

- | | |
|---|------------------------|
| 13. The Appropriation (Railways) Bill (Supplementary Demands for Grants). | 1 hour. |
| 14. The Delhi (Control of Building Operations) Bill, 1955. | 2 hours. |
| 15. The Insurance (Amendment) Bill, 1955. | 2 hours. |
| 16. The Indian Tariff (Second Amendment) Bill, 1955. | 1 hour and 30 minutes. |
| 17. Discussion on the Working of the Preventive Detention Act. | 5 hours. |

The discussion on the Report of the States Reorganisation Commission will commence on the 19th December 1955.

In order to be able to complete this programme by the 23rd December 1955 (the date fixed for the close of the current session), the House should also sit on Saturdays and dispense with lunch hour as and when required.

THE HINDU SUCCESSION BILL. 1954—continued

MR. DEPUTY CHAIRMAN. Tomorrow morning the hon. Minister will be replying to the debate. Now we have just one hour more. But if the House so agrees, we can sit till 6 O'clock.

SHRI J. S. BISHT: Sir, there is a meeting of the Party at 5 O'clock.

MR. DEPUTY CHAIRMAN: So we have only one hour more, and I would appeal to the hon. Members to take not more than ten minutes each.

SHRI JASPAT ROY KAPOOR (Uttar Pradesh): What is the time allotted for the consideration of the S.R.C. Report?

MR. DEPUTY CHAIRMAN: It will commence on the 19th December

SHRI JASPAT ROY KAPOOR: How long will it go on?

MR. DEPUTY CHAIRMAN: We are expected to close on the 23rd. No time has been fixed. Yes, Sardar Raghbir Singh Panjhzari.

सरदार रघुवीर सिंह पंचहजारी : माननीय उपसभापति जी, मैं इस बिल को देखकर इसलिए हैरान हूँ कि दुनिया में अमन को कायम रखने वाले हमारे नेता किस तरह से अपने ही घर में अशान्ति को कायम रखने के लिए इस बिल को हमारे सामने ला रहे हैं। कौन नहीं जानता कि सदियों से हम अपनी बहिनों को दंडियों की तरह पूजते चले आ रहे हैं, इसलिए पूजते चले आ रहे हैं कि हमेशा बहिन अपने भाई का भला चाहती आई हैं, भाई भी हमेशा बहिन के साहाय्य के लिए, बहिन की इज्जत के लिए, बहिन के परिवार के लिए हर तरह की कर्बानियाँ करने से गुर्रज नहीं किया करता। कौन नहीं जानता कि हिन्दुस्तान में डावरी सिस्टम की लानत काफी असें से चली आ रही है, बड़े से बड़ा दहेज अपनी बहिन की शादी के लिए हमें देना पड़ता रहा है, बाप ने अपनी लड़की की शादी करने के लिए अगर अपनी सारी जायदाद भी गिरवी रख दी और उसके कर्जे को उठाकर भाई ने अपनी बहिन की शादी की तो भाइयों ने तमाम उम् उस कर्जे को अदा करके अपनी बहिन का न सिर्फ वह कर्जा ही छुड़ा दिया बल्कि हमेशा के लिए अपनी बहिन के परिवार के लिए हर शादी पर, हर खुशी पर, उसको मदद देता रहा और उसका परिवार सुख मनाता रहा। यही नहीं बल्कि जब भी भाई भाइयों में झगड़ा हुआ करता था और अब भी होता है तो बहिन आकर बीच-बीचाव करती हैं। झगड़ा इस प्रकार के होते थे कि जैसे आपस में बटवारे का झगड़ा है, जायदाद और जमीन का झगड़ा है, तो बहिन बीच में आकर बटवारा ही नहीं कर देती थी बल्कि भाइयों के सारे कुटुम्बों को लड़ाई झगड़ा से बचा दिया करती थी। इस तरह वे भाइयों को सर फुटौल्ल से बचा लेती थी। अब आप अपना यह बिल बनाकर भाइयों

