, I would like to remind the House of the great regard and respect in which the mother is held in our society. As a matter of fact, there is a certain amount of sentiment also involved. I do not base my argument in support of this proposition mainly on sentiment alone; I give my support to this on the basis that the mother as a woman must have a right to independent property. That is my reason but you cannot ignore this question of sentiment also because you should know the regard and esteem in which we hold our mothers in the Hindu society. During the discussion in the Rajya Sabha last time, I find that hon. Members were not quite willing to grant this right to the mother. In this connection some lines from the *Mahabharata* come to my mind, These will show in what respect Hindus have all along held the mother. If my memory serves me right, these lines are attributed to the sage Narada: "When does a person really become old? When is a person really afflicted with sorrow? When is a person so desolate of the whole world? It is only when he feels the parting of his mother". The Sanskrit text is as follows:

तदा स वृद्धो भवति
तदा भवति दुखितः ।
तदा शून्यं जगत् तस्य,
यदा मोत्रा वियुज्यते ।।

It is only at the parting of his mother that the man really becomes old; only then is he stricken with sorrow and only then does he feel the desolateness of the world. That is the great regard, affection and emotional esteem in which we hold our mothers. To that mother, will you deny the grant of rights to property? Would you like to leave her, in her old age, unprotected and without property rights? I am very happy about the inclusion of the mother in class I of the Schedule. I only feel that the right that we have restored to the mother must be restored to all the women. I generally support the amendments but oppose that particular clause. It would have been better if the provisions of clauses 3 and 25 had been liberalised to the advantage of women. I generally support the amendments.

SHRI P. N. SAPRU: Mr. Deputy Chairman, I accord my general support to these amendments. In doing so, I must not be understood to suggest for a moment that I am satisfied with the Bill in all its details. No one can be. Mr. Pataskar, who has devoted considerable time and thought and study to this Bill and who has piloted this Bill so ably, knows its imperfections as well as we do. Those imperfections are inherent in the situation, but let us understand clearly what we are attempting to do. We are trying to pour new wine into old bottles. We have an archaic structure; we have the Mitakshara law; we have the Dayabhaga law and we have other systems, some of them unpronounceable so far as I am concerned, of Hindu law in this country. Now, we are trying to build something which we can call *sui generis*. We take something from the Dayabhaga system; we take something from the Mitakshara law; and we take something from our modern notions of what the women's status should be. We seek to weave them up and make up a piece of legislation which we call the Hindu Succession Bill. A better course would have been to have an entire Hindu Code.

3 P.M.

Then we could have had a clear picture of what the Hindu law affecting all the communities was to be in regard to every aspect of the life of a Hindu—in regard to marriage, in regard to divorce, in regard to inheritance in regard to succession, in regard to guardianship, adoption and self-acquired property, which, I find, has not been dealt with by this Bill. The attempt to have a Hindu Code has, I believe, not been given up. What we are doing is to have that Code in parts. Naturally, when you have piecemeal legislation, you will

have defective draftsmanship; no draftsman, howsoever perfect he may be, will be able to draft a Bill which will be foolproof against attacks in courts of law. I remember some years back Dr. Deshmukh piloting in the old Legislature the Hindu Women's Married Property Bill. I thought, when that Bill was being piloted, that it was a fairly easy Bill but, as Mr. Pataskar knows, it has been the subject-matter of lengthy decisions and lengthy judgments in courts of law and there have been some full bench cases also on that Act. The principle that the Mitakshara was capable of providing for succession if it was suitably amended, was accepted by that Bill. It was that Bill which pointed the way to possible future advances. There we were dealing only with the estate of a pre-deceased son's widow, but we did not give her the right to partition the property but we gave her an interest in the property on a partition among the members of the family. Now that principle has been further extended by Mr. Pataskar in this Bill.

Now, Mr. Deputy Chairman, when we remember that the Muslim woman enjoys only a share, i.e., half the share of that of her brother in the property left by her father, when we remember that the Parsee woman enjoys only one-fourth share in the property left by her father, when we further remember that a married woman could hold and acquire no property in Britain until the Married Woman's Property Act was passed in Britain in 1882, when we further remember that until 1925, in which year only Lord Birkenhead's Act was passed, the distinction in the matter of rules relating to inheritance between what they called 'personality' and what they called 'reality' was a real one and the position of the woman was not quite equal to that of the man.....

DR. SHRIMATI SEETA PARMANAND (Madhya Pradesh): May I say that in Malabar in our own country, since time immemorial inheritance was and is from mother to daughter and not to son?

SHRI P. N. SAPRU: Malabar is only a tiny small portion of the country; Malabar does not constitute the whole of India. I am not suggesting for a moment that woman should not have an equal share in the property of her father. Children of the same father should have equal rights. That was my stand in 1939 or 1940 when I was working as a member of the Joint Select Committee on the Rau Committee's Bill and that is my stand today. But I would like in all humility to point out to my sisters that they have no legitimate cause for complaint against us so far as we are concerned in regard to this Bill. Let them recognise that the men of India have, in the Legislatures in dealing with them, been more fair than the men of other countries. The British woman had to fight for her rights before she got them whereas till recently we all had to fight for our independence and you did not have to fight for your rights. Therefore, in all these matters it is necessary for us not to take an extreme attitude; it is necessary for us to take what I would call a balanced attitude. I would say therefore, Mr. Deputy Chairman, that the Bill as it is, is of a far-reaching character. It will affect our social life in many ways. Until today the brother in a Hindu family, the uncle or cousin in a Hindu family has considered it his right and his duty and his obligation to provide for his sister or his niece or his cousin. I have known cases where brothers have sold family property in order to perform the marriage of their sister in a manner befitting the family status. I have known cases where uncles have done likewise for their nieces and they have never talked about what they have done. All that will in course of time change, and I think it is right, it is desirable and it is proper that it should change, but we should clearly understand and realise the implications of what we are doing. No one can stop the march of time. I have very great reverence for the old law-givers, but I may say that like all others they could not visualize all that is happening in 1956, and

[Shri P. N. Sapru.]

Manu was only legislating for his days.

I was reading the other day a book by an English author on ancient India and he said that in ancient India we treated women fairly, that is, if you compare ancient India with ancient Greece or ancient Rome or ancient Babylon or ancient Egypt. Now, we have a new concept today of the status of woman. In our Constitution we have provided for equality of the sexes. At the United Nations we always take a line which aims at an improvement in the status of woman. We have recognised that they should have—or our policy has been to recognise that they should have—equal rights with men. They cannot have those equal rights unless they have some economic security, and it is essential, therefore, in the interests of the social order, that we are establishing that our women should come to possess a considerable measure of social security.

I venture to think that this Bill may be defective here and there from a draftsman's point of view, but I am not going to pick holes in the draft here because I know that no lawyer could have done better in the circumstances than Mr. Pataskar. But let us in these matters take a whole view of the problem. And if you will take a whole view of the problem, you will have to come to the conclusion that this is a very notable measure. It is easier for a nation to work out its political emancipation than its social emancipation. In 1947 we were able to achieve our political independence. Today we are engaged in the much more difficult task of emancipating ourselves from the thraldom of age-old ideas which are haunting us like ghosts. We want, therefore, a definite break with the past. It does not mean that we have no respect for the past, but nations that desire to go forward do not look backward. They look to the present and to the future for their inspiration. We have tremendously difficult problems today. Let us, therefore, modernise Hindu law in the light of those conditions. Let us recognise that the India of the future cannot be built up by the efforts of men alone, that in building up the India of the future we shall require the co-operation of our sisters and that we can get that co-operation only if we revere the spirit in them. Mr. Deputy Chairman, it has been said that God made man in His own image; that is the Biblical saying. I have often wondered whether it would not be correct to say that man made woman in his own image; the actual physical domination that he enjoys over her has enabled him to dominate her life and to impose upon her his own notions of what is right and what is wrong.

SHRI H. P. SAKSENA: And to treat her as a goddess.

SHRI P. N. SAPRU: I would rather be treated as a devil than as a goddess because, if it is not blasphemous to say so, in the controversy between God and Satan I have often felt that Satan was right because he had the spirit of revolt. I remember, Mr. Deputy Chairman, to have read a story by the Lebanese poet, Khalil Gibran, on Satan. Satan meets a clergyman and the clergyman says: 'I do not want to meet you; I do not want to talk to you because you are a very unholy fellow'; to which Satan replies, 'My dear fellow, where would you be without me? People go to you because they think that you can deliver them from Satan. Therefore, I serve a useful purpose in life.' What I wanted to say was that we are living in revolutionary times. We are covering centuries in years and surely we should be able in these matters of social reform also to go not at a snail's pace but at a very rapid pace. I think this Bill goes at a fairly rapid pace; I won't say, at a revolutionary pace, but it goes at a fairly rapid pace and it deserves the support of this House.

