RAJYA SABHA

Friday, 25th November 1955 The House»met at eleven of the clock, MR, CHAIRMAN in the Chair.

CLARIFICATION BY SHRI BHUPESH GUPTA *RE* HIS REMARKS ON 22ND NOVEMBER 1955 ON THE POLICE FIRING IN BOMBAY.

SHRI BHUPESH GUPTA (West Bengal): Sir, I beg to draw your attention to the misleading reports which have appeared in the Press about my statement in the House on 22nd of November in connection with the Bombay incidents. All that I meant to convey was that whatever influence we have will be exerted for the restoration of peace. As a matter of fact, I read the *Tirrtes of India* report referring to our work :for the maintenance of peace even on the 21st of November.

MR. CHAIRMAN: That is all right. It will get. into the proceedings.

You were speaking yesterday on the Hindu Succession Bill. You continue.

THE HINDU SUCCESSION BILL, 1954—*continued*

CLAUSE BY CLAUSE CONSIDERATION— *continued.*

SHRI BHUPESH GUPTA (West Bengal): Sir, yesterday I was dealing with the question that what is called illegitimate children should be given the right of inheritance to the properties of the father. I was trying to meet a number of arguments advanced by hon. Members in this House and I attach importance to whatever they say in this matter, because I feel that we, most of us here, are actuated by the noble desire so to change the law that it is brought to conform to the requirements of our times.

Sir, one argument that I was meeting yesterday when the House adjourned was that the granting of the share to the illegitimate children would prejudice the rights of the legitimate children. I have pondered his matter last night and I regret to say that I could not bring myself to accept the position. Now, as you know, the legitimate children, as they are called, get the right of inheri tance by birth, that is to say, birth here is the crux of the matter. Now, the children who are called illegiti mate children, they are also born and they have also got the right of birth. Now if the right of birth attaches also to certain rights of properties in one case, why on earth it should be denied in another case? Now, since we are dealing in this case with a set of children, we should be concerned as to how and in what light their rights stand. There fore, Sir, I feel that they should not be denied. Now, if, for instance, I am born in wedlock and I get certain rights because of my birth, well, why this advantage should be denied to the other person who may not have been born in wedlock? He has also got his right and he has got a father also with property. This is not social justice. Therefore, if you go by the right of birth you cannot ignore this factor at all. Now how their interests should be prejudiced, I cannot understand. It is true that some more claimants will be there and to that extent the quantum of share for each one will be reduced. Suppose a father leaves behind two sons. Each of them in that case will get the same share, half the property each. Suppose the same father had four sons then too the shares of each will be equal but the quantum of each share in this case will be less. That way there is no point in discussing this matter. Now, why the son should be penalised, why the illegitimate son as he is called in this case, should be penalised in this connection? For what reason I cannot understand. We

[Shri Bhupesh Gupta.] all agree that no stigma of society should attach to the illegitimate children, as they are called. Everybody should be put on a par and society should not look down upon such children. In that case, Sir, if the right of property is not given, would it not, by implication, suggest that a certain amount of disability arising from a certain stigma has gone to them? This is what I ask. Therefore, Sir, if you really mean that no stigma should be attached to the fact that a person has been born outside the wedlock, I do* not see how you can prevent him from the- right of having his share in the properties left by his father. He is the rightful son of a father. He may not.be the lawful son of a father, but certainly he is the rightful son of a father. Therefore, if the law conflicts with human rights, with codes of social morality, with the principles which should guide our social existence, such law must yield before the requirements of nobler human considerations of what is right. That is what I would beg of the hon. Members to consider.

Then, there is another argument that if you grant them this right, it would amount to giving licence to certain people to lead a promiscuous life. I do not see how one can sustain this argument. What prevents a married person, what prevents, even for that matter, an unmarried person, from leading an impious life, I ask you? If one person is married, does it mean that, just because you are granting certain rights to the so-called illegitimate children, that person would became immoral, that person would go polygamous or begin to lead an immoral life? It does not follow from it at all. The question here is whether, when you are giving rights to the children, you are going to discriminate one set of children as against the other. That is the main point. Licence in society is not given that way.

Sir, our society has a very high moral structure and a moral standard. We had polygamy and all that sort of thing. There is no law to prevent people from leading an impious or dishonourable life, but how many people live such lives? 1 know there are some exceptions here and there, but that is not the» rule. We talk about our society. We are proud of the very high moral stature of our society and if so, how on earth this inheritance which has been handed down to us from past generations, come down to us through the corridor of history, shall be cast aside and thrown away just because by legislation we are giving right to the unfortunate children who are called illegitimate children in society, I would leave hon. Members to judge. I have better confidence and greater faith in our ancient civilisation and in our inheritance than anything else. I think, whatever we may or may not pass here, however we may or may not view matters, the culture of Indian society, its beauty, its majesty will survive everything. I say: have faith in such thing and trust your people. Leave it to them. Society will know how to look after itself and the society will not be a polygamous society or a society of people who lead a very dishonourable and dishonest life that way. Not at all. We have no such fear.

Then, Sir, there was another very interesting argument advanced against the provisions of this clause when Mr. Parikh said that if you grant right to property by birth to the illegitimate children, then there will be blackmailing in the society. Well, those who believe in blackmailing will continue this practice no matter what you have in the law. We are not dealing here with the criminal law, as how to deal with the blackmailers. We are dealing with those unfortunate children of our society, sons and daughters of the soil who for no fault of their own are given a stigma and are made to lead a life of social disability and disadvantage. Don't bring in the question of blackmail. You can blackmail anybody if you so like. If

a person is intent on blackmailing, he can always say anything and everything and do such a thing. Therefore, how on earth can one give that argument that if you grant this it will result in blackmailing?^ What pre>-vents me from saying today, if I am a blackmailer, with all this clause— and Mr. Parikh could have it—that so and so has got so many children, a hundred children, some in Italy, some in France, like that. What prevents me? Now, I can go and ask for money from him. He- should not pay me money; he should treat me with contempt. That is about the argument about blackmail. That argument is a little much too, I would not use the word, funny because we are not funny people. But it is something whica cannot stand to reason. He was concerned with the elections. Of course, he should be concerned with elections since they are coming very near. He said that at the time of the elections some people will say that such anil such a candidate has got so many illegitimate children. But what prevented the people from saying th same thing at the last general elections? It is not a question of property. It is a question of having or not having illegitimate children. Even it this provision is not here I can say that such and such a candidate has got ten illegitimate children and therefore, people should not vote fo him. The question of property does not come in here. The issue is whether a person has got illegitimate children or not. Nothing prevents people from- saying that he has got illegitimate children. So^ the argu-ment that has been advanced is irrelevant: it is fatuous. I hope that Mr. Parikh being a businesslike persoc would not take such arguments but that he will have better arguments at his command. Now, I can tell you that the people who go to vote are sensible people and they know how to cast their votes and they would not be misled by such things.

Then, another argument was advanced and I am very glad that Mr. Kunzru is here. I have great respect for him.

SHRI H. N. KUNZRU (Uttar Pradesh): I have come here to listen to him, Sir.

SHRI BHUPESH GUPTA: Sir, we attach great importance to what he says. The sum and substance, the burden of the song, of what he said was that the moral structure of the society would be undermined. Cer tainly, we should be concerned, while dealing with such matters, with the future of our society, particularly its moral structure. I am at one with him in that and I want to raise it to such a level that the moral structure is not such that it means advanta geous to some section of the people and disadvantageous to certain others, that it does not put a premium on people who indulge in corrupt prac tices but it puts others in jeopardy and difficulty. I am concerned with the moral structure of the society. How would it be less if we recognise certain rights in, property in respect of children born outside wedlock? Is it because that some people might lead this kind of life to produce ille gitimate children? Then, I would not have any faith in our society. If our society had been such where a large section of the people, let alone a majority of people, indulged in this sort of thing or is likely to indulge in this sort of thing, I would have been dead by now because I would have had no faith in such a society. One cannot live until and unless he has faith in his culture and in his society and its future. I do not suffer from my kind of apprehensions of .this sort. [have boundless confidence in our people and I think the structure of)ur society will be.....

SHRI H. N. KUNZRU: May I ask ny hon. friend one point? This is not i question of eloquence. I am glacl le is applying his mind to the real luestion that we are discussing. Sup-)ose the illegitimate children are)iaced on a par with the legitimate hildren in respect of inheritance of >roperty what will happen? They vill be entitled to live in the house

iShri H. N. Kunzru.] and they will be entitled to have their mother with them. Their father ruined the happiness of his wedded wife and neglected his children and now the illegitimate children are allowed to ruin the legitimate children by forced contact with them. Does he contemplate this sort of thing with equanimity? If the illegitimate children are to have a share in their father's property, will they not have a share in the coparcenary? How can you prevent it? The only way in which forced contact between illegitimate and legitimate children can be prevented is that either there should be a complete partition of the property or the widow with her legitimate children should go to her father's house and leave her husband's house completely to his illegitimate children.

SHRI R. U. AGNIBHOJ (Madhya Pradesh): May I ask Mr. Kunzru whether illegitimate children are—they are illegitimate according to the presumption of law—in fact illegitimate? Even legitimate children may be illegitimate and the illegitimate children might be the real children of the father.

SHRI H. N. KUNZRU: My answer to this question is very brief, Sir. If there is no difference between illegitimate and legitimate, then repeal the Hindu Marriage Act and say, 'free love, free field.' We love while we mate.

SHRI BHUPESH GUPTA: Sir, I listened to Pandit Kunzru's arguments with attention and I have no doubt in my mind that he is making impression in some sections in the House because he always adds weight to his arguments, but I beg to submit that when we are thinking of the family of the father of the legitimate children and all that, must the illegitimate children disappear from our view altogether[7] That is the question I put to him. Let him answer. What happens to t'"cm? They are illegitimate. In our society they are looked down upon in a particular way and they would not have any right in the property of the same father who was responsible for bringing them into existence on this earth while the other sons of the same father, ^just because they have been born in wedlock, will get this right. In certain cases it might lead to some complications in the family life. I concede that. Certain family arrangements might be disturbed, but they are such cd^iagencies which can be provided for by suitable provisions in the law, if you want to have it that way. May I know whether with all these things our family life is always very happy? Do we not find that in a family the brothers are quarrelling and making the life of the mother miserable? Do we not find partitions taking place and the entire fabric of family relations being disturbed? Do we not come across such melancholy spectacle and does it not hurt our hearts? Therefore, we have to have certain other arrangements to provide against such contingencies. We are concerned with those people who are born in this world but unfortunately not in wedlock, and who are likely to be frowned upon by society by the denial of property rights which is a very important thing. Sir, I do attach importance to what he is saying, but I would beg of him to appreciate the point of view that I am making at the other end. We are all concerned with the question of having a happy family life but we know for certain that as long as private property remains with all its complications, family life will continue to be disturbed as it has been disturbed all these years. Let us not go into that. I would therefore beg of hon. Members to consider this from the point of view of those people who are not unfortunately born in wedlock for no fault of theirs whatsoever. If I am born to a father I get everything but if my father commits a crime, why must I be penalised for it? Why must I? On the contrary, all the more sympathies should go to the persons who are born outside wedlock. The other son gets all the property,

becomes all the more happier for the

Inheritance of the property but the person who is born to the same lather but outside the wedlock is penalised by society. This denial of property rights to him is social injustice.