[सरदार रघुवीर सिंह पंचहजारी]
 और बीहनों के एक दूसरे के सहारे को खत्म कर रहे हैं, इसको पास करके आप बीहिन और भाई के रिश्ते को हमेशा हमेशा के लिए खत्म कर रहे हैं। आज उस रक्षाबंधन के त्योहार को जो कि सदियों से बड़ी शान व शौकत से वे मनाया करते थे आप खत्म कर रहे हैं बल्कि उनके गले के लिए फंदा बना रहे हैं। आपको शायद नॉर्दर्न इंडिया के बारे में पता नहीं है। पंजाब और पेंप्सू में अब से कोई ३० बरस पहले की बात है कि कोई भी दहात का आदमी अपनी लड़की को जिंदा नहीं रखता था। लड़की को हाते ही उसका गला घोट कर मार दिया जाता था और वह ऐसा इसलिए करता था क्योंकि वह सोचता था कि मैं किसी स्ट्रेंजर का श्वसुर या साला क्यों बनूँ। लेकिन हालात ने पलटा खाया और लोगों ने अपनी लड़कियों को पालना शुरू किया। मैं अर्ज करूँ कि मेरी अपनी ससुराल में मेरे श्वसुर की जो बीहिन थी वह पहली लड़की थी उस गांव में जो जिन्दा बची, उससे पहले कोई लड़की वह रखा ही नहीं करते थे। यह हालत थी पेंप्सू और पंजाब में। तो यह जो साले और श्वसुर होंगे उनके बारे में जब उन लोगों को मालूम होगा कि एक स्ट्रेंजर आकर हमारे बापदादा की कमाई पर आ कर कब्जा करेगा, तो किस तरीके से वे टॉलरेंट कर सकेंगे एक स्ट्रेंजर का अपनी जायदाद और जमीन पर कब्जा करना। हमारे दहातों में यह कायदा है कि कहीं जमीन एक मरला या थोड़ी सी भी बंट कर इधर से उधर हो जाय तो कत्ल और हत्याएं हो जाती हैं। इसलिए वे लोग किसी तरीके से यह बर्दाश्त नहीं कर सकेंगे कि एक स्ट्रेंजर आकर उनकी जायदाद पर काबिज हो जाय, वह काबिज ही नहीं होगा बल्कि आप देखेंगे कि लड़की को अपना शेरर तो मिलेगा और श्वसुर या खाविन्द की जमीन में भी शेरर होगा। तो लाजिमी तौर पर वह जो खाविन्द होगा वह अपनी बाइफ को किसी न किसी तरीके से तैयार करेगा कि तुम्हारी जायदाद यहां बना देंगे इसलिए यहां अच्छा मकान बनाने के लिए तुम्हारी जो जायदाद मैंके की मिली है उसे बेच दो। नतीजा यह होगा कि उस जमीन

जायदाद की कीमत तो घर वाले ज्यादा नहीं देंगे लेकिन उस फौमिली का जो दुश्मन होगा वह उसके लिए ज्यादा से ज्यादा पैसे देकर उसे खरीद लेगा महज इसलिए कि मैं उसको तंग करूँ और उसकी जायदाद पर काबिज होऊँ। इससे यह होगा कि जो जायदाद खरीदगा उसको कब्जा नहीं मिलेगा और बेचने वाली बीहिन को भी और दामाद को भी मार डाला जायगा और उसके साथ लेने वाले को भी मार देंगे। इसलिए मैं समझता हूँ कि यह बिल बनाकर आपने हर एक घर में, हर एक मोहल्ले में, हर एक गांव में बिलकुल एक नया लड़ाई का काम शुरू कर दिया है। एक तरफ आप चाहते हैं कि दहातों में सीलिंग लागू कर दी जाय। मेरी मैं नहीं आता, सीलिंग मुकर्रर कैसे करेंगे। दूसरी तरफ आप कहते हैं कि साहब, जो खुदकाशत करेगा वह ही जमीन का मालिक हो सकता है, जो आदमी खुदकाशत नहीं करेगा उससे जमीन छीन ली जायगी।

श्री एच० बी० पाटस्कर : इस लॉ का उसका ऊपर कुछ असर नहीं पड़ेगा, ऐसा मैंने बताया था।

श्री रघुवीर सिंह पंचहजारी : वही बात अर्ज करता हूँ कि इस लॉ का उस पर असर पड़ेगा। दहात में ज्यादा से ज्यादा लोगों के पास जमीन और मकान होते हैं, मकान तो कच्चे होते हैं उनको तो कोई लेगा नहीं, लेकिन जमीन १००० से लेकर १०,००० रु० एकड़ तक होती है और जमीन का बंटवारा जरूर होगा। जब जमीन का बंटवारा होगा तो आपकी सीलिंग कहां रह जायगी। इसलिए आपको इस बिल को बनाने से पहले यह सोचना चाहिए था कि दहात के जमींदार या दहात के किसान, दहात के वे जमीन वाले किस तरीके से अपनी जमीन पर काबिज रह सकते हैं और किस तरह से वह बंटवारा होगा हालांकि जब लड़की की शादी हो जायगी तो उसका खाविन्द खुदकाशत करेगा। लेकिन वह लड़की जिस मैंके में जमीन मिल जायगी वह खुदकाशत नहीं कर सकेगी। इसी तरीके से अगर एक आदमी के पास एक मकान है, उसमें चार

भाई रहते हैं, तो उसमें बहनोई को जो कि स्ट्रॉजर है हिस्सा दे दिया जायगा तो लड़ाई भगड़ा बना रहेगा। इसीलिए अगर आपको वाकई यह कानून बनाना है तो बरायें मिहरबानी इसे शहरों तक ही महद्द रखिए क्योंकि शहर के आदमी बड़े समझदार होते हैं, वे जानते हैं कि अपनी प्रॉपर्टी को किस तरह से महफूज रखा जा सकता है। वे अपनी जायदाद को खुद खरीदेंगे, और बाद में लड़की को एक तरफ करके बच्चों को देकर या बच बाच कर चले जायंगे। ईहात के गरीब आदमी और जायदाद बना नहीं सकते हैं। जो बाप दादा की जायदाद चली आ रही है, उसी पर उनको गुजर करना है। उससे आगे न तो जायदाद बनायेंगे और न बिल करेंगे। इससे इससे ज्यादा नुस्खाने के लोगों को होगा। अगर दहातों में सर पर खर्च करना चाहते हैं, तो बेशक यह कानून बना दीजिये। इससे नतीजा यह होगा कि आप बहन भाई के रिश्ते को हमेशा के लिये खत्म कर देंगे।