Now, I will examine some of the provisions of this Bill. In the first place I am glad that that monster—the widow's estate—which was a creation of the Privy Council will

hereafter be no more. I think it was a creation of the Privy Council because Prof. Jolly—Mr. Pataskar knows that book—in his *Tagore Law Lectures on Hindu Law* points out that the whole concept of this limited estate was due to a wrong translation of a Sanskrit text by Colebroke. The Privy Council never overrules itself. The Privy Council came to the conclusion that the widow had been given a widow's estate. But actually the Mitakshara, in its original form, makes no distinction between a widow's estate and *stridhana* property. There are various classes of *stridhana* property. Some *stridhana* property goes to one class of heirs; another kind of *stridhana* property goes to some other class of heirs. But they confer absolute estates. She could dispose of that property; she could will that property. And that is the correct reading of the Mitakshara text. This widow's estate was in the good old days a lawyer's paradise, because every time a widow made an alienation, one could go to the court and challenge it on the ground that there was no necessity and there were so many other complications which were incidental to this widow's estate. This has been done away with. So far as the daughter is concerned, she will get a share and that, I think, is the most important change. She will not be a coparcener in the Mitakshara family. That is a right which has been denied to her. But I should have liked the Mitakshara family to disappear. I should have liked the Mitakshara family to be brought into line with the Dayabhaga. I should think that the correct thing is to have tenancies in common, not joint tenancies, but since we have retained the Mitakshara family one right which the sons will possess will be that they will be coparceners while the daugther will not be a coparcener. But let us see how far this right will actually benefit the sons. In the discussions in the other House—I just read them in the papers—the assumption was that this was a very backward step compared with the step which had been taken by the Rajya Sabha. Now, I venture to think that that view is not correct. If a partition has taken place before the death of the father, the sons who are separated from their father will get no share in the father's property, Now, the partition may have taken place at a time when the family was not possessed of much property and with the nucleus which the father got from the partition he may have built up a very large fortune. Let us suppose at the time of the partition there were four sons and one daughter and the property, shall we say, was worth a lakh and twenty thousand rupees. Each one of the sons and the father got about Rs. 20,000. The daughter gets nothing. But with that Rs. 20,000 the father builds up a fortune of say Rs. 5 or Rs. 10 lakhs. As the Bill stands, the daughter and the daughter alone will be entitled to all that Rs. 5 or Rs. 10 lakhs. The sons who partitioned go out of the picture altogether. I shall be glad to be corrected if I am wrong. That, I think, is the position. Now, we know as a matter of fact that the ancestral nucleus, in many cases, is very small and it is not as if a single son gets a double share in the family property because the right to partition has not been given to her. What the clause, in effect, does is to make partitions difficult. In the form in which the Bill was sent by us, the incentive to partition the property was there. In the form in which the Lok Sabha has sent the Bill to us, the incentive to partition disappears. That is, I think, the major difference between the view-points, of the Lok Sabha and of the Rajya Sabha and undoubtedly, in my opinion, the view of the Rajya Sabha was right, because it is desirable to encourage partitions; it is desirable to break up this joint family which degrades women, which is incompatible with modern ways of living and modern ways of thought. Therefore, I personally think that the Rajya Sabha's solution was preferable. Even though that is my personal opinion, I would say that the advance which has been made by the Lok Sabha is of a considerable character and, therefore, we should not over this issue

[Shri P. N. Sapru.]

fight the Lok Sabha. We should not over this issue differ from the Lok Sabha.

I am glad that one of the difficulties which I had in regard to clause 6 has been removed by the speech of Mr. Pataskar. When I read Explanation 1 to clause 6, "....irrespective of whether he was entitled to claim partition or not", I was bewildered, because I did not know that in the Punjab the son has—under the customary law, I suppose, applicable to that State—no right to claim partition in the Mitakshara family. Of course, in the Punjab we know that there used to be a custom of exclusion of daughters and exclusion of widows, for they were governed very largely by their customary law. I suppose that was the reason why these words were used, because otherwise I could not find any meaning in those words.

Then, I shall come to clause 7 and I will point out that the power of testamentary disposition has been given to a Hindu governed by the Mitakshara in respect of what might be called his notional share in the property at the time of his death. Now, I think that is right and personally I have no objection to that clause. Of course, it introduces a completely new idea in the law of Mitakshara. In the Mitakshara system no member of a Hindu joint family can say—until partition takes place—that this is my particular share. The right which a Hindu possesses in the Mitakshara property, if he is dissatisfied with the way in which the family property is being managed, is that of a partition. Here a new right has been conferred of testamentary disposition in regard to the share of the property of which he was the notional owner at the time of his death.

Then, I would like to say one or two words about this question of maintenance. In order that certain persons, towards whom the father or the maker of the will was in a fiduciary capacity or had some legal or moral responsibility, shall not suffer, a provision has been made restricting a person's right to take away the right of maintenance. Now, this question of maintenance is rather a difficult one. The extent to which maintenance will be allowed has not been indicated. In the past the tendency for courts was to give a very small maintenance to widows and female relatives. Today, however, with the growth of social consciousness, even conservatively inclined courts have begun to take a liveral view in regard to this question of maintenance. Therefore, some indication should have been given as to what, in the opinion of this House, was proper maintenance for persons towards whome the testator stood in a particular relationship. I do not personally like the words "moral duties". The law knows legal duties. It is difficult for a law court to act as a court of ethics. And, therefore, I would hesitate to use the words "moral duties" at all.

Then, also there is one other legitimate criticism. Clause 7, as originally passed by the Rajya Sabha, I think, interfered with the vested rights of sons who had separated themselves from the father, because at the time of the father's death the value of their shares would have been taken into consideration, in computing a daughter's share. That was regarded as a wrong move by the Lok Sabha. I am free to say that there is something in that point of view. Personally, the ideal course would have been to have a Hindu Code, to have a law of succession, just as you have an Indian Law of Succession and make the provisions of the Sucession Act applicable to all. But that is a course which we have ruled out and that being so, I am not prepared to say that the Lok Sabha's view is necessarily erroneous.

Now, I would like to say a word or two about the mother. I was not very clear in my mind about the question of the position to be accorded to the

mother. But after hearing my friend there and after having given the matter further thought, I have come to the conclusion that the 'mother' should be elevated to class I of the heirs. After all, we have great respect and reverence for our mothers. It is part of our Hindu heritage to have respect for our mothers and I am glad that 'mother' has been elevated to class I of the shareholders in succession.

Well, there are some other matters of a minor character with which these amendments deal and it is hardly necessary to speak on them. The big question that we have got to consider is whether we should agree to these amendments or whether we should stick to the line that we took initially. Now, I am not one of those who took part in the discussions on the original Bill. But I think we are a 'revising' Chamber and a 'revising Chamber' means a Chamber which is capable of revising its mind from time to time. It means a Chamber which is capable of reviewing—shall I put it like that—in the light of fresh evidence, decisions arrived at on previous occasions. I think, Mr. Deputy Chairman that we shall be fulfilling our mission as a revising Chamber if we agreed, in a matter of this kind, with the Lok Sabha.

The important thing is that this Bill should be the law of the land at an early date because delay is not going to help matters and it will be possible for us to review the entire situation when all the parts of the Hindu law have been codified and we have a full picture of the Hindu law before us. Therefore, I would earnestly, as a very junior Member of this House, appeal to the House to support the measure. But before I close, I would like once again to congratulate Mr. Pataskar on the considerable ability that he has displayed in piloting this measure.

Thank you.