Then a point was made by an hon. Member—I think it was Mr. Tankha—who was reading out from the Soviet law, an American edition of Soviet law. I can tell you that if I want to read anything about India I would not be particularly bothered about reading a South African edition of Indian law. However, learned men should read all kinds of books. What *i* want to say in this connection is that Soviet society is a little different. Let us first of all have the right of work, right of employment. Private property stands on a different footing. Means of production is owned by society and not by individuals and all sorts of things are there. Let us not go into those things. We are con cerned with our own inheritance, our own society. We are trying to adjust things according to the requirements of our own times. That is what we are concerned with. When we estab lish a Soviet society, I shall take counsel with hon. Members there, and see to what extent we should modify such provision as is there in the Bill. But today, we are not concerned with the Soviet society. We are dealing with a society which has been our own peculiar inheritance, with all concepts of law, concepts of jurispru dence, sense of social values, private property and family relations. Let us deal with facts as they are and not dwell upon what is not there. Having regard to that factor, I think we should concede that right to the illegitimate children .....

SHRI N. D. M. PRASADARAO (Andhra): May I point out to Pandit Tankha, who quoted yesterday from the Soviet Civil Law, that here is a quotation from the Chinese law, article 15, of their Marriage Law.

MR. CHAIRMAN: When you get a chance you quote it. Do not interrupt now. Let Mr. Bhupesh Gupta conti nue.

SHRI BHUPESH GUPTA: I seek enlightenment from all quarters. "Article 15.—Children born out of wedlock shall enjoy the same rights a-children born in lawful wedlock. No person shall be allowed to harm or discriminate against children born out of wedlock."

This is what the Chinese Constitu tion has said. China is our next door neighbour and naturally we have very many things in common by way of civilization and culture.....

SHRI P. S. RAJAGOPAL NAIDU (Madras): It does not change the property rights.

SHRI BHUPESH GUPTA: I am not, as you know, at all dealing with other Constitutions here .....

MR. CHAIRMAN: But he raised it, that is the trouble.

SHRI BHUPESH GUPTA: Here I mention it only because that point was raised yesterday. Therefore, I would say that this thing should remain. As the position is, sometimes—on rare occasions—we have to defend the Government and here is an occasion when I am trying To defend the Government's Bill and its provisions. And I know that the hon. Minister, Mr. Pataskar, is very much interested in modifying the law, for improving matters. I ha~v? no doubt about it in this case. I am not so sure about the Law Minister, but I am certainly diffident .....

MR. CHAIRMAN: No insinuations.

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i SHRI BHUPESH GUPTA: He may be more interested in improving matters. I am not so sure. After all, I know he may be more interested, he may be quite better than Mr. Pataskar. But I have not heard him for a long time—therefore, I do not know. I do not mean any offence to him. Therefore, Sir, I would request the hon. Minister to consider it before he takes this into account. I would like to say that since we are changing

[Shri Bhupesh Gupta.] certain things for the better, since we are really going into the whole question, since we are altering the law of succession in a manner which is to be progressive and beneficial to the society at large, why not we have this provision also? It is for the good. If you make a big journey and then fatter when you are nearly reaching the goal, it is not good. Now, let us have this provision and if the society goes wrong on this count, if promiscuity develops in our society, if the monogamous system is really evaded and frustrated, we shall be the first persons to join with you in having this modified. After all, Parliament remains and I take it some hon. Members who sit in this House will reconsider this matter then. And, therefore, take this measure as it is. Do not change it. And if circumstances call for any change, we are there to apply our mind and surely make such changes as would be necessary. Sir, once and for all, let us do away with the stigma of illegitimacy in our society. Children are children. They are the sons of our land, they are the daughters of our soil; Their "birth history, their parentage, are undoubtedly important. But we are dealing with not an individual family, not with the conception merely of family relation. We are approaching the whole problem from a vaster and bigger social angle and from that angle, every one who is born within the boundaries of India, on our land, is a very legitimate son and daughter, no matter whether he is born in wedlock or outside the wedlock. Once we accept this position, we are challenged by the logic of facts that they should be conceded all such rights as are given to those who are called legitimate. Let us do even handed justice to all. Let us not take away the grace of a. good measure by falling victims to certain unnecessary fears and apprehensions. We have embarked on certain good social legislation. Let us pilot it with courage, with conviction, with confidence in our peple and let there be no ship-wrecking when we are about to reach the shore.

SHRI H. C. DASAPPA (Mysore) : Mr. Chairman, we have had a prolonged discussion on this subject and I think the opinion is preponderating-ly against the retention of the clause

श्री गोपीकृष्ण विजयवर्गीय (मध्य भारत) : सभापति महोदय, मैं यह कहना चाहता था कि मैं आम तौर पर प्रगतिशील विचारधारा का समर्थक रहा हूं, लेकिन कुछ मामलों में हम सोवियट संघ से आगे बढ़ने जा रहे हैं, जो अच्छी बात नहीं हैं । कल श्री तन्खा जी ने जिस किताब को कोट किया था वह रशियन राइटर "जोवस्की" की मालूम पड़ती हैं, जिसने सोवियट ला पर लिखा हैं । डाइवोर्स का मामला जो कि स्पेशल मैरिज एक्ट के सिलसिले में आया था उसमें डाइवोर्स बाई कांसेंट की बात उठाई गई थी । लेकिन जुलाई ८, १९४४ के सोवियट ला में ऐसा

"Divorce has been granted only by the courts and only for reasons which the courts deem justifiable."

Thus they have changed their law.

जो दूसरे कानून इंहेरिटेन्स के सोवियट संघ में हैं इसमें इल्लेजिटिमेट चिल्ड्रन को इंहेरिटेन्स नहीं मिलता । मदद देने की बात एक अलग चीज हैं, जिसके लिए सोवियट कानून

"There are, however, special features in the Soviet family law, as for instance, the aid given by the State to mothers of children born out of wedlock, after July 8, 1944."

अतः सोवियट संघ में जो कानून इंहेरिटेन्स इल्लेजिटिमेट बच्चों का हैं वह अलग हैं और उनको मदद देने की बात अलग हैं । किन्तु जहां तक हमारे अपने कानून हैं, उनके सम्बन्ध में सोवियट संघ से आगे बढ़ जाना कोई जरूरी नहीं हैं । उसमें इतना अन्तर होना चाहिये । इसलिए मैं इस बात को सपोर्ट करता हूं कि इल्लेजिटिमेट चिल्ड्रन को हिस्सा नहीं मिलना चाहिये ।

as it is, that is to say, illegitimate children should not be enabled to in herit to their father. That seems to be the greater volume of opinion in this House. Now, I want to just answer one or two points which my hon. friend, Mr. Bhupesh Gupta, referred to. Of course, he seems to be a great protagonist of most illegitimate causes and I am not surprised that he should be backing the illegitimate chil dren .....

SHRI BHUPESH GUPTA: Dees he mean, Sir, that a son who is born outside of wedlock is an illegitimate cause?

SHRI H. C. DASAPPA: Sir, may I continue?

MR. CHAIRMAN: Yes.

SHRI H. C. DASAPPA: Once we confer on the illegitimate children the same rights as we confer on the legitimate children, we have got necessarily to confer on them all other rights incidental to the right of their being treated as legitimate children. There is nothing in this provision, for instance, which can prevent an illegitimate son from claiming all the rights in a coparcenary just as any other male member in a coparcenary can claim. There is nothing in this piece of legislation to show that he cannot lay a claim. to all the coparcenary rights which a male member of the coparcenary can. Is this House prepared to confer such a right on the illegitimate son? That is the question which you have got to answer.

AN. HON. MEMBER: Also the daughter.

SHRI H. C. DASAPPA: Whatever applies to the son applies equally to the daughter also. I do not think that there has been any Member who has advanced such an extreme view as that. But the likely consequences of accepting the provision as it is, is that even in a coparcenary these illegitimate children—sons as well as daughters—get all the rights incidental to their' being members of a copar-cenary. That is number one.

SHRI V. K. DHAGE (Hyderabad): What are those rights?

SHRI H. C. DASAPPA: The right of survivorship.

SHRI V. K. DHAGE: Separate pro perty in a coparcenary property? Anything.....

SHRI H. C. DASAPPA: I will answer that point. If my friend, Shri Dhage reads Clause 6 as it is, he will see that "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 propertv shall devolve by survivorship upon the surviving members of the copar-cenary and not in accordance with this Act." Who are the surviving members of a coparcenary in a joint Hindu family? The father, his sons, his grand-sons and his great grand-sons are the surviving members of a coparecenary in the joint Hindu family. If once we say that 'related' means the illegitimate children of the father who is known, then this incidence of coparcenary property right accrues to the illegitimate child—obviously, the illegitimate son as well as probably, the illegitimate son's son, in case he dies in a coparcenary. This is the necessary conclusion that flows from accepting the definition of 'related' as is given in sub-clause (j) of Clause 3. That is one main thing. And what flows from that, my hon. friend Shri Kunzru has already said, the right of residence necessarily accrues to these illegitimate children. There can be BO better device found out to disrupt the decent family life than by accepting the definition like this and that is my contention. Therefore, I am afraid that we have not visualized in all seriousness the implications of the definition as it is .

SHRI .V. K. DHAGE: Will you please read the definition of sub-clause (j) on page 3? " 'related' means related by legitimate kinship."

SHRI H. C. DASAPPA: Provided it is only for females, never males. That

[Shri H. C. Dasappa.l is what I said yesterday. If only Mr. Dhage continues reading that subclause (j), he will understand 'related' means 'related by legitimate kinship.' Of that Mr. Dhage is right. He is supporting my case when he says 'related' means only related by legitimate kinship. But, unfortunately, the latter portion of the clause more or less swallows up the earlier entirely—namely 'provided' that illegitimate children shall be deemed to be related to their mother and to one another and also to their father, if known'. If a male member of a coparcenary has other mistresses in the house or anywhere else and beget children from them, it is very well known as to who their father is. Therefore, they get all the other rights incidental to the rights of the male members in a coparcenary if we recognize that position. Some have also said how far it will disrupt the decency of a moral life and practically dislocate the whole social fabric if ever we have this definition as it is. I ask this. Mr. Bhupesh Gupta said that there should be no distinction whatever between legitimate children and illegitimate children. If that is so, of course, the question is: Why marriage at all? Apart from that, the further proviso in the same clause restricts the right of the illegitimate children. What does it say?

> "Provided further that nothing contained in the preceding proviso shall be construed as conferring upon any such illegitimate children any rights in or to the property of any person other than any of the persons referred to therein ....."

that is the mother or the father if known—

> ".....in any case, but for the provisions thereof, such children would have been incapable of acquiring any such rights by reason of their being illegitimate children;"

which means to say that these illegitimate children cannot succeed to any of the collaterals. Why is that dis ability there? Why is it that Mr. Bhupesh Gupta did not plead for extending to all illegitimate children the various other rights which the law confers on legitimate children? He should have got an amendment to that effect. But.....

SHRI BHUPESH GUPTA: Why do you take my life on this score? When I come to that point, I shall deal with it.

SHRI H. C. DASAPPA: Why should not the illegitimate child inherit not only the father's or the mother's property but also the father's brother's property? All these rights are not Conferred upon these illegitimate children, but only the right to inherit from the mother and the father. So, even viewing it from the' point of view of logic and consistency, we find that it does not help us. Therefore, I think the original definition as was given at the time the original Hindu Code of 1948 was framed by people, I believe, who had equally applied their minds to this very serious problem, may stand as it is. And I strongly support my friend, Mr. Hegde's amendment that this sub-clause and 'also to their father, if known' should be removed.