SHRI SARDAR SINGH OF KHETRI (Rajasthan): Mr. Deputy Chairman, I rise to support this Bill and to welcome it. I say "to welcome it" because, as has already been pointed out by my hon. friend, Dr. Kunzru, for several years the progressive section of the society in this country has been trying to pass a measure of this kind and always by various manoeuvres obstacles have been put in the way and always the object has been frustrated. But the degree of progress in the movement of public opinion from the earlier years has been such that you will find in this debate hardly anybody daring to oppose the Bill in principle. Still there are underlying currents, as you have seen from the speech of the hon. Member who has just spoken, which oppose the principle of giving women equal rights with men in the matter of succession and inheritance to property. I congratulate the hon. Minister for Legal affairs, therefore, that he has at last established the principle very clearly that women must have the same rights as men to inherit property. That, I think, is a

big achievement in this Bill. Whatever faults there may be in actual execution, I think that in itself is an achievement which we can be proud of.

Now, Sir, I shall be very brief because there are only two matters which I wish to mention. One, of course, is this very controversial clause 6 with regard to coparcenary. I am quite clear in my mind that coparcenary property must be made subject to this law, and at the same time I am equally clear that with regard to this Explanation, clause (b) must go. The entire matter is not free from doubt and difficulty. As the hon. Member, Dr. Kunzru, pointed out, either you abolish Mitakshara and replace it by Dayabhaga or if for various reasons you feel you cannot do it, the only alternative is that at least clause (b) of the Explanation must disappear. That is to say, once a member of the coparcenary has divided and gone away, he must neither be allowed to come back nor must there any question of his share being considered for the purpose of calculating the shares of the successors. The only alternative, as far as I can see, is that the remaining property must then be treated as one unit for the purpose of division between the remaining heirs, whether they are males or females.

Now, Sir, there is one other matter of principle which I wish to raise and I do this because to my mind it is essential that, when we are legislating on a matter of this type, that is to say with regard to succession and inheritance, we must think in terms of a principle which is basic. Now, we have already acknowledged the fact that women are to have equal right with men with regard to succession. We have already under this measure further acknowledged the fact that for various economic and other reasons our society is moving from the system of Hindu joint family to individual families. That recognition

'Shri Sardar Singh of Khetri.]

this measure does not hinder; this measure, if anything, supports it. But there is a third matter of which I find no mention either in the Bill or in the speech of the hon. Minister or in the various speeches which we have heard today, namely, that we must assert the right of the State to be the general inheritor of property. Now, in general terms no doubt hon. Members may feel that that right is already there. In other words, if there are no heirs, the State should inherit the property, but in the schedule the list of heirs is so long that I don't see any chance of the State inheriting any property at all. The Schedule itself consists of two classes, in which you have about 20 heirs. We have also put in the agnates and cognates, and by the time you actually exhaust the list of heirs, the chances of the State inheriting anything will be one in a million. What I am proposing now is not as drastic as hon. Members may believe it to be. After all, in first place, a man can always dispose of his property by gift. In the second place, he can always dispose of his property by making a will, in other words by testamentary disposition. This Bill in no way takes away or detracts from these two methods which every individual has for disposing of his property. This Bill only operates when a person is either careless enough not to dispose of his property by testament or he does not sufficiently care for any individual to make a will in his favour. Only then does this law come into operation. Now, surely it is not too much to expect that we should not allow relatives extending to tenth degree, perhaps 20 degrees or 30 degrees removed, to inherit the property. We know that in a number of countries this position exists that, when there is a case of intestacy, one method of dealing with the position is that you have to pay a heavier death duty. In other words, the principle on which you work is that, if a man does not care sufficiently for another individual to make a will leaving his property to that indi-

vidual, then the State certainly has a right to take a greater share of the property than it would have had, had he made some such disposition. Therefore, to my mind, two methods are open which we should seriously consider for incorporation in this Bill. One of course is the clear-cut simple method of ruling out the agnates and cognates and confining ourselves only to the present schedule, although I would be in favour of ruling out one or two categories in Class II. The other method, if you feel this one is too drastic, is that we can have a clause whereby death duties are graded; that is to say, when it comes to some distant heirs inheriting, the amount of death duties should be correspondingly higher.

There is no use, Mr. Deputy Chairman, in our talking in terms of Socialist pattern of society if we do not take advantage of this opportunity to assert and assist very clearly, the right of the State to be the general inheritor of property.

श्रीमती मायादेवी छत्री (पश्चिमी बंगाल) :

उपाध्यक्ष महोदय, आज यह बिल संसद के सामने समाज के उत्थान और नारियों के उद्धार के नाम पर आया है इसका मैं स्वागत करती हूँ, परन्तु जब मैं सोचती हूँ कि इस बिल से हमारे समाज का और नारियों का कितना उत्थान हो सकता है तो इसे केवल समाज की जड़ को हिलाने वाला और एक रोग फैलाने वाला ही देखती हूँ। हम स्त्रियों के राइट्स के पीछे चलने लगे हैं, इक्वल राइट्स के पीछे चलने लगे हैं। इक्वल राइट्स का अधिकार कांस्टीट्यूशन से हमें मिला है तो फिर इन सब धाराओं को ला कर हम क्यों वॉमनस्य बढ़ा रहे हैं और वह वॉमनस्य किस के साथ बढ़ा रहे हैं? अपने पिता के साथ, अपने भाई के साथ और अपनी माता के साथ बढ़ा रहे हैं। आज घर घर में लड़की की शादी के लिये कितनी दिक्कत है। न मालूम किस तरह से लोग लड़की की शादी कर रहे हैं, अपना सब कुछ बेच कर के, अपनी जायदाद की बिक्री कर के लड़की की शादी कर रहे हैं। इस पर भी अब