श्रीमती चन्द्रावती लखनपाल : श्री उप सभापति महोदय, आज हमारे सामने लोक-सभा से भेजे हुए हिन्दू उत्तराधिकार बिल पर संशोधन विचार के लिए उपस्थित हैं । हमने पहले सोचा तो नहीं था कि इस उत्तराधिकार बिल पर हमें फिर से विचार करना पड़ेगा । यह आशा नहीं थी । लेकिन फिर भी आज हम अपनी इच्छा के विरुद्ध उन संशोधनों पर, जो कि आज हमारे सामने उपस्थित हैं, विचार करने के लिए बाध्य हुए हैं ।

श्रीमन्, कई संशोधन तो काफी महत्वपूर्ण हैं और कुछ, शायद आधे दर्जन के करीब, ऐसे हैं जो कि बिलकुल साधारण हैं । इन संशोधनों के ऊपर इस सदन के अन्दर अभी विचार होना प्रारम्भ हुआ है । जो वक्ता अभी तक बोले हैं उन्होंने अपना संतोष प्रकट किया है और हो सकता है, कुछ हमारे बन्धु इस पर असंतोष भी प्रकट करें, कुछ इससे खुश होंगे और कुछ नाखुश होंगे । लेकिन मैं इस समय किसी की खुशी या नाखुशी की दृष्टि से नही किन्तु अपने विशाल आदर्श की दृष्टि से, सच्चाई और न्याय की कसौटी पर, इन संशोधनों को परखने का प्रयत्न करूंगी ।

श्रीमन्, हमें इस बात को याद करना होगा कि इस विधेयक को जब हम इस सदन के अन्दर लाये, तब हमारा क्या उद्देश्य था । हमारा उद्देश्य यही था कि हम सामाजिक और आर्थिक क्षेत्र में स्त्री और पुरुष के अन्दर जो विषमता विद्यमान है उसको दूर करें और उसमें स्त्री की स्थिति को उन्नत करें, यह हमारा लक्ष्य था । आज यदि इस दृष्टि से हम इस बिल के संशोधनों के ऊपर दृष्टिपात करें और विचार करें तो सब से पहले तो मुझे क्लाज १० में जो संशोधन किया गया है उसका स्वागत करना होगा । राज्य सभा में हमने माता को जो स्थान दिया था, वह दूसरे क्लास में दिया था, लेकिन लोक सभा ने माता को पहले क्लास में स्थान देकर वास्तव में एक बड़ा महत्वपूर्ण कदम उठाया है, और एक सही

[श्रीमती चन्द्रावती लखनपाल]

दिशा में कदम उठाया है क्योंकि, श्रीमन्, जैसा कि अभी कहा गया, माता का स्थान भारतीय संस्कृति में बड़ा ऊंचा है । "मातृ देवो भव, पितृ देवो भव, आचार्य देवो भव"— इस प्रकार माता को पिता और आचार्य सबसे ऊंचा स्थान दिया गया है, हमारी संस्कृति और धर्म के अंदर । तो इसलिए आज जो यह परिवर्तन होता है वह हमारे धर्म और संस्कृति दोनों के अनुकूल है । इसके अतिरिक्त हमने माता को ऊंचा स्थान देकर स्त्री के शोषण को काफी हद तक बंद कर दिया है । जैसा कि श्री पाटस्कर साहब ने आज प्रातःकाल कहा था, ऐसी भी स्थिति हमारे परिवार के अंदर आती है जब कि माता को उसके परिवार में अपने पुत्र की मृत्यु के बाद अपनी पुत्रवधु, पोते और पोतियों की दया की भीख पर रहना पड़ता है और उस पराश्रयता और पराधीनता के अंदर माता का स्थान बिलकुल ही नीचे जा पड़ता है । तो इस प्रकार आज हमने उस विषमता को भी दूर कर दिया है । दक्षिण के कानून में जो मेट्रिआर्कल सिस्टम है, उसके अंदर तो माता को ऊंचा स्थान दिया गया है लेकिन जो हमारे उत्तर का विधान है उसमें ऐसा नहीं है । उत्तर के विधान को दक्षिण के विधान के साथ लाकर हम इस संशोधन के द्वारा इस विधेयक के अंदर एक यनिफ़ार्मिटी, एकरूपता, ले आये हैं । इस दृष्टि से भी यह संशोधन महत्वपूर्ण है ।

इसके पश्चात्, श्रीमन्, लोक सभा द्वारा क्लाज़ ६ में जो संशोधन किया गया है, उस पर कहना चाहूंगी । यह संशोधन सबसे महत्वपूर्ण संशोधन है । इसकी तरफ जब हम देखते हैं तो हमें यह मानना तो पड़ता है कि जो कुछ परिवर्तन लोक सभा ने लड़की के हिस्से को घटा कर किया है, वह किसी भी हालत में, किसी को भी, चाहे वह प्रगतिवादी और विवेकशील भाई हो या बहिन हो, कभी मान्य नहीं हो सकता, क्योंकि इसके अनुसार, जैसा कि माननीय विधि मंत्री ने आज सुबह समझाया, पैतृक सम्पत्ति के अंदर लड़की का हिस्सा बिल्कुल न होने के बराबर हो जाता है । यदि लड़के को १५०० रु० की जायदाद में ६०० रु० मिलता है, तो लड़की को मुश्किल से १०० रु० मिलेगा । इस प्रकार हम देखते हैं कि बहुत ही अधिक और असाधारण रूप से उसके हिस्से में कटौती हुई है । लेकिन क्या हम इसके लिए लोक सभा को दोष देंगे, क्या हम इसके लिए किसी दूसरे लोगों को यह कहेंगे कि वे कट्टरपंथी हैं ? नहीं । मेरा तो अपना ख़याल, अपना मत यह है कि इसका दोष लोक सभा के ऊपर नहीं, इसका दोष, इसकी जिम्मेदारी तो हमारे विधान निर्माता जो हैं, उन पर है और स्वयं हमीं, राज्य-सभा के सदस्यों पर है । श्रीमन्, हमें याद रखना होगा कि जब यह बिल राज्य सभा के अंदर लाया गया था तो किस रूप में, किस शक्ल में लाया गया था । उस वक्त यह शक्ल थी कि इसके अंदर से मिताक्षरा परिवारों को बिलकुल निकाल ही दिया गया था, यह बिल मिताक्षरा परिवारों पर लागू ही नहीं होता था । बहुत कुछ विचार विनिमय के बाद हम लोगों ने और हमारे साथ प्रगतिशील और प्रगतिवादी विचारों के जो बन्धु थे, उन्होंने बहुत शोर मचाया और फिर सेलेक्ट कमेटी में इसके अंदर परिवर्तन हुए । लेकिन सेलेक्ट कमेटी भी, जो कि परिवर्तन करना चाहती थी, वह भी रोग की जो जड़ थी उसको ठीक न कर सकी और उसने ऊपरी लीपापोती कर दी । उन्होंने यह कोशिश की कि मिताक्षरा को भी रखा जाय, साथ ही साथ में लड़की का जो बराबरी का हिस्सा है, उसको रखा जाय । यह प्रयास दो विरोधी तत्वों को मिलाने का, एक असफल प्रयास था क्योंकि, श्रीमन्, मिताक्षरा और इसके साथ ही साथ समानता का हिस्सा, यह दोनों ऐसी चीजें हैं, दोनों ऐसे आदर्श हैं, जो किसी हालत में एक दूसरे से मेल ही नहीं खाते और उसका परिणाम वह हुआ जो होना चाहिए । राज्य सभा की सेलेक्ट कमेटी से निकल कर जब यह बिल आया तो हमने यहां भी उसे ठीक करने का प्रयत्न किया और यह कोशिश की गई कि कोई ऐसा सूत्र, कोई

ऐसा फार्मुला निकाला जाय जिससे कि लड़का और लड़की दोनों के साथ न्याय हो और मिताक्षरा भी बना रहे, जैसा कि सेलेक्ट कमेटी का आशय था । लेकिन हमें यह दुःख के साथ कहना पड़ता है कि हम राज्य सभा के लोग बहुत कुछ विचार करने के बाद भी, कोई सैटिस्फेक्टरी (संतोषजनक) फार्मूला नहीं निकाल पाये । हमने जिस शक्ल में लोक सभा में यह बिल भेजा था, उसमें बहुत सी त्रुटियां थीं और जैसा कि माननीय पाटस्कर जी ने हमें बतलाया, उसमें बहुत सी डिस्क्रेपेंसीज रह गई थीं । पहली सब से बड़ी त्रुटि यह थी कि अनडिवाइडेड सन (अविभक्त पुत्र) को लड़की से कम हिस्सा मिल जाता था और जो डिवाइडेड सन (विभक्त पुत्र) था, उसको जरूरत से ज्यादा हिस्सा मिल जाता था ।

श्रीमन्, इस सब का परिणाम वही हुआ जो होना था । असल में प्रारम्भ से लेकर अब तक, हम लोग देखें कि, हमारी क्या नीति रही । हमारी नीति यह रही कि हम मिताक्षरा को बनाये रखें । मिताक्षरा की रक्षा करना हमारा प्रारम्भ से आखिर तक ध्येय रहा । मैं यहां आखिरी वक्त में इस प्रथा का क्या विरोध करूं, लेकिन मैं यह कहे बिना नहीं रह सकती कि मिताक्षरा एक ऐसा आदर्श है, एक ऐसी प्रथा है जो पुरानी होते हुए भी और उस समय के लिए अच्छी होते हुए थी, एक ऐसी चट्टान के समान है जिससे रगड़ खाकर समाजवादी समाज को स्थापित करने के हमारे सब के सब सुनहरे स्वप्न चकनाचूर हो जायेंगे । हमारे उन्नतिशील आदर्श कभी भी इसके साथ मेल नहीं खा सकते । इसलिए इसको लेकर आगे बढ़ना बिलकुल ऐसा ही है जैसा कि रेगिस्तान के अन्दर हरे-भरे खेतों को देखने की आशा करना ।