श्री रामेश्वर अग्निभोज : सभापति महोदय, मैं इस बिल को इस दृष्टि से देखता हूं कि हमारे देश में नाना प्रकार की जातियां और धर्म हैं और यह बिल केवल एक धर्म के लिये बनाया जा रहा है, एक जाति के लिए बनाया जा रहा है । इस लिए हमें यह देखना है कि यदि हम यह कानून बनाते हैं तो इससे समाज का हित होगा, कल्याण होगा या इससे खराबी पैदा होगी । आप जानते हैं कि देश में वर्ण व्यवस्था ने, जाति पाति के भेद ने और विधवाओं को शादी न करने देने की मनाही ने हमारे देश के, हिन्दू धर्म के, हिन्दू जाति के, हिन्दू समाज के और हिन्दू घर के टुकड़े टुकड़े कर दिये हैं और उसका परिणाम यह हुआ है कि आज हिन्दू जाति विभाजित है, हिन्दू जाति से लाखों और करोड़ों लोग हिन्दू धर्म छोड़ कर विधर्मी हो गये हैं । मैं नहीं

कहता कि कोई भी धर्म अच्छा या बुरा हैं । परन्तु मैं यह कह रहा हूं कि हिन्दू धर्म के बन्धनों ने, हिन्दू धर्म की खराबियों ने, हिन्दू धर्म के दकियानूसी ख्यालात ने, हिन्दू धर्म के गिरे हुये दिमाग ने हमारे समाज को छिन्न भिन्न करके बहुत ही दुरवस्था में डाल दिया हैं । इस दृष्टि से यदि हम देखें तो हमें यह मानना पड़ेगा कि हमको समाज में कुछ ऐसे क्रांतिकारी परिवर्तन करने होंगे, ऐसे सुझाव देने होंगे जिन से वे बुराइयां निकलें जिन पर हम भावनावश, अभिमानवश या मूर्खतावश चल रहे हैं ।

मैं आपसे यह कहूं कि जो हमारे सामने यह लेजिटिमेट और इल्लेजिटिमेट, कानूनी और गैर कानूनी, बच्चों का सवाल पैदा हुआ, उस पर हमारे दोस्तों में मतभेद हैं । हमारे देश में, हमारे धर्म में, एक व्यवस्था हैं जिसका नाम विवाह हैं । चाहे वह विवाह राजी से हो या बेराजी से हो, एक दूसरे की इच्छा से हो या अनिच्छा से हो, परन्तु भेड़ और बकरियों के माफिक एक स्त्री और एक पुरुष को उस धर्म के बन्धन में बांध कर एक साथ अपना जीवन बिताना पड़ता हैं । हमारे देश में कोई इस बात को अस्वीकार नहीं कर सकता कि यहां लाखों, करोड़ों ऐसे कुटुम्ब हैं जहां पर कि स्त्री की पुरुष से नहीं बनती और पुरुष की स्त्री नहीं बनती । इस बात को छिपाने की कोई आवश्यकता नहीं हैं । इसको खुले दिल से मान लेना चाहिये ।

अब सवाल कानून का आता हैं । कानून क्या कहता हैं ? कानून कहता हैं कि यदि किसी पुरुष का किसी स्त्री के साथ विवाह हो और चाहे वह किसी की भी संतान हो वह उसकी जायज संतान मानी जायेगी । यह प्रिजम्पशन आफ ला हैं, यह हमारे हिन्दू धर्म का, कानून हैं । इसका अर्थ यह हैं कि यदि विवाह के पश्चात् स्त्री को लाइसेंस मिल गया कि वह विवाहित हैं तब वह हजार संतान भी दूसरे पुरुषों से पैदा करे पर वह सब जायज संतान हैं । परन्तु दुर्भाग्यवश यदि किसी स्त्री और पुरुष का सम्बन्ध ज्यादा गहरा हो, ज्यादा प्रेम का हो और सच्चा हो और उससे कोई संतान पैदा हो तो वह गैरकानूनी समझी जायेगी, नाजायज समझी जायेगी ।

तो मैं यह आपसे प्रार्थना करूंगा कि लेजिटिमेट और इल्लेजिटिमेट, जायज और नाजायज, संतान का भेद करना ठीक नहीं हैं । दोनों एक ही रक्त की संतानें हैं, एक ही पुरुष के दो अंश होते हैं, एक ही पुरुष के दो अंग होते हैं, दोनों एक ही खून के कतरे हैं । उसका एक कतरा कानूनी कहलाता हैं और दूसरा गैर कानूनी । यह मेरी समझ से बाहर की बात हैं । इसका हिन्दू समाज के लिये क्या परिणाम होगा ? एक ही कुटुम्ब में एक बच्चा ऐसा पैदा होगा जो अपने को हीन समझेगा और दूसरा अपने को ऊंचा समझेगा । इस ऊंच और नीच की भावना ने हमारे समाज में बहुत ही उपद्रव और विग्रह पैदा किये हैं और इसका परिणाम यह होगा कि जो लोग नाजायज संतान समझे जाने लगेंगे वे इस धर्म को छोड़ कर चले जायेंगे और इसको लात मार देंगे । वह समझ लेंगे कि हिन्दू धर्म वह धर्म हैं जिसमें मनुष्य की डिगनिटी, मनुष्य का अस्तित्व, मनुष्य का सम्मान, नाजायज कह कर ठुकराया जाता हैं । इसलिये हिन्दू धर्म में, हिन्दू समाज में रहना उचित नहीं होगा । परिणाम यह होगा कि इससे कन्वर्शन बढ़ेगा । आपने मौनोगेमी का कानून पास कर दिया हैं । उसका भी परिणाम यह होगा कि एक पुरुष जो कि अब तक एक स्त्री से शादी करने के बाद एक दूसरी स्त्री से भी शादी कर सकता था और दोनों स्त्रियों को विवाहिता बना कर के इज्जत के साथ रख सकता था वह अब ऐसा नहीं कर सकेगा । वह भी आपने बंद कर दिया हैं । (हंसी) यह कोई हंसने की या मजाक उड़ाने की बात नहीं हैं । मैं एक तथ्य की बात कह रहा हूं और उसका परिणाम यह होगा कि आपके समाज में जो स्त्रियां इज्जत के साथ नहीं रह सकतीं वे इल्लेजिटिमेट संतानें पैदा करेंगी । उसको कोई दुनिया में रोक नहीं सकता ।

श्री बरकतुल्ला खान (राजस्थान) : अब कहां रोक सकते हैं ?

श्री रामेश्वर अग्निभोज : हां, नहीं रोक सकते हैं और उसी का यह परिणाम हुआ है कि हमारे देश में करोड़ों की संख्या में ऐसी संतानें पैदा हुई हैं ।

श्री प्रे० थो० लेउवा (मुम्बई) : करोड़ों की संख्या में ?

श्री रामेश्वर अग्निभोज : जी हां, करोड़ों की संख्या में ।

दूसरी समाज में बुराई यह है कि यद्यपि आपने विडो रिमैरिज को कानूनी करार दे दिया है परन्तु समाज में विडो की फिर से शादी करना एक लज्जा की बात समझी जाती है, एक तौहीन समझी जाती है । इसका भी परिणाम यह हुआ है कि हिन्दू धर्म की लाखों स्त्रियां अपना धर्म छोड़ कर के विधर्मी हो गई हैं ।

श्री दंबकीनन्दन (मुम्बई) : मैं आपके द्वारा अपने मित्र से जानना चाहता हूं कि क्या सब इल्लेजिटिमेट चिलड्रेन का ही पाकिस्तान बना हुआ है ?

श्री रामेश्वर अग्निभोज : जी नहीं, वह तो लेजिटिमेट और इल्लेजिटिमेट दोनों का है । दुनिया में सब पाये जाते हैं । कहीं ज्यादा होते हैं और कहीं कम होते हैं ।

श्री दंबकीनन्दन : यानी पाकिस्तान में बहुत ज्यादा हैं ।

श्री रामेश्वर अग्निभोज : जी नहीं । मैं किसी देश का या धर्म का नाम नहीं लेना चाहता हूं । मैं तो यह कहना चाहता हूं कि हिन्दू समाज की कमजोरियों ने देश के और जाति के टुकड़े किये और उसका परिणाम यह हुआ कि करोड़ों लोग विधर्मी हुये । मैं तो आपको फैक्ट्स बता रहा हूं, आप उससे जो कुछ भी चाहें प्रिज्यूम करें । मैं तो आपको तथ्य बता रहा हूं ।

मैं आपसे पूछना चाहता हूं कि इस उत्तराधिकार की प्रणाली का बेसिस क्या है ? उसका बेसिस है कैपिटलिज्म, पैसा और धन और यह है कि वह धन उसी के खानदान को मिले । यह कैपिटलिज्म, यह पैतृक सम्पत्ति का विचार, जो हमारे समाज में घुसा हुआ है.....

श्री के० एस० हेगड़े (मद्रास) : लेजिटिमेसी में भी क्या कैपिटलिज्म है ?

श्री रामेश्वर अग्निभोज : हां लेजिटिमेसी में भी कैपिटलिज्म है । आप लेजिटिमेट को अपनी सम्पत्ति देंगे, लेकिन सोसाइटी को नहीं देंगे । इसलिये जो लोग सोशलिस्टिक पैटर्न आफ सोसाइटी का दम भरने वाले हैं उन लोगों से कहना चाहता हूं कि.....

SHRI R. P. N. SINHA (Bihar): Does t'.ie hon. Member mean that the society is built up of only illegitimate children?

श्री रामेश्वर अग्निभोज : मैं समझता हूं कि लेजिटिमेट और इल्लेजिटिमेट दोनों की सोसाइटी होती है । कभी कभी ऐसा होता है कि इन फैक्ट लेजिटिमेट सन वह होता है जिसको कि आप लेजिटिमेट नहीं कहते हैं, इल्लेजिटिमेट कहते हैं । और आप जिनको लेजिटिमेट कहते हैं वे इन फैक्ट इल्लेजिटिमेट होते हैं ।

By presumption of law you call them legitimate but in fact they are illegitimate. That is the fact.

SHRI K. S. HEGDE: How can you say that?

श्री रामेश्वर अग्निभोज : मैं जितना थोड़ा बहुत कानून जानता हूं उसके आधार पर कहता हूं । मुझे मालूम है कि यू० पी० का आदमी या महाराष्ट्र का आदमी तीन तीन साल तक दूसरी जगह नौकरी करता है, बम्बई में नौकरी करता है और उसके संतान पैदा हो जाती है । बम्बई में नौकरी करता है और लखनऊ में संतान पैदा हो जाती है और उसी का नाम चलता है ।

डा० पी० सी० मित्रा (बिहार) : यह कैसे होता है ?