आ उनके ऊपर डबल बोझ डाल रहे हैं। एक तरफ तां लड़की और लड़के को समान अधिकार भी देना है और दूसरी तरफ उसकी शादी में खर्च भी करना है। लड़के और लड़की दोनों को पढ़ाना है, लड़के और लड़की दोनों की शादी करनी है और फिर लड़की के लिये दहेज भी देना है। यह जो दहेज देते हैं वह खुशी के साथ देते हैं, किसी आईन की वजह से नहीं देते हैं, खुशी से दहेज देते हैं। इसलिये देते हैं कि लड़की दूसरे के घर में जा कर भी खुशी से रहे। किसी आईन के कारण या जबरदस्ती की वजह से नहीं देते बल्कि खुशी और आनन्द से देते हैं। तां फिर माता पिता पर और कानूनी बोझ डालना मेरी समझ में नहीं आता है। आज तक लड़की को जो दहेज मिलता है वह खुशी से एक कन्याधन के रूप में, दान की तरह से, मिलता है लेकिन अब अगर उसको आईन के मुताबिक मिलेगा तो वैमनस्य बढ़ेगा। कल से उसको जो मिलेगा वह हक के रूप में मिलेगा और आईन के मुताबिक वह अपने राइट को क्लेम करेगी। अगर लड़की अपने माता पिता और भाई के ऊपर ममता रखती है और उन पर बोझ डालना नहीं चाहती तो वह क्लेम नहीं करेगी लेकिन उसका जो हसबैंड है, प्रतिनिधि है, वह कहेंगे कि तुम क्यों अपना हिस्सा छोड़ती हो, तुमको लेना ही होगा। उसका जो प्रतिनिधि हसबैंड होता है वह कहेंगे कि हम लेंगे और लड़ कर लेंगे और कोर्ट में जायेंगे। तां इस तरह से भाई और बहन कोर्ट में जाने लगेंगे और झगड़ा होने लगेगा और वैमनस्य फैलने लगेगा। जब ऐसा होगा तो फिर हमारा समाज कैसे आदर के स्थान पर रहेगा जो कि परम्परा से चली आ रही है ? हमारा हिन्दू समाज किस आधार पर रहा है ? वह सत्य के आधार पर, प्रेम के आधार पर और भाई चारों के आधार पर ही रहा है। वह आधार टूट जायेगा और आपस में प्रेम नहीं रहेगा, भाई और बहन में प्रेम नहीं रहेगा। लड़की पैदा होते ही भाई के मन में यह होगा कि यह हमारा हक छीनने वाली है और बहन यह समझेगी कि हमारा भी पतृक सम्पत्ति पर पूरा हक है। हम लोग यह न भूलें कि हमने हिन्दू मीरज और डाइवोर्स बिल भी

पास किया है और स्पेशल मीरज बिल भी पास किया है। जब लड़की बड़ी होगी तो वह कहेंगी कि मैं अमुक लड़के के साथ स्पेशल मीरज एक्ट के मातहत शादी करूंगी और मैं अपना हक चाहती हूँ। उसको चाहे बिक्री कर के दो या चाहे जैसे दो, हमें हिस्सा देना ही पड़ेगा। तां उस वक्त किसी तरह से भी उसको हिस्सा देना ही पड़ेगा। आपने पास कर दिया है कि वह स्पेशल मीरज एक्ट के अन्दर शादी कर सकती है और अब इस सर्वेसेशन बिल के अनुसार वह हक भी ले सकती है। इस तरह से वह स्पेशल मीरज एक्ट के अनुसार शादी के इस बिल के मातहत अपना हक भी मांगेगी। आप जानते ही हैं कि आज कल प्रापर्टी क्या रही है, और सम्पत्ति क्या रही है जो कि हम सभी को हिस्सा कर के दे सकें। पतृक सम्पत्ति तो रहने वाली नहीं है। वह तो रहेगी नहीं, जो कुछ रहेगा वह सिर्फ रहने का मकान ही होगा, ड्रवेलिंग हाउस ही रहेगा। ऐसी हालत में जो बैठने के लिये घर है उसको भाँ बँका कर के उसे हिस्सा देना होगा। अगर बिक्री कर के नहीं देते हैं तो लड़की का जो परिवार है, हसबैंड है, फादर इन ला और मदर इन ला है वे सब आ कर उसी घर में रहेंगे और अपना हक लेंगे। इस परिस्थिति में बेचारी लड़की की और उसके पिता या भाई की क्या अवस्था होगी ? क्या वे इस हालत में सुखी रहेंगे ?