श्रीमन्, इस समय तो प्रश्न यह है कि हमारे सामने जो संशोधित बिल प्रस्तुत है उसको हम पास करें या गिरायें । यह देखते हुए भी कि जो हिस्सा लड़की को मिला है, उससे हम कभी भी संतुष्ट नहीं हो सकते, यह देखते हुए भी कि समाजवादी समाज की स्थापना करने का जो हमारा आदर्श है, उसको भी हम बहुत आगे नहीं बढ़ा सकते हैं, श्रीमन्, मैं इस प्रस्ताव का, जो हमारे सामने प्रस्तुत है, अभिनन्दन करती हूं और उसका समर्थन करती हूं । क्योंकि मैं यह देखती हूं कि जो वर्तमान परिस्थितियां हैं, जिनका मैंने उल्लेख किया है, वह ऐसी ही है कि उसको हमें स्वीकार कर ही लेना चाहिये और किसी को भी दोष नहीं देना चाहिये । श्रीमन्, इसको सपोर्ट (समर्थन) करने का एक सब से बड़ा कारण यह भी है, जो यह एक संशोधन है, वह सर्वसम्मति से किया गया है । चाहे प्रगतिवादी लोग हों, चाहे कट्टरपंथी हों, सब ने एक साथ मिल कर और विचार करके, एक समझौते के रूप में इस संशोधन को हमारे सामने रखा है । इस से यदि सब खुश हैं तो हम भी खुश हैं । सब की खुशी में ही हमारी खुशी है । मान का तो पान भी बड़ा होता है । हम 'मान का पान' समझ कर इसे स्वीकार करते है । श्रीमन्, जहां तक स्त्रियों का सम्बन्ध है, उनकी ओर से मैं यह कहना चाहती हूं कि चाहे हम इस बिल से नाखुश भी हों, असंतुष्ट भी हों, तब भी हम कभी विद्रोह नहीं करेंगी क्योंकि हमें विद्रोह के अन्दर कटुता का भास होता है । हमारा विद्रोह में विश्वास नहीं है । हमारा विश्वास अपने भाइयों की सद्भावनाओं पर अधिक है । उससे भी अधिक विश्वास हमें अपनी क्षमता पर है, अपने बल पर है और हमें आशा है कि हम प्रेम के द्वारा, शान्ति के द्वारा, समझौते के द्वारा अपने विरोधी भाइयों का हृदय परिवर्तन करने में, कुछ न कुछ समय के बाद, समर्थ होंगे ।

इस के बाद एक बात और भी है । यदि गम्भीर दृष्टि से विचार किया जाय तो हमें यह मानना पड़ेगा कि यह बिल बहुत सी कमियों के होते हुए भी, बहुत से दोषों के होते हुए भी, सामाजिक और आर्थिक क्षेत्र में एक बड़ा भारी क्रान्तिकारी कदम है, क्योंकि आज सबसे पहली बार आर्थिक क्षेत्र में, सम्पत्ति और जायदाद के ऊपर स्त्रियों का अधिकार माना

[श्रीमती चन्द्रावती लखनपाल]

गया है और सबसे पहली बार स्त्री को पुरुष के बराबर समान अधिकार का अधिकारी माना गया है । श्रीमन्, इसलिए आज का जो यह विधेयक है, जो उत्तराधिकार बिल है, यह स्त्रियों को एक बड़ा अधिकार आर्थिक और सामाजिक क्षेत्र में देता है । मैं इस बिल का इसलिए भी स्वागत करती हूं कि आज देश के अंदर सामाजिक और आर्थिक क्षेत्र में जो एक महान् क्रान्ति चल रही है, उसको आगे बढ़ाने में यह विधेयक एक बड़े मार्गदर्शक, एक बड़े कदम के रूप में काम करेगा, और साथ ही साथ हमें यह भी विश्वास है कि स्त्रियों की स्थिति आगे बढ़ाने में, स्त्रियों की स्थिति को उन्नत करने में और उनको शोषण से मुक्त कराने में, यह विधेयक बड़ा भारी साधन बनेगा । इसलिए श्रीमन्, मैं इस विधेयक का समर्थन करती हूं । इसके पहले कि मैं बैठूं—मुझे पता नही कि मुझे आगे बोलने का मौका मिलेगा या नहीं—मैं चाहती हूं कि इस विधेयक के संचालक अपने माननीय विधि मंत्री श्री पाटस्कर को धन्यवाद दे दूं, जिनके अनथक परिश्रम के द्वारा, जिनकी प्रतिभा और विद्वत्ता से आज यह बिल इस रूप में हमारे सामने प्रस्तुत है ।

श्रीमन्, यदि उन्होंने इतनी होशियारी, इतनी योग्यता और इस बुद्धिमत्ता के साथ काम न किया होता तो, निश्चय ही यह बिल इतनी जल्दी पास न हो सकता । मैं उन्हें विश्वास दिलाती हूं कि भारत की स्त्रियां उनके प्रति युग युगान्तर तक ऋणी रहेंगी और स्त्री जाति की स्वाधीनता के इतिहास में उनका नाम स्वर्णाक्षरो में अंकित रहेगा ।

SHRI MAHESH SARAN (Bihar): Mr. Deputy Chairman, Sir, on the whole I greatly welcome the amendments made, but I must confess that I am not satisfied with the amendment to clause 6. We talk about equality of women and men. We say that women should get posts everywhere and they should be treated absolutely equally along with men. But what do we find? We find a great change in this measure which has come back from the Lok Sabha. We decided here that they would get equal rights with men, I mean the daughters and sons would have equal rights. But what do we find? We find that first of all the property would be divided amongst the sons, and then the share of the father would be divided amongst the sons and the daughters. Can we say that we are treating them fairly? I feel that it is one of the most unfair things, and that instead of going forward we are going backward. I find that most of the speakers here have greatly appreciated this change, but somehow or other it appears to me that it is very unfair. The hon. Mr. Sapru talked about the Parsis and the Muslims and said that so far as they were concerned, the daughters got only one-half or one-third. But they are not our ideals. We want to make India a beautiful land, where men and women will be treated alike. This change does not at all look well, and, therefore, it is my earnest desire that the law Minister will consider this point. When we are talking about giving equal rights to women, the whole world will say: The Rajya Sabha passed a Bill in which equal rights were given to women, but the Lok Sabha said, 'No'. Not only that equal rights will not be given to daughters, but the sons will have their share along with the father, and in the share of the father also, the sons will have a share along with the daughters. This is most unfair. It appears to me that this change somehow or other spoils the whole picture, the whole atmosphere. This is how I feel about it. I thought it my duty to give vent to my feelings. But everybody seems to feel that it is all right, and so I would also like that this Bill should be passed soon. Some of the Members are anxious that this Bill should be passed because they say that something is better than nothing. I do not agree. I would say that the daughters should get equal rights.

DR. SHRIMATI SEETA PARMANAND: For that a new Bill will be introduced.

SHRI MAHESH SARAN: You may introduce it later on. But my point, is that even now they should be placed on an equal footing.

SHRI H. V. PATASKAR: It is only in respect of coparcenary property that the daughter gets a share only in the interests of the deceased coparcenary. As regards self-acquired property or separate property, there is no distinction between a daughter and a son. So far as Mitakshara property is concerned, she gets only a share in the father's interests.

DR. SHRIMATI SEETA PARMANAND: In Dayabhaga property, she gets an equal share.

SHRI MAHESH SARAN: I am not going to be influenced by the lady Members here. I have my own views, and I shall give expression to them. It is true that separate property or self-acquired property will not be touched.....

DR. SHRIMATI SEETA PARMANAND: She gets an equal share in it.

SHRI MAHESH SARAN: But there is little self-acquired property with the different taxes that we are levying on property. The only thing that will satisfy me is that the son and the daughter should be treated alike. That is the only point which I want to emphasise. So far as the other points are concerned, the amendments are very nice, and I am glad that the mother becomes a class I heir. But I would like that the father should also be a class I heir. I see no reason why the father should be left out, when the mother is there. Both should be in class I. This is what I feel. Thank you very much.

SHRI KISHEN CHAND (Hyderabad): Mr. Deputy Chairman, as a compromise, I support this Bill. As has been pointed out already by several speakers that, if we make any changes or do not accept the amendments, the Bill will have to go back for a Joint Session of the two Houses, which may not take place for another six months or one year. Even if we accept this Bill in its present form, let us not be led away by some people's over-enthusiasm and Championship of the cause of women, by saying that they are completely against the Mitakshara system. I submit that in my humble opinion the Mitakshara system has done good to the Hindu society, and its continuance will be very beneficial to Hindu society. In a poor country such as ours where only a few people have got property and where there is a large section of people who have no or very little property consisting probably of a small piece of land or one house—in such a country—if there is joint effort on the part of the brothers and they somehow build up their business, it just gives them their means of livelihood. We look at the case of a few rich people who may be having huge property, and we are guided by that, while we do not look at the larger number of people running into crores who have got very little property. If you break up the Mitakshara system and if you break up the joint family, you will be inflicting untold misery on the average man. I submit that in this Bill a woman gets three shares—as a daughter, as a wife and as a mother. She gets a share from three places, while the son gets only one share, his own share.