श्री रामेश्वर अग्निभोज : आप सत्य को क्यों छिपाना चाहते हैं ? सच्चाई की जो बात है वह मैं कहना चाहता हूं । तो मेरे कहने का मतलब यह है कि हमें यह देखना चाहिये कि यदि एक पुरुष

की संतान हैं और वह मानता है कि यह मेरी संतान है तो फिर उसमें लेजिटिमेसी और इल्लेजिटिमेसी का कोई झगड़ा नहीं होना चाहिये। ऐसी हालत में कानून को भी चाहिये कि उसको बराबर का अधिकार दे। यदि आज के इस प्रगतिशील जमाने में भी हम कैपिटलिज्म के ऊपर, पैतृक सम्पत्ति के ऊपर, और इस तरह के दकियानूसी ख्यालात के ऊपर चलेंगे तो मैं आपसे कहता हूं कि आपका यह कैपिटलिज्म, आपका यह हिन्दू धर्म ज्यादा दिन तक इस दुनिया में नहीं ठहर सकेगा। मेरा यह आपसे कहना है।

You may differ with me but I am telling you the fact.

(Interruptions.)

MR. CHAIRMAN: Order, order. You go on.

श्री रामेश्वर अग्निभोज : श्रीमान्, मैं यह कहना चाहता हूं कि आप इल्लेजिटिमेसी को बिल्कुल हटा दीजिये और सब को लेजिटिमेट समझिये। संतान संतान है और जो संतान है वह आखिर संतान है, ऐसा मान कर चलना चाहिये। इसलिये पटास्कर साहब ने जो बिल में रखा है उसका मैं हृदय से समर्थन करता हूं।

श्रीमती शारदा भार्गव (राजस्थान) : सभापति महोदय, यह जो एमेंडमेंट होई साहब ने रखा है, उसका समर्थन करने के लिए मैं खड़ी हुई हूं।

अभी कुछ भाइयों ने इस एमेंडमेंट के खिलाफ और जो बिल में धारा दी गई है उसके पक्ष में कई कारण दिए हैं और अपनी राय दी जिस पर हंसी भी हुई, परन्तु तो भी उसके विषय में मैं कुछ कहने की आवश्यकता समझती हूं और इसलिए संशोधन का समर्थन करने के लिए खड़ी हुई हूं। अभी पिछले भाई ने जो इस विषय पर अपना भाषण दिया उसमें कुछ बातें तो ऐसी हैं कि जिनका जवाब देना ही बेकार है परन्तु कुछ बातें, जिनका मैं समझती हूं कि मुझे जवाब देना चाहिए, जवाब दूंगी। उन्होंने कहा है कि अवैध और वैध सन्तान में कोई भेद ही नहीं होना चाहिए। इसके माने तो मैं यह समझती हूं कि वे यह चाहते हैं कि विवाह भी नहीं होना चाहिए क्योंकि अवैध बच्चों को भी वैध मानने के पक्ष में वे हैं तथा इसके माने यह भी हुए कि विवाह की कोई सैंक्टिटी नहीं है, अतः विवाह करने की कोई आवश्यकता नहीं है और न कोई इस तरह के बन्धन होने चाहिएं। और यह कि कोई भी पुरुष जिस स्त्री को चाहे उसको अपने पास रख ले, जब चाहे निकाल दे, जब चाहे दूसरी स्त्री को, तीसरी स्त्री को और चौथी स्त्री को ले आकर अपने पास रख ले और मनमाने बच्चे पैदा करे। जैसा कि मेरी समझ में आया, शायद वे मोनोगेमी के भी पक्ष में नहीं हैं और कहते हैं कि यह बेकार की चीज है। इसके माने तो यह हुए, एक उच्छृंखलता देश में लाना और उसको रोकने के लिए किसी प्रकार के बंधन न होने देना। जो मर्जी जिसके आये करे, जहां मर्जी आए उस जगह जाए कोई रुकावट नहीं होनी चाहिए। साथ ही यह भी कहा जाता है कि इन बंधनों से हिन्दू धर्म चला जायगा, देश खत्म हो जायगा मैं समझती हूं कि हिन्दू धर्म नहीं होता या उसमें किसी प्रकार के बंधन नहीं होते तो यह देश रसातल को पहुंच गया होता। और मैं यह मानने के लिए तैयार नहीं हूं कि विवाह के बंधन हिन्दू धर्म को नष्ट करने वाले हैं बल्कि जो विचार यहां प्रकट किए गए हैं उनसे ही हिन्दू धर्म नष्ट हो जायगा। हिन्दू धर्म में विवाह कर्म एक पवित्र व्यवस्था मानी गई है, उसकी सैंक्टिटी मानी गई है। उसका कारण यह है कि हमारे यहां विवाह को बड़ा ऊंचा स्थान दिया गया है और अवैध सन्तान अर्थात् अविवाहित माता पिता से उत्पन्न बच्चों को उसमें अब भी नीचा मानते हैं। इसलिए अविवाहित पुरुष-स्त्रियों के जो बच्चे होते हैं वे अवैध हैं और उनके लिए उत्तराधिकार बिल में जो यह बराबरी का अधिकार दिया जा रहा है उसे मैं भी गलत मानती हूं।

अभी कुछ भाइयों ने कहा, बच्चों का क्या दोष है, बच्चों में अन्तर क्यों किया जाय। यह तो सब कहेंगे कि अवैध बच्चों का दोष नहीं होता। परन्तु मां, बाप ही बच्चे का भविष्य बनाने

(श्रीमती शारदा भार्गव)

वाले हैं । बच्चे उनके द्वारा ही पाले पोसे जाते हैं और उनमें ही छोटे, बड़े या ऊंचे बनते हैं । क्यों हम नहीं कहते हैं कि यह गरीब का बच्चा है और यह अमीर का बच्चा है ? गरीब को अपने बच्चे पर ५ रुपये महीने तक भी एजुकेशन पर खर्च करने को नहीं मिलते और हम जानते हैं कि अमीरों के बच्चे, चाहे वे कितने ही मूर्ख हों, उनको बड़ी बड़ी एजुकेशन दी जाती हैं । २०० रु० और उससे भी ज्यादा महीने में उनके ऊपर खर्च होता हैं । लेकिन गरीब के बच्चे को कोई एजुकेशन नहीं मिल पाती, उसके मां बाप की स्थिति के अनुसार ही उसका पालनपोषण होता हैं । बच्चा पैदा होने के बाद उसका कोई ख्याल नहीं किया जाता । इसलिए कहने के लिए चाहे कुछ कह दें, लेकिन यथार्थ की ओर हमें ध्यान देना चाहिए । बार बार यह बात कही गई हैं कि बच्चों का क्या दोष हैं । वैध और अवैध बच्चे बराबर हैं । तो उसके लिए मैं समझती हूं कि ऐसे मां बाप जो कुकर्म करते हैं उनके बच्चों को भी मां बाप की सजा भुगतनी पड़ेगी ताकि मां बाप यह समझ लें कि हमारे न रहने पर बच्चों को कितनी तकलीफ मिलेगी और उनके साथ समय कैसा व्यवहार करेंगा । अन्यथा यदि उनको यह मालूम होगा कि वैध और अवैध बच्चों के साथ एक सा व्यवहार होगा तो उन्हें किसी प्रकार का अवैध कार्य करने में संकोच नहीं रहेगा और इस प्रकार अवैध कार्य बढ़ने लगेंगे । हम एक तरफ तो मोनोगेमी का बिल पास कर देंगे और साथ ही साथ यह भी कहेंगे कि वैध बच्चे और अवैध बच्चे सब बराबर हैं । इससे यह होगा कि एक आदमी तीन-तीन, चार-चार अविवाहित स्त्री, जिसको पटास्कर साहब ने अनमैरीड वाइफ कहा हैं, करेंगा । इस तरह हम मोनोगेमी में जहां एक बंधन बना देते हैं वहां इस बात की छूट दे देते हैं कि अनमैरीड वाइव्ज जितनी चाहो कर लो क्योंकि सब प्रकार के बच्चों को उत्तराधिकार मिलेगा । फिर मोनोगेमी बिल पास करना बेकार हो जायगा । इसलिए जो माननीय सदस्य यह समझते हैं कि वैध, अवैध में कोई अंतर नहीं होना चाहिए, सबको बराबर का अधिकार मिलना चाहिए, वे साफ साफ कह दें कि विवाहित और अविवाहित स्त्रियों में कोई अंतर नहीं हैं । बस मोनोगेमी के कानून के अनुसार एक विवाह कर लें, बाकी जितनी चाहे अनमैरीड वाइव्ज रख सकते हैं । बच्चों को सजा इसलिए नहीं मिलेगी क्योंकि उन विचारों का दोष नहीं हैं । परन्तु मैं कहती हूं कि बच्चों का दोष न होते हुए भी मां बाप के दोष का हिस्सा बच्चों को सहन करना पड़ेगा । यह ठीक हैं कि समाज में उस बच्चे को जो निर्दोष हैं पढ़ाया जाय, पालन पोषण किया जाय, क्योंकि वह पैदा हो गया हैं । मगर इसके साथ ही साथ यह नहीं कि उसको उसी प्रकार का अधिकार मिले जिस प्रकार कि वैध बच्चे को होता हैं, यानी सम्पत्ति का अधिकार । इधर कई माननीय सदस्य, लड़की की बात आती हैं तो, कहते हैं लड़की तो पराये घर की हैं, बाहर चली जायगी, उसको क्यों अधिकार मिले ? बेटी मानो अपवित्र और अछूत हैं जो उसके नाम से घबराते हैं कि कहीं उसे सम्पत्ति में अधिकार न मिल जाय । दूसरी तरफ वे अवैध बच्चों को भी बराबरी के अधिकार मिलने के लिए कहते हैं क्योंकि वह लड़का हैं । इस तरह की मनोवृत्ति को मैं इन्फीरियॉरिटी कम्प्लेक्स कहूंगी, कि जो यह चाहते हैं कि मर्द ही मर्द बनें । इस तरह की बातों से मुझे बहुत ही दुःख होता हैं कि वे लोग जो लड़कियों को सम्पत्ति में अधिकार देने के खिलाफ हैं वे यह कहते हैं कि वैध और अवैध दोनों को बराबरी के अधिकार मिलने चाहियें । शर्म आती हैं इस बात पर कि वैध अवैध में कोई अंतर नहीं होना चाहिए । मगर एक व्यक्ति के पुत्र और पुत्री में भेद होना ही चाहिए ।

यह भी कहा गया हैं कि दूसरी पत्नियां रखने में कोई हर्ज नहीं होना चाहिए, सिर्फ उनसे विवाह न हो । मुझे तो यह मालूम पड़ता हैं कि यह हिन्दू संस्कृति को डुबाने का एक जरिया हैं, इसके अलावा कुछ नहीं हैं । हिन्दू संस्कृति में जो पवित्रता हैं वह सब इस बात से कि पुरुष एक पत्नीव्रतधारी रहे । यही उसकी सबसे

बड़ी विशेषता है, हिन्दू धर्म इसीलिए टिका हुआ है । हमारी पुरानी संस्कृति भी यही थी । परन्तु आज हम कहते हैं कि विवाह करने के बाद भी दो, चार स्त्रियां पुरुष के साथ रह सकती हैं । इस प्रकार के विचार हमारी हिन्दू जाति को नीचे गिराने वाले होंगे, यह मेरा मानना है । इसलिए मैं समझती हूं कि वैध और अवैध में अवश्य अंतर होना चाहिए, वैध बच्चों को सम्पत्ति में पूरा अधिकार होना चाहिए, अवैध बच्चों को नहीं होना चाहिए । एक कारण और भी अवैध बच्चों को वैध के बराबर न मानने का यह है कि अवैध बच्चों की उत्पत्ति के पीछे विवाहिता स्त्री की दुःख की कहानी छिपी हुई है । विवाहिता स्त्री के रहते, जिस वक्त मर्जी हो, पुरुष उसको अलग रख कर चाहे जितनी स्त्रियों के साथ सम्बन्ध रखते हैं और इस प्रकार उस विवाहित स्त्री को बहुत दुःख देते हैं । इसीलिए मैं कह रही हूं कि यदि अवैध बच्चों को वैध बच्चों के बराबर नहीं माना जायगा तब तो पुरुष लोग अपनी विवाहिता स्त्री की कद्र करेंगे, अन्यथा नहीं ।

इतना कह कर सेलेक्ट कमेटी द्वारा जो धारा रखी गई है उसका विरोध और हैगड़े साहब के संशोधन का मैं समर्थन करती हूं ।

[MR. DEPUTY CHAIRMAN in the Chair.]