यह बिल बहुत ही काम्प्लीकेटेड है। मेरी प्रार्थना है कि इस में जितने क्लोज़ हैं उन सब को फिर से दुहरा कर यह देखना चाहिये कि किस किस को निकालना है और किस किस क्लेज को आगे बढ़ाना है।

बहुत से मॅम्बर क्लेज ६ के बार में बोल चुके हैं। मैं उसके बार में ज्यादा कहना नहीं चाहती हूँ लेकिन फिर भी एक बात रखना चाहती हूँ। इस क्लेज में यह बात रखना चाहती हूँ कि लड़के के समान लड़की को भी पूरा हिस्सा मिलना चाहिये लेकिन कब ? उस वक्त तक जब कि वह शादी करने की उम्र से ज्यादा हो जाती है और कुंवारी हो रहना चाहती है। अगर

[श्रीमती माया दबी चेत्री]

लड़की घर में ही रहना चाहती हैं तो उसे भाई के बराबर हिस्सा मिलना चाहिये, नहीं तो नहीं मिलना चाहिये। अगर ऐसा नहीं होगा तो लड़की जब विवाह करने की उम्र की हो जायेगी तब अपना कलम करने लगेंगी और कलम कर के अपना पूरा हिस्सा लेकर विवाह करने में समर्थ होंगी। हां अगर कुआरी रहना चाहे तो फिर लड़के के बराबर ही हैं और उसको भी बराबर का हक मिलना चाहिये। इसके लिये एज (उम्र) की भी लिमिट (सीमा) रखनी चाहिये।

दूसरी बात मुझे यह कहनी है कि इसमें यह लिखा है कि अगर लड़का इनवॉलड हो, डिफीक्टव हो तो भी उसको सम्पत्ति से वंचित नहीं किया जायेगा। मेरा कहना है कि जिस तरह से इस हालत में लड़के को सम्पत्ति मिलती है उसी तरह से अगर लड़की इनवॉलड हो, डिफीक्टव हो तो उसको भी सम्पत्ति मिलनी चाहिये। जिस तरह से अगर लड़का डिफीक्टव है, इनवॉलड है तब उसका देखने वाला कोई नहीं होता है और उसको सम्पत्ति मिलती है उसी तरह से अगर लड़की डिफीक्टव पैदा हो गई, वह इनवॉलड हो गई, तो उससे शादी करने के लिये कोई नहीं आयेगा और वह अनाथ हो जायेगी। इसीलिये मेरा कहना है कि जिस तरह से लड़के के लिये प्राविजन रखा गया है कि उसको पूरा हक मिलेगा, उसी तरह से लड़की के लिये भी प्राविजन रखना चाहिये कि उसे पूरा हक मिलेगा।

MR. DEPUTY CHAIRMAN: It applies to both the son and the daughter because the word used in the clause is "person". It is a common gender.

श्री ज० रा० कपूर : जो आप चाहती हैं वह है बिल में। बेटा और बेटी दोनों पर अप्लाई होता है।

MR. DEPUTY CHAIRMAN: The clause says: "No person shall be disqualified". That means the daughter as well as the son.

श्रीमती मायादबी चेत्री : तब तो ठीक ही है। दूसरी बात है :

"A certain widow remarrying may not inherit as widows".

विडों को जितनी सम्पत्ति अपने मायके से मिली है वह उसको मिलती ही है और वह भी सम्पत्ति मिलनी ही चाहिए जो उसने अपने जीवन में अर्जित की है या उसे पितृक सम्पत्ति से मिली है या पति ने उसके नाम पर लिख दी हो।

तीसरी बात यह है कि विडों को, जब तक वह शादी नहीं करती हैं, अपने पति की सम्पत्ति पूरी मिलनी ही चाहिए। जब वह फिर शादी कर ले तो यदि वह जॉइन्ट फॅमिली सिस्टम वाले परिवार की विडो हो तब उसको पति की सम्पत्ति पर आधा ही हिस्सा मिलना चाहिए, पूरा नहीं मिलना चाहिए क्योंकि उस परिवार में सभी लोग अर्जन करते हैं, सभी कमाते हैं। इसीलिये उस हालत में वह पूरा हिस्सा ले कर के नहीं जा सकती। लेकिन यदि उस विडो के बच्चा, लड़की या लड़का हो, तो अपने पति की सम्पत्ति में उसे पूरा २ हिस्सा मिलना चाहिए।

(समय की घंटी)

एक और बात यह है कि legitimate and illegitimate सन्तानों के विषय में बहुत बहस हो चुकी है हमारे देश में। विवाहित अवस्था में जो बच्चे पैदा होते हैं उनको सम्पत्ति में कोई स्थान नहीं देना चाहिए नहीं तो समाज और खराब होता चला जायेगा। उनके बारे में यह पता नहीं होता है कि कौन उनका बाप है। लेकिन कल जब बाप मर जाता है तो और कोन एक स्त्री आ कर एक लड़के को लेकर खड़ी हो जाती है कि यह अमुक का लड़का है और सबूत पेश करती है तो उस वक्त और बंटवारे के समय कौन्सिलर उठ खड़े होने की सम्भावना होती है। इसके अलावा ऐसा करने से आदमी का मौरल खराब हो जाता है, जिस पवित्रता के सूत्र में बंध कर शादी होती है उसी से उत्पन्न संतान को पवित्र समझनी चाहिए और वही हकदार मानना चाहिए। जहां हमने बहुविवाह का निर्बंध

किया है वहाँ हम बैंकडोर खोल देने जा रहे हैं और ऐसी चीज करने जा रहे हैं जो हमें नहीं करनी चाहिए और बिल्कुल अनुचित समझना चाहिए।

आखिर में मैं यह कहना चाहती हूँ कि मदर का और फादर का स्थान एक होना चाहिए क्योंकि माता पिता से किसी तरह छोटी बड़ी नहीं हैं।

SHRI H. C. DASAPPA: Mr. Deputy Chairman, I rise to accord my warm welcome to this Bill as it has emanated from the Joint Select Committee. I expressed certain views at the time of its introduction. I must say that it has changed its form, its shape, its scope, its content, much beyond recognition now as it is presented to us before this House. I am afraid that though on fundamentals we may all agree, so far as certain of the details are concerned, there is room for considerable difference. I agree with most of my hon. friends who have supported this Bill. On the cardinal point, namely, of giving a share to the female heirs, the daughter..... and so on, there can be no difference.