DR. SHRIMATI SEETA PARMANAND: The husband also gets from his wife.

SHRI KISHEN CHAND: I am afraid opinions can differ upon it. A lady Member has pointed out that, if a woman dies and she has no children, then her husband gets a share in her property.

DR. SHRIMATI SEETA PARMANAND: Along with them he gets one share.

SHRI KISHEN CHAND: She forgets that, while some women may have large self-acquired property,—there are only a few cases of that type—in the large majority of cases a woman has received the property either from her father or from her husband, and that money is going to be transferred later on to the husband. So, in my view, a woman gets three shares, may be small shares, but the son gets only one share that of his own. I am of the opinion that in the case of self-acquired property, a daughter should have only half a share; I voted for it, and I still maintain that it is wrong to give her more than half a share. In the case of self-acquired property, her share should be only half, while in the case of Mitakshara property, with this amendment, I have nothing to add. By this amendment, Mitakshara property is now properly distributed. Examples have been cited, and the Law Minister, when he was moving this motion, was asked several questions, and hypothetical instances were offered. If the father has got only daughters and no sons, the question does not arise at all. Whether it is Mitakshara property or self-acquired property, if he has only daughters, there is no question at all. If he has only sons, there is no question. The question will arise when the father has got both sons and daughters. The fact of the matter is that everybody is trying to put forward cases which suit him. If a man wants to argue in favour of daughters, he naturally takes up cases where there are many daughters and only one son. If he wants to argue the other way round, he takes up cases where there are a large number of sons and only one daughter. In this very wide field, if you want to justify anything, you can certainly quote examples which suit you. You should take a normal case, and if you take a normal case, it will be two sons and two daughters. As I said, there can be extreme cases, where all the four are daughters or all the four are sons, but from such instances we cannot draw any conclusions. But any fair-minded man will always say that on an average in this country the number of men and women are equal. That is, equal number of boys and girls are born in the country. There may be half a per cent. difference and possibly it is because boys die more in their first year of life. I don't want to go into all that statistical detail. There may be half a per cent. variation and it is not going to make such a big difference in this country. So, if we presume that sons and daughters are equal in number, there will be certain reduction in the share of the daughters in coparcenary property. But if you take the sum total, as was pointed out by the hon. Minister and if the coparcenary proprety is worth about Rs. 1,500 or Rs. 2,000 and if there are two sons and two daughters whether the daughter gets Rs. 200 or Rs. 100 will not make any material difference, as her share will be mostly in the self-acquired property. There she will get equal share. As I have already said in the previous part of the speech, she will get a share as mother, and also as widow. If you take the whole thing I think the daughter is going to get a bigger share than the son.

4 P.M.

DR. SHRIMATI SEETA PARMANAND: For once, the hon. Member's arithmetic has gone wrong.

SHRI KISHEN CHAND: The hon. Member's arithmetic may be correct, the hon. Member's arithmetic may be strong. I don't deny it.

DR. SHRIMATI SEETA PARMANAND: The calculation has gone wrong.

SHRI KISHEN CHAND: She probably begins with the presumption that they are all daughters and one son and there, as I pointed out, certainly the share of the daughter will be small. You can change the arithmetic to suit your own opinions.

SHRI BHUPESH GUPTA: What is the position according to you when

there are equal number of daughters and sons?

(Interruptions.)

SHRI KISHEN CHAND: As a daughter, she will get a lesser share in the coparcenary property but in the self-acquired property she will get the same share. As widow and mother she will get some share and if you add up the shares of the widow the mother and the daughter, the three together will be certainly equal to the share of the son. It means that if the woman's property is taken as a whole from all the three sources, she will not be the loser. In this country, so far, it is mostly the man who earns the money in a large number of cases. In other countries before marriage the woman also earns money, but that system has not been introduced in our country. After 10 or 15 years it may come in and then it will be high time for us to change again. We can easily change this law again but so far it is only the man's property and he is entrusted with the task of providing the means of livelihood to the family. In such a case and in such a society.....

DR. SHRIMATI SEETA PARMANAND: What about a society of working class people.....

SHRI KISHEN CHAND: In an argument, when you take the working class, there is no coparcenary property and there is no inheritance—nothing at all. To cite their case when we are arguing a case about the coparcenary property is most unfair, I submit. You are trying to distract from the argument by advancing an argument which is not applicable to this case. In a coparcenary property it is not a question of working class women. She is not going to inherit anything at all and the woman who is going to inherit some property is not going to work and she does not work. How can you then compare the two things and draw any inference from one to the other? I am more or less satisfied with this Bill and reconciled to it considering that it has to be passed. The only way of passing it is to concur with all the amendments and give assent to them.

I would add one word. The hon. Minister, when he was explaining the motion said that a widow would have the right of residence in the family house even if her husband had left her a house. This would be a little unfair because supposing she has even two houses, she may rent them and collect the rent. She may say that from the houses she gets rent, so she will come and live in her father's house. It will be unfair. That is why we had provided that she should only have a right of residence if no house is left to her, but that has been changed by the Lok Sabha. Here again I think it is most unfair to the family. The woman may have half a dozen houses and can get their rents and yet she can come and claim to live in the father's house and claim a share in that house. I can point out similar instances where it is unfair to the man, but as I said in the beginning the only way of having this law passed is by accepting all the amendments and therefore, I support all the amendments.

MR. DEPUTY CHAIRMAN: Dr. Shrimati Seeta Parmanand.

DR. SHRIMATI SEETA PARMANAND: Shrimati Nigam wants to speak. I thought I would speak tomorrow.

MR. DEPUTY CHAIRMAN: If she is prepared to lose her chance I have no objection.

DR. SHRIMATI SEETA PARMANAND: Mr. Deputy Chairman, I am glad that this Bill has come to us to be passed again because though it was said in the other House that such important measures should always originate in that House and it was also questioned that it should never have been introduced in our House, I am very glad to see that not only was it originated in this House but for its final passage, because of the amendments that House itself made, for its final blessings also, it has come to our

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House. So, with the blessings of the Elders, as it should be, this Bill will become law of the land. Sir, I cannot begin making my remarks on this Bill without referring to a wonderful cartoon in Shankar's Weekly today called 'The Man of the Week', the finest tribute that could be paid to the womanhood of India of tomorrow. Here is a picture of a woman who is downtrodden and bemoaning and as Shankar himself says in that article:

> "The meek Hindu wife with eyes so rigidly downcast that she must be suffering from a painful squint will soon become a myth to be classed along with demons, dragons and legislators with antediluvian notions. The sooner that day, the better. In any case man had best put a good face on the obvious superiority of woman for while he can do wondrous deeds and invoke strange spirits to transform this world of ours, he has not yet learnt a way to give birth to healthy babies. And that is precisely why the women is our 'Man' of the Week."

So, with the passage of the Bill, the tide has already turned, and the 'man' of the week is a woman.

MR. DEPUTY CHAIRMAN: There is another cartoon inside.

DR. SHRIMATI SEETA PARMANAND: Yes. There is one more but if I may say so, with the passage of the Bill, before it actually becomes an Act, the signs of what is yet to come are there. This type of picture of a woman who is frightened of the whole world, though she is called *devi*—and I am glad that the epithet was explained away by our hon. friend Mr. Sapru who gave actually the real meaning of '*devi*'—will become very soon only a picture to be remembered, a thing of the past. I always wondered why woman was called *devi* and I used to think that it was because man liked to be himself called a god or *deva* but Mr. Sapru has given a good interpretation—and that in a way is better—that God has created woman in his own image and she is called *devi;* so in a way, I am glad to see, all this greatness, which man wanted to be reflected on himself by calling the woman *devi*, has been taken away by the interpretation given by another man. I am very glad to have that new interpretation.

Today, I must say in general that we miss here a very important figure in our House, namely, the hon. the framer of this Bill, the Law Minister, Mr. Biswas, the father of this Bill. But I am very glad to point out that the handicapped child that was presented, that was introduced by him in this House or the handicapped child that was presented to the Cabinet and which was adopted by the foster-father has under the fostering care of Shri Pataskar, now come out of the difficulties and has shed its crutches—the Mitakshara—and has come forward as a somewhat sturdy child and I feel glad.....

MR. DEPUTY CHAIRMAN: You mean it has survived infantile mortality.

DR. SHRIMATI SEETA PARMANAND: Yes, Sir.