श्री कन्हैयालाल दाँ० वैद्य (मध्य भारत) : उप सभापति महोदय, इस सदन में जो बहस इस विषय में चल रही है और जो संशोधन रखा गया है, मैं समझता हूं उसके समर्थन में जो बहस हुई है वह कम से कम प्रचलित गुलामी की प्रथा को कायम रखेगी । गुलामों को पैदा करने और गुलामी को कायम रखने के अलावा यह उस मनोवृत्ति को बतलाने वाली है कि देश में भिखमंगे बराबर बढ़ें । इससे अधिक उसका कोई मतलब नहीं है, जहां तक उसका सम्बन्ध संविधान की पवित्रता या विवाह संस्था की पवित्रता से है । कोई भी बुद्धिमान आदमी इस प्रकार का तर्क और दलीलें इस सदन में दे सकता है कि यदि विवाहित जीवन के अंदर रहकर कोई पुरुष अपनी नैतिक जिम्मेदारी न रखते हुए अपनी इच्छा के अनुसार कुकर्म करते रहें और दूसरी स्त्री रख कर संतान भी पैदा करते रहें, तो क्यों न उस संतान को रक्षण दिया जाय । मेरी बहिनें जो इस विषय पर अपनी दलीलें देती हैं वे अनुभव करती हैं कि विवाहित संस्था की पवित्रता इल्लेजिटिमेट संतान को सम्पत्ति का अधिकार देने से नष्ट हो जायगी, विवाह संस्था ही खत्म हो जायगी, तो मैं नहीं समझता कि इस प्रकार का रक्षण उन्हें क्यों दिया जाय । जो पुरुष अपने पापों को छिपाने के लिए संसार के सामने इस जिम्मेदारी को लेने के लिए कभी तैयार नहीं हुआ है, आज वह यदि उसको सिर्फ मैंटिनेंस एलाउंस दिलाकर जिम्मेदारी से बच जाना चाहता है, तो मैं समझता हूं कि हम उस गुलामी को बिलकुल कठोर बनाए रखना चाहते हैं ।

पार्लियामेंट के सब मेम्बरों को मालूम है कि अभी जब आपने रेलवे पासेज के साथ सर्वेन्ट्स टिकट मिलने के सवाल को उठाया था तो हमारे प्रधान मंत्री जी ने कहा था कि याद रखिए, जमाना तेजी के साथ बदलता जा रहा है, अब नौकरी को गुलाम रखने की प्रवृत्ति आपको बदलनी होगी । गुलामी को कायम रखने की मनोवृत्ति को हमें हर क्षेत्र में बदलने की जरूरत है । इसलिए मैं तो यह सुझाव रखूंगा कि इस तरह के जो कानून होते हैं, माननीय कानून मंत्री को चाहिए कि जो लोग पवित्रता की बातें करते हैं उनकी पहिचान के लिए ही मूल धारा को रहने दें ।

12 NOON

तो मेरा सुझाव यह है कि यदि कोई पुरुष विवाहित स्त्री के अतिरिक्त किसी दूसरी स्त्री से सम्बन्ध रखता है तो उसको कम से कम छः मास की सजा होनी चाहिये । इस तरह का कानून हमें पहले सदन में पास करवाना चाहिये । इस सम्बन्ध में विवाह संस्था की पवित्रता के सम्बन्ध में जो बातें कही जा रही हैं, वह एक ढोंग है । इस तरह की बातें कह के उल्टी दलीलें दी जा रही हैं । अगर आप इल्लेजिटिमेट चिल्ड्रन को अधिकार नहीं देंगे

[श्री कन्हैयालाल दाँ० वैद्य]

तो विवाह संस्था की पवित्रता कायम नहीं रह सकती हैं, इससे विवाह संस्था एक धोखाबाजी हो जायेगी और उसकी पवित्रता नष्ट हो जायेगी । हमारी बहिनें इस चीज को अनुभव नहीं कर रही हैं, और उल्टी दलीलें दे रही हैं । बहुत से व्यक्तियों ने सदन के अन्दर इस तरह की विचारधारा रखी जो कि हमारे संविधान की पवित्रता के विरुद्ध हैं । संविधान में हमने सब लोगों को समानता देने का वचन दिया हैं । इस बात को सामने रखकर हम सबों को यह बात तय करनी चाहिये । मैं यह बात उचित नहीं समझता कि बैंध और अवैंध के झगड़े में पड़कर, या मैंटिनेंस की व्यवस्था करके हम कल्याणकारी समाज की इस देश में स्थापना कर सकते हैं, जो कि हमारा लक्ष्य हैं । इससे तो गुलामी की व्यवस्था ही बढ़ेगी, जो कि देश के लिए हानिकर हैं । हम सोशलिस्टिक पैंटर्न आफ सोसाइटी की स्थापना इस तरह की व्यवस्थाओं से नहीं कर सकते । हमें इस बात पर गम्भीरतापूर्वक विचार करना चाहिये । यह सक्सेशन का प्रश्न ऐसा हैं कि वह सम्पत्ति के ऊपर प्रहार करता हैं, सम्पत्ति को बटवारे की तरफ ले जाता हैं । इस तरह से हम अपने संविधान की धाराओं को भूल जाते हैं । सोशलिस्टिक पैंटर्न आफ सोसाइटी के लक्ष्य को, जिसका नारा हम लगाते रहते हैं, भूल जाते हैं । मुझे दुःख होता हैं कि हमारी बहिनें भी इस प्रवाह से प्रभावित हो गई हैं और होती जा रही हैं । वे अभी अपना दिमाग स्वतंत्र नहीं समझती और गुलामी की मनोवृत्ति के प्रवाह में इस तरह की बातें करने लगती हैं । अतः यह हम सब लोगों का कर्त्तव्य हो जाता हैं कि हम एक अच्छे कानून बनाने में हर तरह से समझदारी बरतें अन्यथा इतिहास यह बतलायेगा कि हम लोगों ने इधर उधर की दलीलें देकर एक अच्छे कानून की व्यवस्था कायम करने के विरोध में आवाज उठाई और यह भविष्य के इतिहास में हमारे लिए एक कलंकपूर्ण कार्य होगा ।

इन शब्दों के साथ मैं मैंटिनेंस देने का विरोध करता हूं और मूल धारा में जो अधिकार दिया गया हैं, उसका समर्थन करता हूं ।

(Shri B. K. Mukerjee rose.) SHRI R. P. N. SINHA: Sir, we have already had a prolonged discussion on this question.

MR. DEPUTY CHAIRMAN: He will be the last speaker.

SHRI B. K. MUKERJEE (Uttar Pradesh) : I shall speak on my amendment, No. 61. A number of people have either supported the amendments or have supported the original clause as it stands in the Bill, but unfortunately those who are in support of the clause or the provision made in the existing Bill, think that they have got a monopoly of wisdom and that our arguments are not as worthy of consideration as their own arguments are. There were lawyers also who were supporting the original provision in the Bill which runs like this:

' "Related" means related by legitimate kinship.' Legitimate kinship means kinship through the institution of marriage which we have recognised by law by custom, and by convention also. Marriage in all lands, not only in our own country, is being recognised, including the Soviet Russia and China.

SHRI N. D. M. PRASADARAO: It has always been sanctified in those countries.

SHRI B. K. MUKERJEE: Now, we want to include illegitimate kinship, which is not by custom or law or by convention, to be treated as legitimate and we want illegitimate children to have equal rights with legitimate children. Thereby, we are trying to make illegitimate connections legal.

And then, those who are supporting this provision, always talk as if they are the only people who have any sympathy for these unfortunate illegitimate children. They forget what is said in the explanation to clause 2(1). If they see this explanation, they will see that with all their sympa-i thies, these illegitimate children can-

not inherit property, because there is a restriction here. It says:

> ".....who is brought up as a member of the tribe, community, group or family to which such parent belongs or belonged."

This means that only if an illegitimate son is brought up in the society or the tribe or the religion of the father, he can inherit property, whereas there may be cases where the parties to the illegitimate may belong to different religions. If they belong to different religions, what happens? All your sympathies cannot help such illegitimate children to inherit the property of their father. Illegitimate connections may be between two parties belonging to different religions. If, say, the mother is a Christian and the father is a Hindu, if they get a child and if that child is brought up with the mother in Christian society, that child cannot inherit the property of the Hindu father. They have sympathies for illegitimate children but I am afraid their sympathies are misplaced here. That does not bring any advantage to the illegitimate children.

Then, one hon. Member criticised some other hon. Members who quoted from the Russian law in this regard. I want to point out this to that hon. Member. As was pointed out by Mr. Tankha, under the Russian law. they had before June 1944 a system where by illegitimate children could inherit but through the experience gathered, they found that the provision went against the society. Therefore, they were compelled to change the law in Tune 1944. After their experience they have changed that law and now *we* must take advantage of the experience of Russia when they have changed their law of inheritance and ;hey debar the illegitimate children. So we can say this that they want equality but even if we incorporate :his provision as it is here we cannot during about equality because there vill be sections among the illegitimate children who will not benefit. This known as the Hindu Succession Bill and we are legislating *far* Hindus and we have laid down a provision that if a child who is illegitimate is brought up in a family of another religion, he cannot inherit. So we have a division. All the illegitimate children will therefore not get the father's property unless we amend this provision. So if they want equality, this provision cannot be retained here and from the moral point of view also, many people have said that this clause should go. We should not concede anything to the illegitimate children to inherit along with the legitimate children. Now, while they have got all the sympathy for the illegitimate children, they forget about the married wife or the children born out of the married wife. If an illegitimate son comes in the family, then another section will suffer because the father, when he was in love with an unmarried girl who was not his legal wife and was carrying on adultery with that woman, he naturally neglected his married wife and the legal children. They suffer during the life-time of the father and they will suffer after the death of the father also. Therefore, the sympathies are rather misplaced or misdirected. I want them to have all sympathies for those people —for all these illegitimate children— but at least they should show a little bit of their sympathy to the family of the legal marriage—to the legal wife and children of the person who committed adultery during his life-Jtime.

I, therefore, have to oppose this original clause in the Bill but regarding my own amendment, I wish I should support Mrs. Seeta Parmanand's amendment in preference to Mr. Hegde's amendment No. 89. In my opinion. Mrs. Seeta Parmanand's amendment No. 63 will serve our purpose better than amendment No. 89 of Mr. Hegde, but if Mrs. Seeta Parm'anand agrees, we can adopt her amendment along with amendment No. 91 of Mr. Hegde. I feel that amendment No. 91 of Mr. Hegde along with amendment No. 63 may be adopted and if it is agreed to, I will withdraw, my amendment.