SHRI K. S. HEGDE: What about the wife?

Shri H. C. DASAPPA: Yes, the widow and other female heirs.

SHRI K. S. HEGDE: The first widow.

Shri H. C. DASAPPA: About that there could be no difference of views. This view had met with a large amount of opposition in the beginning but, thank God, the climate for the reception of this has so agreeably changed that today, it looks as if we are vying with one another in trying to push through this Bill and have it placed on the Statute Book as early as possible.

Sir, I remember referring to what some of the States had done in respect of giving a share to the females during the earlier years, Baroda for

instance and Mysore in particular of which I am aware. It was in the early thirties that Mysore changed the law the Hindu Law of Succession in Mysore and gave a definite place to the female heirs in regard to succession, including a share in the coparcenary property. I am only mentioning this just to show that there is nothing extraordinary or nothing strange about giving a share in the coparcenary. Whether joint family or coparcenary system should continue and that Mitakshara system should also continue in the land, is a matter on which there may be difference of views. But what I say is, if it does continue, I think it is perfectly right that we should include the right of the female heir also to get a share when a division takes place in a coparcenary. I welcome the idea of Joint Select Committee to give the female heirs a share in the coparcenary also and I am not in favour of the exclusion of the joint family property from the scope of this Bill.

I would also say one or two words about the result that might flow from giving this right to the daughters. It has been said that there will be a lot of fragmentation of holdings. Already our system is such that it permits of a great deal of fragmentation. Simple arithmetic will show that there will be a great deal more of fragmentation with the change. But I am one of those people who feel that fragmentation itself may ensure to the good of the country, because a good many people cannot stick on to the land as though that was the only means of livelihood. When the land gets fragmented to that extent, a good many of the people who are now depending solely on the land would try to go out of those lands and try to build up their own livelihood in other occupations. Secondly, there is the charge that the woman will not be able to look after the property so well. My experience, however, has been that when there are these male members in a coparcenary, in many a case the estates are ruined. I am not saying that it is a general trend

[Shri H. C. Dasappa.]

among males not to protect or safeguard their **properties**.

Especially in the Malnad, you know, Sir, that men sometimes race through their lives and ruin the properties. When the woman takes charge of the estate after the death of the male she re-builds it practically and rehabilitates the estate which has been wasted by the man. It is altogether wrong to say that the men are more competent and more capable of looking after the properties than women.

First of all, I would like to deal with this question of continuing the Mitakshara system in our land. When we are going to have such a great and historic reform, which is really an epoch-making reform, a thing which really gives a charter to half the population of this land, why should we be very supercilious about giving up the coparcenary rights and the mitakshara system? I myself do not understand. It is fast dying out and I think it would be an excellent thing if we did away with the coparcenary system and adopted the Dayabhaga system.

As regards the shares, in Mysore we excluded the married daughters from having a share of the assets and, to the unmarried female heirs we provided half the share of a son. There is a certain amount of logic about it because, with regard to the married daughters, we have got to spend a lot. In addition, we also have to give her something in the shape of presents, gifts, etc. That way, her share would be much more than what she would ordinarily have got as her share. Therefore, to put the married daughter and the unmarried daughter on the same scale and give them the same share may not be quite logical or fair. Yet, I am afraid we have got to accept this reform as it simplifies the position and we do not have to make any difference between the married and the unmarried daughters.

Another matter is this: If we think of protecting the rights of sons and grand sons when a male person inherits the property, that is to say, in the case of a joint family property in which the sons and grand sons have a claim by birth when the father or the grand father, as the case may be, inherits property from an ancestor, we do not confer the same rights on the daughters' sons when a daughter inherits property. I do not know whether the hon. Lady Members will ever approve of this kind of a difference in the rights that accrue to the family members. It is one thing when a male member inherits and a different thing when a female member inherits and, therefore, that is a matter I think which deserves being looked into.

As regards the honoured position that is given to illegitimate children I agree that it should not find a place on this Statute. It is the responsibility of the States to look after all children in the country, whether it is a question of legitimate or illegitimate children. Every child born in the State has a right to be looked after by the State but here it is altogether wrong to accord special privileges to the illegitimate children.

There is only one other matter to which I would like to refer, if you permit me, and that is with regard to the right of residence. I agree with the hon. Mr. Kunzru that it does not refer only to the right of the daughters to come and stay in the dwelling house of her parents. This right is given to all female heirs so much so that if you turn to Class I, you will find that a daughter of a pre-deceased daughter can have the right of residence in the family of her father, in the family of her maternal grand father and in the house in which she marries. So, she will have three places of residence to choose. That is altogether unnecessary and I think we can do away with it.