I would like to say here that I am very glad the House as a whole has welcomed all the amendments, because it might have been pointed out by some Members who might like, if I may say so, to shed crocodile tears saying that woman has actually by the adoption of the amendment to clause 6, got, more or less, nothing. It is all very well to say that. But if these very people had been asked to give something more, they would have seen to it that woman did not get even this much. What I would like to say is that the Rajya Sabha in no way need look upon this amendment made by the Lok Sabha as any kind of a reflection on it. I am myself looking upon it from the point of view of women. I would put it in the way my hon. friend Shrimati Chandravati

Lakhanpal has put it *viz.*, woman did not want to get anything that had with it the vehement protests of the male Members. If the Lok Sabha, which consists of direct representatives of the people, thought that the advantage given to the divided son would bring in a spate of litigations and create unnecessary unpleasantness in the family by all sons asking for partition or by even parents dividing the estate of their children, or the guardians asking for a share of the minors, who had an interest in the family and wanted that the divided son should be on a par with the undivided son, we have to yield with willingness. For that reason I call this the ace of trumps which the Rajya Sabha had kept in its hands; for by giving the daughter a share in the undivided share of the son, undivided share in the ancestral property this House has enabled her to get an equal share from the Lok Sabha in the self-acquired and *Dayabhaga* property. This is a great achievement. After all, we have to remember how in the Lok Sabha, unfortunately, even a woman Member said that the daughter should get a one-fourth share, and one or two other Members—one of them a lady Member—said that because the daughter would be getting a share in the landed property, she should get a half-share. So as a compromise by this extra share, which according to those people was not very justified, the Rajya Sabha was able to bring round those Members of Lok Sabha to giving an equal share to the daughter. It is a very great triumph for the Rajya Sabha and I personally feel that it is not the women Members who have been taken in by this compromise, but it is the Lok Sabha which has been taken in by the entire Rajya Sabha. So, I feel that the progressive Members of the Rajya Sabha have scored a point over the Lok Sabha by making them agree to the equal share to the daughter, by agreeing to surrender something and that was really a very big gain, because the equal share of the daughter applies not only to this entire property of Dayabhaga but to the self-acquired property of the Mitakshara family. Sir after all, from that point of view, it is a great principle conceded. As my hon. friend Shri Sapru pointed out when even in our own country even progressive communities in this aspect of property legislation like the Muslims, who have always given a partial share to women, or the Parsis, who have not yet given an equal share to the daughter, it is a great step that we who are trying to bring in a uniform Civil Code have already gone ahead of them. And so I feel that in every way there is nothing to be complained of as far as clause 6 goes.

With regard to this clause, there is one more aspect which has not been touched upon in this House, namely that by reducing the share of the daughter, or rather by bringing in the widow along with the daughter for an equal share, the share given to the widow under the 1937 Act has been reduced. Formerly the widow got a full share along with the son and this new share of a daughter and now also mother would come in only reduces the share of the widow. As against that, we have gained in one way, namely, that the widow's estate which was a limited estate, has been made a full estate. And that is an advantage.

With regard to this concession that has been made in clause 6, in giving away part of the share which the daughter would have had along with the undivided share of the undivided son in the ancestral property, we have been able to get the woman an additional advantage, *viz.*, a share along with the sons and daughters as mother. Here I would like to inform our hon. friend Shri Kishen Chand how his arithmetic, as I said, had gone wrong for once. Somehow, these new rights loom large in the eyes of people and they just think only of what would happen to the woman, the female. The way Mr. Kishen Chand argues his point, it would seem that in his eyes only men die and women succeed to the property of the deceased husbands,

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as if women do not die at all. Woman also dies and the man also succeeds as the widower. If one woman succeeds as the widow, surely another man will also succeed as a widower, for women also die sometime before the husbands. Of course, they say, the son succeeds and the daughter also succeeds and so they are quits. The widow succeeds and the widower also succeeds and so there also they are quits. But the only place where the woman gets more, over and above what the Rajya Sabha had given her, is that she comes in as the mother. But let it be clear that that has not been done only out of respect for the mother. Cunning man in trying to get the drop of blood along with the pound of flesh has reduced the shares as far as possible so that even if the son's share is reduced by giving a share to mother, he feels that he will be able to keep the mother with him and get a share when she dies. But anyway, I am glad that this has happened, because we feel that in our society which has not yet got old-age insurance, a society which is fast tending to break away from the joint family system, we are giving a share to the mother. This will not only ensure devotion and affection till the end, and attention to the mother from the son, but it will also ensure care from the mother-in-law who usually when she comes in her own tries to assert herself and to ignore the mother. So from that point of view, I am prepared to accept it. I wanted to point out how every cunning has been practised to reduce a daughter's share. It is not as if we are not aware of it. We are aware of how this has been done. We, the women Members and progressive men who have been on our side, thought—

सर्वनाशे समुत्पन्ने अर्द्धं त्यजति पण्डित:

that when it was difficult to get an equal share, we would bargain for something.

One more point. Of course, nothing new has been done but only a separated wife has been given the right of residence. I do not understand the argument of people that it is very unfair that women who perhaps may not be left a residential house or who perhaps may not be able to pull on with their in-laws should on separation or being widowed, be allowed to come and stay in that house. That argument was put forward by the hon. Member from Hyderabad who spoke before me.

SHRI KISHEN CHAND: On a point of personal explanation, Sir. What I said was that if she has several houses and if she wants to come and reside in the ancestral house, she should not be allowed to do so. If she does not have a house of her own, then there is no objection.

DR. SHRIMATI SEETA PARMANAND: Ordinarily, the hon. Member is a very shrewd and practical businessman and is also very wise, but in this particular case, he tries to give a very impractical suggestion so far as women are concerned. Is it humanly possible, whether it is the case of a man or a woman and more particularly so in the case of a woman who has to live in the house all the time, to live in another's place? Even if it is a shed, a woman would like to stay in her own house. Everybody likes his or her independence better than anything and it will be only in extreme cases of necessity that a woman would go and live in her ancestral house. A woman, who has as much self-respect as a man, who cares for her independence as man, would never like to come and stay in her parents' house unless she was driven to it. If she is invited and if she is getting on on good terms with her brothers, etc., of course, she will go and stay and then there will be no complaint about it.

There are one or two things with regard to some of the fears entertained by Members. It was said that this Bill would be a paradise for lawyers. All legislation is a paradise for lawyers. After all, there are lawyers not on one side alone; there

are lawyers on both sides. Whether this Bill is to be a paradise for lawyers or whether it is not to be will depend on our lawyer friends. If they are very anxious that society should improve, that as little harm as possible should come out of this bill, they should form themselves into a free legal aid society and help women. Not only that, they should help all people, illiterate people. This should include men also. They should help these people in making flawless wills. There would be a spate of wills because people will think that that will be the best way of remedying many of the uncertainties. As a matter of fact, I would request the hon. Minister and the Government to bring in such a measure as is prevalent in England, for giving legal aid, but knowing full well the heavy legislative programme of the Government, I think we would bring in a Private Member's Bill next Session asking for the formation of a free legal aid society on the same level as is existent in England today. In this, all junior lawyers are employed and thirty per cent. of the cost of the suit is given to such people; if there are cases where people have to go to court out of sheer harassment, they need not pay anything at all. All these fears have been expressed by opponents of the Bill only to frighten away people. That should not be the attitude of persons who really want to help; this is the attitude of persons who want to hamper progress. It is they who come out with such false sympathies and shed such crocodile tears.

I would like here to pay a tribute to the hon. Minister who, I think, is the Manu of today. There is no reason why he should not be. In the old days, there were individuals, *Rajarishis*, who enjoyed court patronage, who prepared laws and here is the person—the spokesman of Members of Parliament—who stands in that place.

SHRI BHUPESH GUPTA: What about Mr. C. C. Biswas?

DR. SHRIMATI SEETA PARMANAND: Mr. Biswas has to get credit for other Bills. I am glad the hon. Member reminded me because I want to mention an important point which would have been forgotten. We have blamed the Select Committee; there were even motions in this House and in the other to the effect that the Bill should be referred back to the Select Committee or that a fresh Select Committee should be appointed. The House too has been blamed. Who has been responsible for putting this conundrum, this puzzle before the whole country and the Parliament? I think it is the hon. Minister for Law, Mr. Biswas. To say first that an equal share should not be given to the daughter or that what the people in the country feel should be done within the limitations of the Mitakshara system which applies to the whole of the country or, as the Bill originally said, that the whole of the Mitakshara system should be excluded from the purview of this Bill is, as I pointed out in the Select Committee, not worthy of the scrap of paper on which it was written. It was no use taking the time of the House if this measure was to be made applicable only to one-fourth of the country, namely, the Dayabhaga system and to certain parts of the Punjab. So, the Select Committee, took courage in both hands and decided this way. It is no use blaming the Select Committee because the impossible had to be achieved. The Select Committee within the limitations, that is, without wanting to go outside the strict limits of the Bill, that is again, without referring the Bill to the country without saying that the joint family system will be abolished once and for all, did the best it could by finding out this way of notional partition, I can take the House into confidence and tell them that the hon. Minister had a very anxious time on clause 6 because I had an occasion to discuss this matter with the Minister for Legal Affairs while this particular clause was under discussion at the Select Committee, in this House and in the other House. Many amendments came forward and they had

[Dr. Shrimati Seeta Parmanand.]

to find out a solution that would be both logical and practical. So, it is not right to blame anybody; it is not right to find fault with the aparent inconsistencies in drafting. This is so because of the conditions imposed by the scope of the Bill. What has been done is really an achievement and I feel that when the next Bill dealing with the abolition of the joint family system comes up after being referred to the country, it will be time enough to remove this anomaly.