THE MINISTER FOR LEGAL AF FAIRS (SHRI H. V. PATASKAR): Sir, there has been a great deal and pro longed debate with respect to the Select Committee's opinion regarding the definition of the word 'related' so as to include in the term, 'related', children whose father was known. I have already referred to this matter when I first made the motion that the Report of the Select Committee be taken into consideration. After that a good deal of the time of this House was taken up in consideration, parti cularly, of this provision along with others. Everybody seems to be sym pathetic—for the unfortunate child which is born of a man and woman who had not been legally and law fully married and from that point of view alone the Select Committee thought that, in such cases where tho> father could be ascertained, that should be done. *However, I find that against this Bill which is trying to effect some very far-reaching changes in the law relating to succession, probably I will not be quite wrong in saying, that this is one of the points on which too much stress has been laid, in order that the whole measure may also be either held up or criticised or attack ed—not in this House, I don't mean any Member here'—but I find that probably this matter, which need not have been so controversial as it appears to be, has received a large and undue share of attention not onl,y here but also outside, in" the general public. There are two things to be considered dispassionately apart from all those extreme cases on either side. As a matter of fact, under the present Hindu law as it stands, the illegitimate sons or rather I would prefer to call them the sons born out of wedlock of Sudra, still get a share and the son born of other categories of Hindus in which they are divided—of course we don't recognize any of those divisions for this purpose and that is a different matter—but the right of maintenance is there for all those people even now. The only small thing which probably would have resulted from this provision will be that, instead of maintenance, they would have got share in the property because that right of maintenance, in spite of what the provisions here are. will continue. That is one thing which I would like to make clear, so long as we don't amend that part of the original Hindu Code which relates to maintenance. That is not yet done. So all the provisions of the Hindu law as administered now will continue and so far as these unfortunate children are concerned their right of maintenance will be there not only until the Hindu law but also until the Code of Criminal Procedure, which gives not only to the child but also to the mother the right to get maintenance, is changed. The only change made in this was, it was thought it is much better, in consistent with the progress made, that the illegitimate son may also be given some share but I find that it has evoked such a storm, of protest en certain grounds which are worth considering. For instance, as I myself said in the beginning, the question as to how far this will be consistent with the law of monogamy which we have introduced is a matter for serious consideration. The original texts which were quoted with regard to Dasiputra and all others, are the result of a state of Hindu Law where a man was allowed to marry as many wives or not only of his own caste but of other inferior castes and keep a number of concubines and all that sort of thing which is outmoded now and I think we have already abolished all that in the Act which we have made. Therefore, such cases of illegitimate children will now be few and far between, because of these conditions, naturally. But I may tell hon. Members that even now in certain parts of India, where the girl is married and is sent to her husband's place, the father himself sends some *dasis* also with her. But of course, because of present social and economic conditions they may not be able to

do so now. However, all that is row rendered wrong, not sanctioned by law so far as the marriage law is concerned.

PANDIT S. S. N. TANKHA* (U11:ar Pradesh): May I ask the hon. Minis ter .....

SHRI H. V. PATASKAR: I would not like to be interrupted till I reach the end, otherwise I lose the trend of he argument. I would therefore, request the hon. Member to wait till I finish and then he may ask me whatever questions he may want to ask, at the end.

PANDIT S. S. N. TANKHA: Bui I want information on .....

MR. DEPUTY CHAIRMAN: He does not want to be disturbed.

SHRI H. V. PATASKAR: Because I lose the trend of my thoughts. My hon. friend will kindly have patierce and ask me questions at the end.

As I said, we have passed the Hin lu Marriage Act and so far as the question of legitimate and ' illegitimate children is concerned it should be a broad law which woula spply to all, whether they be Hindus. Christians Parsees or anyother body of people. As I said in the past also, it is better to have some Legitimacy Act as In England which applies to all. We are not so much worried about the property. There may be a small diff - rence between the right to maintenance and the right to a share, but I do not think there will be much difference in many cases, though in a few cases there may be. But in view of the large body of opinion that w;i? pxnressed. as well as my own fear that it may affect to some extent the law of marriage by which we want to prescribe monogamy, it would be much better to tackle this question independently, rather than in thii; indirect way, in this Bill. There were so many points raised, whether it should be an *"avarudha stree"* which means a permanent concubine, and all that. I think it is much bette > either to accept what is* how there 94 R.S.D.—2.

recommended by the Select Committee, or we go back to the original clause which says that "related" means related to the mother, because there is no doubt about the relation- ship to the mother; it is only in respect of the father that there is doubt. I believe that by and large, the clause as it was originally worded is preferred. I find now that even the lady Members of this House are in favour of it, many of them seem to think that this will affect them.

SHRI K. S. HEGDE: They are more interested than even we.

SHRI H. V. PATASKAR: "We should not in any way, try to create complication by having so many amendments, regarding concubines of a permanent nature and so on. Either we keep the original, clause which is simply 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; and any word expressing relationship or denoting a relative shall be construed accordingly;"

or the present one. Some hon. Member suggested that if this remained, we will be introducing in the joint family, which will not be abolished by reason just now of this Bill, a sort of copar-cenership between the persons. I do not know how far it will be worthwhile to do that in this particular measure. I know, there are those hon. Members who naturally have got a feeling that we ought to abolish this stamp of illegitimacy at the earliest nApent. I feel it would be much better to consider the whole matte'* separately, and we should leave this question to be dealt with by a separate Bill, on the lines of the Legitimacy Act in England. I say this because I still yield to none in saying —and really it is one of the things on which I feel most—these unfortunate

[Shri H. V. Pataskar.J children who are born for no fault of theirs, why should they be branded and stamped as illegitimate? They have done nothing wrong. Therefore, something has got to be done, it is necessary and there is no doubt about that. But I am inclined to think that it is better to deal with it in a direct manner by bringing forward a legislation somewhat on the lines of the Legitimacy Act in England, and make it applicable to all people, whether they be Hindus, Christians, Muslims, Sikhs. Parsees etc. It is not as if they do not have such illegitimate children. Therefore, I would say that we may revert to the original clause, in view of the expression of opinion here and the complications and difficulties that have arisen, and leave this matter to be dealt with by a separate piece of legislation.

As regards the amendments, I find three of them are of the same nature. But amendment No. 8 clearly and specifically mentions the whole section, while amendment Nos. 9 and 11 refer to it indirectly, I mean those of Mr. Bisht. though they have the same result. Amendment Nos. 89 and 91 of Mr. Hegde also lead to the same result. But as I said, amendment No. 8 reproduces the whole section as it originally stood. So I accept amendment No. 8.

MR. DEPUTY CHAIRMAN: And so you accept amendment No. 8?

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SHRI H. V. PATASKAR: Yes.

SHRI H. N. KUNZRU: But yesterday, the hon. Minister said he would revert to the definition of "related" as given in the Bill as introduced here.

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MR. DEPUTY CHAIRMAN: Yes, it only brings back the original clause.

So I now put to the House the amendment of Mr. Sinha.

SHRI K. S. HEGDE: That is to say, Dr. Barlingay's amendment, No. 8.

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MR DEPUTY CHAIRMAN: But I do not know whether Dr. Barlingay owns it now.

The question is:

8. "That at page 3, for lines 25 to 38, the following be substituted, namely:—

'(i) '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; and any word expressing relationship or denoting a relative shall be construed accordingly;' ".

(.After a count) Ayes 50; Noes 6. The motion was adopted.

MR. CHAIRMAN: In view of the adoption of this amendment, all the other amendments fall through.

The question is;

That clause 3, as amended, stan.i part of the Bill.

The motion was adopted.

Clause 3, as amended, was added to the Bill.

Clause 4—*Over-riding effect of Act*

SHRI H. V. PATASKAR: Sir, I *beg* to move:

117. "That at page 4, lines 1 to 8, the existing clause 4 be renumbered as sub-clause (1) of. that clause, and after line 8, the following be inserted, namely:—".

SHRI JASPAT ROY KAPOOR (Uttar Pradesh): What is the amendment that the hon. Minister is moving?

MR. DEPUTY CHAIRMAN: It is a new amendment which was given notice of just now and he is reading it.

SHRI JASPAT ROY KAPOOR: But we do not have a copy of it.

SHRI H. V. PATASKAR: I will give hon. Members copies, and I will also explain the amendment:

117. "That at page 4, lines 1 to 8, the existing clause 4 be renumbered as sub-clause (1) of that clause and after line 8, the following Be inserted, namely: —

'(2) For the removal of doubts it is hereby declared that nothing contained in this Act shall be deemed to affect the provisions of any law for the time being in force providing for the prevention of fragmentation of agricultural holdings or for the fixation of ceilings or for the devolution of tenancy rights in respect of such holdings'."

MR. DEPUTY CHAIRMAN: The clause and the amendment are open for discussion.

SHRI H. V. PATASKAR: I would like to explain the amendment briefly, Sir.

Clause 4, as you will find, relates to the overriding effect of this A t. It says:

"Save as otherwise expressly provided in this Act,—

(a) any text, rule or interpretation of Hindu law or any custom or usage as part of that law in force immediately before the commencement of this Act shall cease to have effect with respect tc any matter for which provision is made in this Act;"

This sub-clause (a) says tnat anything which is inconsistent with the provisions of this Act shall cease to have effect. That is all right. Then there is sub-clause (b) which says:

"(b) any other law in force immediately before the comm fcnee-rnent of this Act shall cease to apply to Hindus in so far as it is inconsistent with any of the provisions contained in this Act."

Throughout the country, apart from the text, rule or interpretation, there are certain legislations which are likely to be inconsistent with the provisions which we have incorporated in this Bill. There are so many laws in the States on this subject of succession. A fear was also expressed In the earlier stages of the Bill and I referred to this point in my speech and I will refer to my speech again in order to explain to hon. Members as to why I have moved this amendment now:

"A fear is expressed in certain quarters that this Bill will interfere with problems of land policy. This is due again to another misconception. This Bill is one which lays down the personal law of the Hindus. My attention was drawn to the provisions of section 59 of the Punjab Tenancy Act. It lays down certain rules of devolution regarding agricultural lands in that State. Now, that law relates to agricultural lands and it applied to all, whether they are Hindus, Parsees, Christians or Muslims, and their personal laws of succession can never override the provisions of that Act relating to devolution of interest in agricultural lands. In India, land tenures, their holdings, and many matters connected with that question, are different from area to area. The question of a general and common land policy for the whole country is yet to be evolved. When evolved, it will apply to all Indians alike in so far as lands are concerned, and the personal laws of Hindus will not have an overriding effect over them."

As we are aware^ land tenures differ from State to State. As I pointed out, in the case of Punjab, there is a specific mode of devolution of properly-after the death of the last tenant and this has been done from the point of view of making the maximum use of

[Shri H. V. Pataskar.] the land for the purpose of society in general. In the case of Assam, U.P. and Bihar, where there was the system of zamindari which was abolished, the tenant get certain rights and I am further told that that policy is in conformity with whatever is deemed fit for those States. The word "tenant" has been used because it has been used in the different Acts in U.P. and Bihar and these are all persons who could be brought together under the common category of tenants of those lands. When my attention was drawn to the capability of such sort of an interpretation being arrived at. I thought that that situation should be remedied. I, therefore, thought that considering there were different personal laws relating to the Muslims, Christians, etc., the laws governing the properties should be different. It would be found from the debates of this House as well as that of the other that hon Members had raised the question of ceiling, the question of fragmentation, etc. Even this fragmentation would be there with the sons and daughters partitioning. To make the position clear, therefore, we have thought it better to provide as follows:

> "For the removal of doubts it is hereby declared that nothing con tained in this Act shall be deemed to affect the provisions of any law for the time being in force pro viding for the prevention of frag mentation of agricultural hold ings....."