Secondly, in clause 25 we find that the female heir shall have the right

of residence therein. Does it mean that she can introduce other relations of hers, namely, her husband and her children into this family dwelling house? It is not clear. If it is a case only of that female heir by herself coming and saying, it is one thing; on the other hand, it may mean that she can come with her husband and her children. If it is so, then it is another anomaly. If all the female heirs coming under Class I can come and stay in the family dwelling house there will be hardly any room for the members of the joint family to live.

Then again it is said that her right to claim a share in the dwelling house will only arise when there is a partition. It may be that a person dies leaving only a son and a daughter in which the question of partition does not arise at all. What it says is that the right of any such female to claim partition of the dwelling house shall arise only if the male heirs, that is more than one heir, choose to divide their respective shares therein. There may not be more than one male heir in which case there will not be any question of a partition arising at all. Does it mean then that she cannot claim partition? I think this is altogether unfair. The daughter should have the right to get her share allotted if there is only one son and one daughter.

Clause 6 says that the question of partition arises only when a man dies. Supposing the father and all the sons partition, why should not the daughters in the family be entitled to get their shares along with the sons? You will see, Sir, in the Mysore law, it was enacted that at the time of a partition, the daughter must get such and such a share. Irrespective of the fact that a male person dies in a coparcenary, when there is general partition, it must be open for the daughter to have her share demarcated and she must get her share. I also agree that (b) of Explanation is absolutely misplaced and must go altogether.

I welcome this Bill

DR. W. S. BARLINGAY: Mr. Deputy Chairman, at the fag end of the discussion on the consideration stage of the Bill, it is not necessary to repeat the many excellent arguments that have been advanced in favour of this Bill but, I am surprised to find that although several most excellent speeches have been made in this House, none-the-less, some of the prejudices against the Bill continue to remain. If I may say so, one such prejudice you may find with regard to the rights of the so-called illegitimate children. I think it has been very well said that the relationship between a man and a woman may be legitimate or illegitimate. It is a perfectly valid concept. But so far as the rights of children are concerned, the concept of legitimacy and illegitimacy does seem to me absolutely out of place. It does seem to me, what in logic is called, nonsense, this concept of illegitimacy of children. I have said in my Dissenting Note that I am not in favour of doing away with this institution of marriage altogether. On the other hand I have said that we cannot encourage prostitution in this country. That would be against public morality. But then you have got to dissociate these two concepts altogether, the concept of the relationship between a man and a woman and the concept.....

SHRI K. S. HEGDE: And the result thereof.

DR. W. S. BARLINGAY: The result is inevitable. Whether the marriage is legitimate or illegitimate the result is inevitable and the whole point is: Why should we visit this sin, if you may call it so, of the parents on to the child? What is the justification for it?

SHRI J. S. BISHT: This is to preserve morality.

DR. W. S. BARLINGAY: What is this morality, I do not understand. I am not suggesting that we should do away with the institution of marriage. (Interruption). No, no. What I am suggesting is that so far as the relationship between a man and a woman

[Dr. W. S. Barlingay.]
is concerned, penalise them if they transgress their limits. By all means punish them. Imprison them or make further provisions in your laws. But I do not see any justification for punishing a child which is born of what is called an illegitimate wedlock.

SHRI K. S. HEGDE: Illegitimate wedlock?

DR. W. S. BARLINGAY: Yes, it is a wedlock which is illegitimate. The child is not illegitimate at all. What has the child done? Is this really a case of social justice? I would like this House to consider this very seriously. Now this was one of the points on which I really wanted to lay a good deal of stress. I am not suggesting, Sir, that this Bill is absolutely without any defect. So far as the various provisions of the Bill are concerned, I have pointed out in my Dissenting Note that the drafting is not proper and especially in regard to clause 6 I feel that the entire clause has got to be overhauled.

SHRI H. C. DASAPPA: May I know, Sir, if he objects to a share for the illegitimate children in the properties of their father even when he is known?

DR. W. S. BARLINGAY: Yes, certainly, most certainly.

SHRI H. C. DASAPPA: May I then know, Sir, why Dr. Barlingay has sent in an amendment at page 2 of the List of Amendments like this? "related" means related by legitimate kinship: Provided that illegitimate children shall be deemed to be related to their mother and to one another, and their legitimate descendants shall be deemed to be related to them, and to one another;***" He has omitted the father.

DR. W. S. BARLINGAY: I will come to the amendments later on.

SHRI H. C. DASAPPA: I ask you therefore whether you believe in giving to the illegitimate children a

share in the properties of the father if he is known. But you have omitted it in the amendment.

DR. W. S. BARLINGAY: I will come to that at the stage when we take up the amendments; leave me alone for the present. At this stage we are merely discussing the principles. Now what I was saying was this. If you look at the principles underlying this Bill, then there should be no objection whatever to the consideration of the Bill at all. At the present moment, in so far as the Hindu society is concerned, women do not have rights equal to those of men. Under the Constitution women are as good citizens as men, but then in actual practice you will find that their status in law is much lower than that of men and that for three reasons. First of all, there are certain classes of women. Take for instance unmarried daughters who have no right to property at all. Now if there are in this State people who have no right to property, then can they be called complete citizens? It is impossible to hold that view.