For passing this measure, the Congress Party and the Congress Government have to be congratulated. Above all, I would here like to pay a tribute to the Prime Minister, the one person towards whom we would not be able to discharge all the obligations by merely paying compliments. It is a well-known fact that but for his sympathy, but for his vivid imagination to realise the pitiable condition in which women live, but for his realisation of the fact that the full co-operation of the women is needed for the future progress of the country and that this inequality between men and women in the greatest part of the community, namely the Hindu community, should be removed, this Bill would not have been here today and would not have been passed. We are all aware of the various Parliamentary tactics that were practised for putting obstacles in the way of this Bill; it was very difficult to find time for this Bill in this House and in the other. We had to go begging from one committee to another committee,—Congress Party meetings, Executive Committees, etc.—troubling everybody who mattered, to see that this Bill got through. It is these troubles and the work of women for the last thirty years that are now seeing this fulfilment.

SHRI BHUPESH GUPTA: Domestic troubles in the Congress Party!

DR. SHRIMATI SEETA PARMANAND: They are no troubles at all. You have to appreciate today the fact that the party has carried out its pledge to the electorate irrespective of the threats from the orthodox sections, the Hindu Sabhaites, the Jan Sanghaites and all the others.

Sir, I would like here to say that the soul of the late Shrimati Sarojini Naidu, the champion and beloved leader of the women's movement, would be happy in watching us today about to pass this Bill and by passing this Bill we as women and our brothers here have paid our debt of gratitude to her for all the trouble she took all these years in pressing this issue. Of course, the so called champions of Hindu society, the Hindu Mahasabhaites and others, after this Bill has been passed, would be out to blame the Congress, but they may be asked even now, at this stage, as to what they have done to preserve Hindu society, as to what they have done to see that the best remains of the Hindu culture, and the places of worship are kept in a condition which would inspire anybody to.....

MR. DEPUTY CHAIRMAN: That is beside the point.

DR. SHRIMATI SEETA PARMANAND: This is a sort of a last speech in the last reading; there won't be any further reading. So I am putting the women's point of view and I may be given a little indulgence.

Sir, I would like to say finally that the speech made by our Prime Minister in the other House, in itself, was the greatest tribute that could be paid to the women of India. We were then in this House and we could not naturally speak in that House. Even there as his speech was last, the other Members there also could not on the floor of the House express their thanks for the fine sentiments expressed by our Prime Minister about the womanhood of India for the whole world to see. I would like to take this opportunity on the floor of the House to say how grateful we are to him and pay this tribute to him.

Lastly, Sir, I would like to say that this is a kind of *yajna* and I feel in

this *yajna* the Prime Minister is the *yajaman*. In *yajna*, Sir, five things are required. The *purohit* is our Pataskar, who is a *brahmin*, and as in fact he happens to be one. *Samidha* and *samagri* are all the speeches of the reactionaries and the views expressed by protagonists and *ishtakarya siddhi* is the progress of the country through the equality and justice given to women. So, Sir, I feel.....

DR. W. S. BARLINGAY: But who is the goat?

MR. DEPUTY CHAIRMAN: All the reactionary speeches.

DR. SHRIMATI SEETA PARMANAND: The goat is all the old customs and injustices heaped on women. That is the goat and I hope it will be dead for ever. So, Sir, in the words for the *yajna pooja* I would say,

ओं यदस्य कर्मणोज्यारीरिचं
यद्वा न्यूनमिहाकरम्

This is the first Swishtakruth Whatever is the deficiency

अग्निष्टुत स्विष्टकृत्विद्यात्
सर्वं स्विष्टं सुहुतं करोतु मे.....

Whatever are the deficiencies in this legislation, etc., they will be all consumed in the *agni* of public sympathy, etc. And so, Sir,

सर्वं शान्तिः शान्तिरेव शान्तिः
सा समाजं शान्तिरेधि ।

So, I would say that once again, Sir, I would on behalf of all people of the House not only congratulate but express here our feeling of appreciation for the persevering and patient way and the sweet calm manner in which the hon. Minister for Legal Affairs bore with us whenever we phoned to him over one difficulty or one interpretation. I do not know how many phone calls he received during all the time from different people when these committees were sitting. I feel all these amendments are such that they can be accepted for the present and whatever women may have lost they will in due course make up by their attitude towards this measure in the country and by their efforts through women's organisations of giving help they will create such a favourable situation that the men Members who have been opponents of this Bill themselves will come forward and enthusiastically support a Bill for the removal of joint family which, when done, will equate all systems and pave the way for a uniform civil code for the country.

Thank you, Sir.

SHRI JASPAT ROY KAPOOR (Uttar Pradesh): Mr. Deputy Chairman, Sir, as I was listening to the appealing peroration of the hon. Mr. Pataskar, I was almost lulled into forgetting the various defects of this measure, more particularly the shortcomings of the amendments which have been passed by the Lok Sabha and have been forwarded to us for our consideration and acceptance.

[THE VICE CHAIRMAN (SHRI S. N. MAZUMDAR) in the Chair.]

Sir, we could not have found a better pilot than Mr. Pataskar for this measure. He has worked hard on it and patiently too, both in this House and the other House, in the lobby and even at his own residence where he sometimes called us to discuss the various alternative proposals that many of us were anxious to place before him and there we are obliged to him. He even entertained us to tea and sweet drinks. I hope, Sir, at the conclusion of this debate, after this measure has been passed into an Act, he will give us a good party with cold drinks.....

SHRI AKBAR ALI KHAN (Hyderabad): To all of us.

SHRI JASPAT ROY KAPOOR: Surely, and particularly to the lady Members in double measure.

Sir, this Bill had had a very chequered career but now, unfortunately I should say, it has come before us in a truncated and mutilated form, howsoever much it might be appreciated by the lady Members of this House,

[Shri Jaspat Roy Kapoor.]

Sir, it must be apparent now to all how generous and large-hearted and how affectionate the older Members of the Parliament are towards ladies, for we in this House, who are supposed to be more elderly than the young Members of the other House were prepared not only to be just but even generous to them, and we had, therefore, passed an amendment to this measure to the effect that the daughter should have an equal right with the son in a coparcenary property in some measure at least, but then we find that this was not acceptable to the other House. This appears to me to be a little unfortunate, Sir. To me it appears that this measure in its final form will be something which is just the reverse of what we intended it to be.

What is the fundamental basis on which we wanted to base this measure? That was, according to me, that the daughter should have an equal right with the son or in other words, in a wider sphere that a Hindu woman should have equal right with a Hindu male. I use the word "right" Mr. Vice-Chairman, and I submit that this measure does not give any absolute right of inheritance, whatsoever, to woman. Whatever is being given to a woman under this measure is more by grace, more by sufferance than as of right. I mean what I say, Sir. In the father's house a daughter will not get anything as of right, whether as an unmarried daughter or married. If the father so wishes, he can part with his own share whether it is self-acquired or whether it is his notional share in the coparcenary property by willing it away. Now that is something very important and serious. The daughter is absolutely at the mercy of the father unlike the son who has as of right a share in the ancestral property. The daughter has no share as of right in the ancestral property. Then even before death, the father, if he so chooses, can will away the property without even dissolving the coparcenary according to the latest amendment adopted by the other House. So far as of course his self-acquired property is concerned nobody has an inherent right in that; neither the son nor the daughter and the father can will away or dispose of that even by gift or by will if he is so inclined to deprive the daughter of any right in his property either during his lifetime or after his death. That is the position; let us be clear about it. Nothing as of right is being given to the daughter.

Sir, this measure from stage to stage has been whittled down so far as the woman's right is concerned. Originally we started with the Report of the Joint Committee to the effect that the daughter will have equal share with the son in the entire coparcenary property when the father died, which, to illustrate by an example, would mean this. If the total value of the ancestral coparcenary property at the time of the death of the father is Rs. 5 lakhs and the father dies leaving behind four sons and one daughter, then the daughter would have inherited property worth a lakh of rupees. Now, according to the latest amended position, whereas the sons would have one lakh worth of property each in their own right, in addition they will have one-fifths of the share of the father's interests in the property of Rs. I lakh. So the son would have property worth one lakh and twenty thousand rupees while the daughter would have property worth only Rs. 20,000. That is ~~interest i nthe property of Rs. 1 lakh~~. the position now.