I am told that such a law is there in Punjab; probably in U.P. also there is some method of devolution of pro perty. I am told that the tenancy right goes to the brother after the death of the cultivator as they want the land to be properly cultivated. It was asked, "Why should we not decide it here? Why should we leave it to the States?" This question of land is so varied in its aspects throughout the country that I think it is much better and safer to leave this question to be settled by the State Governments themselves. This has been done indirectly also, in order to see that the State Governments are free to take action in regard to this question of land, in regard to the tenure, etc. When the original Hindu Code Bill was brought forward, such a provision could not be incorporated in it as, under the Government of India Act, 1935, this subject was not on the concurrent List. This is now on the Concurrent List under the new Constitution and so we are able to legislate. At the same time, it is desirable also to make it clear that by this personal law of succession, we are not trying to interfere in any manner whatever with the land policy of the States. You must be aware of the fact that the Bombay State Legislature is considering some tenancy reform which is in favour of the tenants.

There are so many other States. They may also change, we do not know. Conditions in different States may change and they may have to lay down certain different rules with regard to the lands, their use and all that because we are developing that land policy so far as the different States are concerned. I look to the day when there will be one uniform land policy for the whole of India. It may take some time. Under those conditions in order that there may be no prejudice against a measure of this kind which deals with only personal law and where we do not even want in any way to interfere with the question of the land policy of States, I thought it would be much better and safer because it may be argued by some, it is capable of being argued, that with respect to the fragmentation of tenancy holdings why is it the law is so, why not make it clear beyond all doubt. So it^is my suggestion that it will create a little confidence in the people who are governed by those laws and the large mass of people who are going to be affected are the poor agricultural tenants in the dMe-rent parts of the States. In order that they may not even be misled or they

may properly understand as to what we are doing, I think, it would be safer and better to add this explanation. It is only for the removal of doubts that we say so. We definitely exclude them and say that it would be within the competence of the States in so far as they may make provisions about tenancy rights or about succession or about the ceilings or about the prevention of fragmentation.

SHRI K. S. HEGDE: It refers only to existing Acts—not future Acts.,

SHRI H. V. PATASKAR: The land policy is developing. There may not be different laws in different places with respect to any of these matters now, but they may think it necessary in future formally to come in line with the land policy of Government.

SHRI K. S. HEGDE: On a point of explanation. If I understand the clause correctly, as you read it out, it relates only to the past Acts and existing Acts and not to future Acts. Your clause does not provide for it.

SHRI H. V. PATASKAR: It docs.

MR. DEPUTY CHAIRMAN: How can you provide for future?

SHRI K. S. HEGDE: That is what I explained.

SHRI H. V. PATASKAR: "Any law for the time being in force" is the wording. You can interpret it in any manner.

SHRI K. S. HEGDE: It is as it ought to be. We have got no concurrent power.

SHRI H. V. PATASKAR: This was a non-controversial clause but I thought it much better to give* this small amendment and I hope it will receive the acceptance of the House.

SHRI R. C. GUPTA (Uttar Pradesh) : May I ask if with sub-clause (b) of clause 4 of the Bill, will it be possible for a member of a joint Hindu family to make a will? My question is this whether under sub-clause (b) of clause 4 of the Bill, page 4, it will be possible for a member of a joint Hindu family to make a will under clause 32.

SHRI H. V. PATASKAR: It is covered by another clause, clause 32 and I think it would be much better to discuss this when we come to that.

SHRI R. C. GUPTA: There is no question of discussion. Under sub clause (b) you say, "any other law in force immediately before the com mencement of this Act shall cease to apply to Hindus in so far as it is inconsistent with any of the provi sions contained in this Act." Now, clause 32 lays down a provision which is against the provisions of the Hindu law so far as making of a will by a member of the joint Hindu family is concerned. Is It intended.....

SHRI H. V. PATASKAR: Whatever else is inconsistent with whatever we decide in this Act naturally will cease to have effect.

SHRI R. C. GUPTA: Is it intended to allow or to permit a member of a joint Hindu family to make a will or not?

SHRI H. V. PATASKAR: That question will be considered when we come to clause 32.

SHRI RAJENDRA PRATAP SINHA (Bihar): The hon. Minister has just said that this was a non-controversial clause that he had introduced at this stage. I am afraid I can't agree with him and I am rather surprised that at the last moment this clause is being inserted and we are not being given a proper opportunity to study the implications that flow out of this clause. If the hon. Minister decided to have such a clause only yesterday, this could have been circulated to us this morning. Probably he has decided just now. I wonder what are thr? facts in his possession which have goaded him to introduce such a provision. As a matter of fact, Sir, this matter was also raised in the Select

[Shri Rajendra Pratap Sinha.] Committee, the question of the devolution of property of the agricultural type, the lands I mean, and we considered this issue whether the landed estates should come under the purview of this Act or not. As you will find from the Report of the Select Committee, Sir, it is the intention of the Select Committee that all the landed properties including tie farms and the agricultural lands should come under the purview of this Act. This sub-clause reads: "For the removal of doubt it is hereby declared".... Now what a^e the doubts? I would like to know them from the hon. Minister, doubts which he felt at the last moment. This sub-clause reads:

> "that nothing contained in this Act shall be deemed to affect the provisions of any law for the time being in force". .

—"For the time being in force" is also open to different interpretation —it may be the existing laws or the future laws that may come. The wording is not very definite about it.

SHRI K. S. HEGDE: Quite definite.

SHRI RAJENDRA PRATAP SINHA: So I object to this wording as well. Then it proceeds to say:

> "Providing for the prevention of fragmentation of agricultural holdings or for the fixation of ceilings or for the devolution of tenancy rights in respect of such holdings."

Now there are three types of cases included. First is the "prevention of fragmentation". As far as I know, Sir, all the States of India have not yet got laws to give effect to the prevention of fragmentation of agricultural holdings. Some of the States have; some of the States have not. I would certainly like to look into the provisions of those Acts. Then comes the 'fixation of ceilings.' None of the States has so far fixed the ceiling in respect of agricultural holdings. Now, without knowing how it is, what type of law it will be, what would be the provisions of those laws, we are going to just give a blank cheque with regard to them that they will not come under the purview of this law. Now "for the devolution of tenancy rights" there are laws in existence and there will be laws in future also on the subject, but all these laws with regard to the prevention of fragmentation and particularly for the devolution of tenancy rights are all governed by one principle that they altogether ignore female heirs. The House previously, while adopting the motion for referring the Bill to Select Committee, had accepted the principle that with regard to all agricultural properties the female heir will be entitled to a share in her father's property. In India, it is a well-known fact that none of the States' regulations or laws provided for any share with regard to the female heir. Now we have said that these will be the heirs to any person in which we have included both male and female and we have given equal rights to all. Now all that will be set at naught. Almost the properties, 99 per cent of the properties belonging to the people in India are on the rural side. They are mostly agricultural properties. Now, we are by a back-door method out to do away with all the rights that we are conferring in this Act on the female heir. We want to provide not only for our sister and daughters living in the towns, all having properties other than agricultural land, but we also want to provide for the vast number of women of India who live in the villages and whose parents have got no other properties but only agricultural properties.

Now, there are many landed estates, big farms. Supposing a ceiling is fixed. All the sons will get It. There is now a talk going on in the State of Bihar for example where a family of five consisting of only sons are to be taken into account. Now, they will be given a particular ceiling of, say, 30 acres, or 15 or 20 whatever it is. And that famiy of five includes only the sons

If they exclude the daughters, are we going to accept that? Sir, the ceiling laws, the fragmentation of hok'ings laws and the devolution of tenancy laws will all have to be governed by this principle that the female heirs will have a share in the agricultural land. We heard only the other day the 'members from Punjab and Pepsu and they were vehement .....

MR. DEPUTY CHAIRMAN: This amendment does not say that: she would not have a share, but by virtue of that share she cannot break the property to pieces or fragments. That is what it is. She can have her share. As regards tenancies, suppose a daughter gets one-tenth share. • She cannot say, 'I have got one-tenth share and so I will give it *to* a separate tenant'. This is preventing fragmentation.

SHRI RAJENDRA PRATAP SINHA: I will explain to you, Sir. What about fixation of ceiling? If they say that a family of five composed of sons only will have so much of ceiling, from now onwards as the daughters will also have a share, naturally the family of five should include daughters also. If you exclude them in the provisions of the legislation that is coming into ope ration, devolution of tenancy laws and all that .....

SHRI K. S. HEGDE: On a point of information, Sir, I think my friend is under a misconception. This is not going to affect future laws. This merely affects the existing laws. So far as the future laws are concerned, these provisions are in the concurrent list and every State legislature will always have the right of enacting the necessary legislation. I do not know what fear he has.

MR. DEPUTY CHAIRMAN: I believe, I am right. It does not take away her right. Is it not so, Mr. Pataskar?

SHRI K. S. HEGDE: She will have the right but she cannot insist on "having a portion of the land itself, if there is a land registration.

MR. DEPUTY CHAIRMAN: Even as regards ceiling, Mr. Sinha, suppose a State fixes 30 acres as the ceiling for a family and then if the daughter gets a share of, say, 6 or 10 acres, she cannot say, T have got six acres and so partition it acid give it to me.' That 30 acres will remain.

SHRI RAJENDRA PRATAP SINHA: Sir, this requires a little more examination and I would humbly appeal to you and, through you, to the hon. Minister that this clause may be postponed till tomorrow. We can go ahead with the other provisions now. In the meantime we can discuss it with the hon. Mr. Pataskar and have the position clarified. We can place our viewpoints before him and arrive at a decision on certain lines.

MR. DEPUTY CHAIRMAN: Now have yeu finished?

SHRI RAJENDRA PRATAP SINHA: Sir, my submission is only this. When we have certain doubts, we want to place our viewpoint before him. This matter was not raised in the Select Committee and this was not circulated to us yesterday, so we could not give our thoughts to it and we could not discuss it with the hon. Minister outside the House. This was not in the mind of the Government previously. He has been told something—a certain point of view—and on that he has proposed this. Now, he must hear the other side and therefore, my submission is merely this. Let a decision on this clause be postponed till tomorrow or the next day. Now, we can go ahead with the other clauses. We can take this up again tomorrow or the day after.

MR. DEPUTY CHAIRMAN: I ^e-not see any necessity.

SHRI B. C. GHOSE (West Bengal): I have not taken any interest in this Bill, so I am not probably competent but if hon. Members have doubts and if the> have not had time to examine it carefully, there is no harm in post-poning it. The time is not wasted

[Shri B. C. Ghose.] because we will be going on with the other clauses.

MR. DEPUTY CHAIRMAN: Mr. Ghose, the wording is quite clear.

SHRI B. C. GHOSE: But the Members should be clear in their minds and Members have a right to demand postponement if something is put in at the last minute. And how does it affect the business of the House? The time is not being wasted.

MR. DEPUTY CHAIRMAN: But why should it be unnecessarily postponed? I do not see any reason for it.

SHRI BHUPESH GUPTA: I have not got the amendment before me. The implication will have to be worked out and it requires a little thought. Therefore, I think that the discussion should be deferred till tomorrow.