Then we come to the question of limited rights. So far as the wife is concerned, she has got only limited right in the property of her husband even under the Deshmukh Act. Now can we say that she is enjoying in that case the full rights of a citizen? Then we must remember that under the Constitution a woman has got to be given the same rights as a man, whether it is with respect to property or whether it is with respect to any other matter. They have got to be given the same rights and so long as they are not given the same rights.....

DR. P. C. MITRA: In the Constitution there is mention of only "status", not "right". "Status" and "rights" are different things.

SHRI KANHAIYALAL D. VAIDYA: Equality of status means "right" also.

DR. P. C. MITRA: "Status" and "rights" are different things.

DR. W. S. BARLINGAY: As I was saying, after all, this is the basis on which the whole Bill proceeds namely, that we have got to give equal rights. First of all we must give women right to property, secondly we must give them equal right to property, and thirdly there should be no limited rights at all in property because that will lead to endless litigation.

Sir, since there is no time at all at my disposal—there are only two or three minutes left for the House to rise—I will read with your permission five verses which I have composed in Sanskrit which will give you all the arguments in favour of the principles underlying this Bill and I will read out the translation also. These verses sum up virtually all the arguments:

“आत्मा भवेद्यदि सुतः खलु पुत्रनामा ।
अंगान्न किं प्रभवतीह सुताङ्गीपि पित्रोः ॥
धर्मः पितृयुग्मं धनेषु सुताधिकारः
दायं हरन्नु दूहितीति मूषा विवादः ॥”

I will read the translation: If the son is the soul of the man called पुत्र is it not equally true that the daughter also is born out of the bodies of the parents. Hence, if it is in consonance with our ancient law that the son should have a right in the property of the father, it is futile to argue that none-the-less the daughter should not have any such right.

धर्मः पुराण इति तन्नियमा अलोप्या ।
नाहीन्ति दायमबला इति यन्मतं च ॥
जानन्तु तदङ्गीपि परिवर्तयतीह लोकान् ।
धर्मान्तिस्था वेत्त पुराणतरो हि कालः ॥

The translation is this: Those who say that our law is very ancient and therefore its rules are not transgressable and hence women should

have no right to property, should know that Time is still more ancient and it changes both societies and social laws:

“लोका निसर्गविषमा इति यं वदन्ति ।
किं तैरिदं मनसि नैव विचारणीयम् ॥
भूषु तिष्ठति समांशतयाङ्गन्तरात्मा ।
धनाधिकारसमता जनतंत्रमूलम् ॥”

The translation is this: Those who say that there are natural differences between males and females, should they not pause to consider this in their minds that God stays equally in hearts of all beings and that equality of status in law is the basis of democracy:

“स्त्रीदायहेतुरचलस्य पितृधनस्य ।
व्यथ नु चीवद् भजने त्वधिका प्रवृत्तिः ॥
लोको भवेद्यदि पुनर्वीनताविहीनः ।
किं दायसंविभजनेषु तदा विरामः ॥”

If it is said that on account of giving to women the right to property, there would be an increased tendency of fragmentation of the father's property, the reply is: would this fragmentation stop it if there were no women in society at all?

As my learned friend, Mr. Dasappa, quite rightly pointed out, the real solution to the question of fragmentation, You cannot prevent fragmentation but to have consolidation. That is the only solution to fragmentation. You cannot prevent fragmentation by saying that women should have no property.

DR. P. C. MITRA: The tiller of the land is the owner of the land That is what the Bihar Government.....

DR. W. S. BARLINGAY:

“भुञ्जीत दायमबला किल जीवन्तं ।
पुंसां तु तेषु निरपेक्षतयाधिकारः ॥
एवं नु चेत् कुटिलदुर्व्यवहारपूर्ण ।
कौटुंबिकी विषमता कलहस्य मूलम् ॥”

[Dr. W. S. Barlingay.]

If it is argued that women should have the right to the enjoyment of the property only till her life time, while so far as the males are concerned their rights in property should be absolute, then let us understand clearly that such disparities in the family which are objectionable from the point of view of व्यवह. will lead to litigation.

Now, I will take only a minute or two, Sir. I am not one of those who think that our forefathers were just fools. I have got the greatest respect for our forefathers but I am not also of the view that all the wisdom was concentrated only in our forefathers and we are all fools. There were great men amongst our ancient people, and there are great men amongst us too even now.

SHRI D. P. KARMARKAR: No doubt about that.

DR. W. S. BARLINGAY: There is no question about that. It seems to me that with all the best will in the world nobody can possibly say that those forefathers of ours, however wise they may have been, could see 2,000 years ahead. It is not possible to hold that view. The real basis of our institution which I

venerate with all respect is that neither man nor woman did have any right to property at all so far as our ancient law was concerned. I am talking of the individual. It was the institution called family which had the right of property. Neither man nor woman had the right to property.

(Time bell rings)

Actually, you will find that even when there was partition the right did not go to a person; it again went to another institution called sub-family. That is really the basis of our institution. The whole civilisation of the Hindus was based on this that money was not associated with a sense of dignity at all. Money was completely dissociated from dignity and all the great values of life. That was the basis of our civilisation. And I do feel that at a later date we would be able to build up a civilisation the basis of which would not be money but moral and human values.

MR. DEPUTY CHAIRMAN: The House stands adjourned till 11 A.M. tomorrow.

The House then adjourned at five minutes past five of the clock till eleven of the clock on Thursday, the 24th November 1955.

Editor of Debates,
Rajya Sabha Secretariat