Again, according to the Report of the Joint Committee even the property which went over to a son who left the coparcenary would have been taken into consideration while giving a share to the daughter along with the other brothers who continued to remain in the coparcenary. When this measure came up before us last time, that was deleted. That was the second stage. Now in the third stage we find hardly anything substantial left to the daughter.

Again if we refer to clause 32 of the measure it was added in this House last time. If I remember aright it was not there in the Report of the

Joint Select Committee. According to that it was made permissible for a member of the coparcenary to dispose of either by will or by other testamentary disposition his notional right in the coparcenary property. That was something of a very astounding nature. While we swear by the ancient law of coparcenary in other respects, we bade good-bye to this essential and fundamental principle of coparcenary law that unless and until a coparcenary was dissolved we could not say with any amount of certainty as to what the share of a member in the coparcenary was. But according to clause 32 a member of the coparcenary was permitted to dispose of by will or by other testamentary disposition his notional right therein. What was the object of that new clause? Not to give the right to a member of the coparcenary to dispose of the property in any manner he likes. This right of disposition was confined only to the making of a will or other testamentary disposition. Now, the only object thereof was that the right of the daughter to inherit the property when the member disposing of the property dies may be done away with during the lifetime of that person. That was the only object and now we find that this clause has been amended in a slight measure agreeably of course, to the effect that such disposition will not deprive one of the right to maintenance if that right existed otherwise The Lok Sabha has not had the fairness to extend this to seeing that the daughter was not deprived of her right of inheritance in such property. If the Lok Sabha had provided herein—as in fact I had suggested when this measure was under discussion last time here—that no such disposition by will or other testamentary deed would deprive the daughter of her right to inherit the property of the father, then it would have been all right. But as it is, it is not like that. So what ultimately the position reduces itself to is that firstly the woman has no right—I use the word "right"—in her father's family. By birth she has no right; she can be deprived of her right to inherit the father's property if the father so chooses. So far as her right in the husband's family is concerned, she has none. We would have very much wished—persons of my way of thinking—that she should have had a equal right with her husband in her father-in-law's house. That would have given her a good status in her father-in-law's house, a status equal to that of her husband in the family where she would go and an equal status with her brother in her father's family so long as she was unmarried. Just as an adopted son when he goes to the family of the adoptive father loses all his rights in the original house of his father but until such adoption he has full right with any other brother of his, similarly a daughter so long as she remained a member of the family of her father should have had equal right with her brothers and once she went over to another family, she should have.....

DR. SHRIMATI SEETA PARMANAND: If a woman did not marry, say, until the age of 35 or after she has got majority, would she get a limited estate or a full estate and how would you deprive her of the property if it is full estate?

SHRI JASPAT ROY KAPOOR: According to my view if she had remained unmarried all her life, she would have had full right over the property inherited from her father but then it is no use crying over that position because that is a matter of the past. My only object in reminding hon. Members of this House of these propositions which had been suggested from time to time is that we started fundamentally in a wrong way. Let some of our friends take pride in designating others as reactionary, howsoever much respect and regard they may have for the women in this country. I am one of those who has the greatest respect for women, greatest affection for them, be they in the form of mother, sister or daughter. But I am not alone in this respect because in this country howsoever much we might be denounced, we have always had the greatest respect for our ladies.

[Shri Jaspat Roy Kapoor.]

As my hon. friend, Mr. Sapru, pointed out to us, so far as political rights are concerned, we have given them straightway equal political rights, whereas women in the West had to struggle very hard for them. So far as social and economic status is concerned, if we look at the ancient customs, the ancient scriptures and ancient conventions, we have placed them not only on an equal footing with men, but even on a superior footing. We have always placed them in a superior position. They have always been designated as Lakshmi. We have placed them on the same level as goddesses. May I remind the House that even in the matter of name, we always give a woman's name first and man's name second? Even while praying we pray in the name of Radhakrishna and Sitaram and so on. Even at the time of marriage the bridegroom has to give a solemn assurance, he has to take a solemn oath, not to do anything without consulting his consort. And at all ceremonial occasions the wife is given the place of honour on the right side and not on the left, even she is called *ardhangini*. And then even though as a child we love and accuse Krishna as being a thief of *makhan* and *mishri*, we respect, adore and worship the *Kanya* at the farthest end of the south in the sacred temple of Kanya Kumari at Cape Comorin.

SHRIMATI CHANDRAVATI LAKHANPAL: Paper compliments.

SHRIMATI SAVITRY DEVI NIGAM (Uttar Pradesh): Nothing in practice.

SHRI JASPAT ROY KAPOOR: Well, the experience of my hon. friend, Mrs. Savitri Nigam may be different. But then the experience which we have in our household is to the effect that I am submitting. I would not like to quarrel with some of the hon. lady Members here because I would sympathise with their position because of the different experience they might have had. I would not take more time of the House because it would hardly serve any useful purpose now. But then I would like to accord my support particularly to the amendment which has come before us from the other House with respect to clause 25 of the Bill and that is a woman, if she has to leave the house of her husband because of a judicial separation from him, would be allowed to live in the dwelling-house left by her father. That is a good and useful amendment. And I also welcome the amendment to the effect that a widow, if she likes to live in the house of her father, may have the right to do so irrespective of the fact whether her husband has left any house for her or not. I do not agree with my hon. friend, Mr. Kishen Chand, that a widow, if she has a number of houses left by her late husband, would be tempted to let them out on rent and force her entry into her father's house. In actual practice, that is hardly ever going to happen. If the widow has only a very small house left to her by her late husband, well, it will be open to her to let it out to eke out a little income and go and stay in her father's house in her father's family where she may find a more congenial atmosphere for her to stay.

Sir, I have nothing more to add. With mixed feelings of pleasure and disappointment, I accord my support to this measure and congratulate the hon. Mr. Pataskar for it. My sister, Mrs. Seeta Parmanand, was sorry to miss here Mr. Biswas whom she described as the father of the Bill. But we should all be happy to see here today the hon. Mr. Pataskar, who, if he does not mind, may be called the mother of this Bill. Or maybe he deserves to be—because of the grandmotherly advice which he has given us to accept this Bill silently and quietly—designated as the grandmother of this Bill. With these words, I close.

श्री गोपीकृष्ण विजयवर्गीय (मध्यभारत): उप सभाध्यक्ष महोदय, मैं भी इस बिल के समर्थन में बोलने के लिए खड़ा हुआ हूं, यद्यपि यह उतने अच्छे और संतोषजनक रूप में लोक सभा में जाकर नहीं रहा जिस रूप में कि

राज्य सभा ने इसे पास किया था। लेकिन यदि हमें कुछ सुधार करना है तो हमको अधिक विलम्ब नहीं करना चाहिए क्योंकि यदि एक दफा फिर इस बिल में संशोधन और सुधार किये जायेंगे तो फिर कुछ देर लग जायगी। यदि हम फिर यहां संशोधन लाएं और यह बिल दुबारा लोक सभा में जाय या फिर दोनों सदनों का संयुक्त अधिवेशन हो, इस में जाते जाते इतना समय लग जायगा कि शायद इस पार्लियामेंट के जीवन काल में यह बिल पास न हो सके।

इस बिल की सबसे बड़ी बात यह है कि यह मिताक्षरा संयुक्त परिवार के आधार पर बनाया गया है। वैसे भी धीरे-धीरे समाज में मिताक्षरा परिवार अब बहुत कम होते जा रहे हैं। संयुक्त परिवार तो हैं किन्तु उनमें संयक्तपन का स्वरूप अब बहुत कम रह गया है। जब घर में एक पिता होता है और कई पुत्र होते हैं तो जब पुत्र बड़े हो कर पढ़ लिख कर धंधे करने लगते हैं तो प्रायः वह संयुक्त परिवार आजकल दिखायी नही देते। चूंकि जो एक वकील होता है, उसकी अच्छी आमदनी होती है, एक डाक्टर है उसकी अच्छी आमदनी होती है, और जो छोटा-मोटा धंधा करता है उसकी कम आमदनी होती है, तो भिन्न भिन्न आमदनियां होने के कारण वे सब एक सा जीवन, संयुक्त परिवार में रह कर, नहीं व्यतीत करते।

THE VICE-CHAIRMAN (SHRI S. N. MAZUMDAR): Mr. Vijaivargiya, you will continue tomorrow.

The House stands adjourned till 11 A.M. on Tuesday, the 15th May, 1956.

The House then adjourned at five of the clock till eleven of the clock on Tuesday, the 15th May 1956.