MR. DEPUTY CHAIRMAN: The language is quite clear, Mr. Gupta. I expected that the Communist Party would support it.

SHRI BHUPESH GUPTA: It is better to support a thing after understanding it rather than support it blindfold.

MR. DEPUTY CHAIRMAN: It is a very simple amendment.

SHRI B. C. GHOSE: How do you lose any time? If some hon. Members feel that they want this to be taken up at a later stage, there should be no difficulty.

MR. DEPUTY CHAIRMAN: If necessary, I can read it over again. The whole thing is quite clear. The principles enunciated are very clear.

SHRI N. D. M. PRASADARAO: It is not a question of reading it, Sir. There are many implications. There is already a ceiling and if it is to be applied.....

SHRI K. S. HEGDE: It is aireaay one o'clock. If you are adjourning the House, we can take it up afterwards.

SHRI N. D. M. PRASADARAO: Ceiling law is being applied in one district in Hyderbad and it will be applied in other places also and each stirpe will be getting a family holding. And supposing this legislation 'is-passed, then the daughters also, who would not come under it previously, will get a right. A high ceiling has already been fixed on the basis that the daughters do not get a share and now if the daughters are to get a share, then that may have to be changed. All such implications are there, and so we want more time to examine it carefully. So I agree with Mr. Sinha that it could be taken up tomorrow. We can go over this and come back to this clause later.

DR. SHRIMATI SEETA PARMA NAND (Madhya Pradesh): Sir, when I saw that amendment I was myself apprehensive as to whether the daughter's share in the agricultural property would be affected particular ly with regard to the reference to the devolution of the land according to agricultural policy. But I would fur ther say that we all know that this being a concurrent subject, the States can never be prevented from legisla ting, as Mr. Hegde also pointed out. If there are some backward States where the influence of men only pre vails and women have no voice in public life, they can even now nullify the whole of the Hindu Code. Every thing has to be done with goodwill and understanding and we are trying to work on the principle that the country is one and what is done by the Centre will not be negatived by the States. For that reason I feel there is nothing to fear and when I say that, anybody can be sure that I have concerned myself that the inter ests of women are unaffected thereby. The women's share will not be affect ed. If the holding becomes smaller because of women coming in, the share of men also will be affected.....

MR. DEPUTY CHAIRMAN: Yes, it applies equally to both' men and women.

DR. SHRIMATI SEETA PARMANAND: Yes; the brothers will also be affected in the same way as sisters. But perhaps the future policy will be to have some co-operative farming or the eldest brother or the eldest sister, as the case may be, will be allowed to cultivate without any distinction of sex and the shares will go to each person. There is nothing more according to me in that amendment and so I have no objection to it.

MR. DEPUTY CHAIRMAN: We will meet after lunch.

The House stands adjourned till 2-30 P.M.

The House then adjourned for lunch at one of the clock till half past two of the clock.

The House re-assembled after lunch at half past two of the clock, MR. DEPUTY CHAIRMAN in the Chair.

SHRI RAJENDRA PRATAP SINHA: Sir, I have got to say a word .....

MR. DEPUTY CHAIRMAN: You have finished your speech.

SHRI RAJENDRA PRATAP SINHA: I know, Sir. I just want some clarification from the hon. Minister. I have studied this question during the lunch interval that you were good enough to permit.

MR. DEPUTY CHAIRMAN: What is the clarification?

SHRI RAJENDRA PRATAP SINHA: I just want a clarification. I hope I have got the attention of the hon. Minister .....

SHRI H. V. PATASKAR: I am only taking out the book; otherwise, *1* am quite attentive.

SHRI RAJENDRA PRATAP S1JNHA: I hope the hon. Minister will remember that in the Bill drafted by the Rau Committee, "agricultural land" was excluded from the purview of the Hindu Succession Bill. Now, in the present Bill it was not so. It was the definite view of the Select Committee to include "agricultural land", to bring it under the purview of this Bill. Now, by a backdoor method what we are going to do is to exclude the agricultural land from coming under the purview of this Bill. Now, they say—these are the words—"devolution of tenancy rights". I would like to know from the hon. Minister in charge of this Bill what does he mean by this. I have some agricultural land, some shares, houses and factories at the present moment. If I am living, say, in U.P., my inheritance to my estate other than agricultural land is governed by the Succession Law; but so far as succession to my agricutural land is concerned, as a tenant, it is governed by the tenancy law of the State. Now, tenancy laws were based on the recently existing or even now existing concepts of succession. That is to say, the male heirs are to inherit the property and only in the absence of the male heir, the female heir would come in. That is the tenancy law, for example, in U.P. Now, I have not been able to get hold of the tenancy laws of all these States, but here is a concrete example. So far as management of the land is concerned, I can understand that it will remain with one man—whoever may be more capable, whether the female or the male. That the State Government can decide. I can understand that.....

MR. DEPUTY CHAIRMAN: Now, you are making a speech. That cannot be allowed. You please put a question and he will answer.

SHRI RAJENDRA PRATAP SINHA: What I want to know from the hon. Minister is this: whether the agricultural land under the tenancy law will

[Shri Rajendra Pratap Sinha.] devolve according to the Hindu Succession Law that we are going to enact, or according to the different state tenancy laws? If they are going to devolve under the tenancy laws, all the female heirs will be excluded altogether. Or, is it only for the purpose of management that they will go to one person—may be brother or a male? But it is not very clear from the clause. Will the interests, so far as the tenancy rights are concerned, be shared by the daughter as well or not?

MR. DEPUTY CHAIRMAN: Mr. Bisht.

SHRI RAJENDRA PRATAP SINHA: The whole view of the Select Committee was this.

MR. DEPUTY CHAIRMAN: Mr. Sinha, order, order. You are making a speech. .

SHRI J. S. BISHT (Uttar Pradesh): Mr. Deputy Chairman, I support this new amendment that has been moved by the hon. Minister in charge of this Bill. There are certain unfounded misapprehensions in the mind of my hon. friend, Mr. Sinha. If he reads clause 6 and clause 7 and all these other clauses, he will find that it is "an interest in a Mitakshara coparcenary property." I have never heard that there is a Mitakshara coparcenary property in a tenancy. There is no Mitakshara or Dayabhaga or joint family property in any tenancy at all. All the tenancy laws—I know the tenancy law of the Punjab, U.P. and Bihar—have laid down a particular mode of devolution of that tenancy right and that mode of devolution is applicable to everybody, irrespective of whether he is a Hindu, Muslim, Christian, Parsi or anyone else. It supersedes the family laws or personal laws of all those people. Now, what is being done here is this. In clause 4, sub-clause (b), it says:

> "any other law in force immedia tely before the commencement of this Act....."

That is likely to be misinterpreted. Any other law' might include tenancy law also. In that case, the whole tenancy laws of all these States would be very much upset to the disfavour of the Hindu tenants. The Muslim tenants or Christian tenants or Parsi tenants would not be affected, in that the law relating to tenancy would apply. That is why the proposed amendment is only a declaration, a clarification that those laws would not apply. The same thing applies with regard to fragmentation of holdings, and ceilings on holdings. These are being applied to everybody irrespective of the caste or community to which he belongs. For instance, if it is laid down that a holding shall not be less than ten acres, then only one man can inherit it. It may be the eldest son. It is not only the daughters, but the other sons are also affected. Therefore, do not look at it from the point of view of Hindu. It applies to everybody. The same applies in the case of ceilings. It is merely to clarify this point "any other law" and, therefore, I support the amendment.

SHRI N. D. M. PRASADARAO: Sir, I would like the hon. Minister to clarify his views. Already Mr. Rajendra Pratap Sinha has raised one question. The tenancy law as it exists today gives the right of inheritance to the share of tenants and I am sorry Mr. Bisht has not properly understood the tenancy law of Punjab, I think. I aim quoting the clause from the Punjab Occupancy Tenants (Vesting of Proprietory Rights) Act, 1952. There, occupancy right has been defined as follows:

> " 'occupancy tenant' means a tenant who, immediately before the commencement of this Act, is recorded as an occupancy tenant..... *and includes also the predecessors and successors in/an) occupancy tenant."* ~- *J*

That means..... *L interest of*

MR. DEPUTY CHAIRMAN: Whatever the tenancy law is, it will not be disturbed by this amendment. It is to protect those laws.

SHRI N. D. M. PRASADARAO: When the Tenancy Act was passed, only the male lineal descendant of the tenant has got the right of inheri-tance. Now, we are going to extend it to the daughters also. Under the Punjab Tenancy Law, let the daugi-ters also inherit the interest of an occupancy tenant.

Similarly, in the Hyderabad Tenancy and Agricultural Lands Act also, that has been defined. A protected tenant has been defined as below:

> "The following persons only sh>Il be deemed to be the heirs of a protected tenant for the purposes of this section: —
>
> (a) his legitimate lineal des cendants by blood or adoption;
>
> (b) in the absence of any such descendants, his widow for as long as she does not remarry."

That means here the wife also lias been accepted. But are the daughters accepted or not? That is the question. It has not been defined in this and if you take only the law as it exists today into consideration, the daughters may not get a share. Hut now we propose to give the daughters also a share. That is the question.

Secondly, in Hyderabad there is already a ceiling put on the land holdings. Generally, it should be four and a half times the family holding, "provided that in calculating the excess of land owned by a joint family, every branch of it entitled under the Hindu law to a share per stirpes in the property owned by the family on the partition of the family, shall be allowed one family holding even though the aggregate of such shares may exceed four and a half times the family holding." Here also the daughters have no share. Now, we sre giving a share. That means not only the sons, but even the daughters will be allowed one family holding, thereby, the ceiling will be increased. That means, the very purpose of putting a ceiling on land holdings will be defeated. So, I want to know how this amendment you are putting will affect these classes.

Thirdly, there is the question of fragmentation of holdings. I am not going into the details, because it is outside the scope of discussion. Under this fragmentation or holdings, already a lot of trouble is going on and we need not increase that trouble. Even though fragmentation of holdings is prevented by law, still it is going on in practice, though it is not recognised in law. In Hyderabad, fragmentation below a basic holding is not allowed. Supposing a father has got only two family holdings.....

SHRI RAJENDRA PRATAP SINHA: Fragmentation by daughter only is not permitted.

SHRI N. D. M. PRASADA RAO: Under the present law we are going to give a share to daughter's. The sons will divide it though it is not shown in the records. Actually this thing is going on. The sons will take advantage of this Act to prevent daughter's right. So, I want more clarification on all these things and how these will be affected.

SHRI R. C. GUPTA: Sir, I wish to move an amendment.

MR. DEPUTY CHAIRMAN: Not at this stage. Which amendment is it?

SHRI R. C. GUPTA: Amendment to the hon. Minister's amendment.

MR. DEPUTY CHAIRMAN: (To Shri H. V. Pataskar): Amendment to your amendment. I will allow it because I allowed your amendment.

SHRI R. C. GUPTA: Sir, I wish to insert the words "including Bhuimi-dhari rights" after the words "tenancy rights" in the last line.

MR. DEPUTY CHAIRMAN: Yes.

SHRI R. C. GUPTA: Sir, I move:

117(1). "That in amendment No. 117 in List No. 5 of amendments dated the 25th November 1955, after the words 'tenancy right' the words 'including Bhumidhari rights' he inserted."

My object is this. The hon. Minister says that he is bringing forward this amendment for the Removal of doubts. The word 'tenancy rights' will again be a little bit doubtful and therefore, for the removal of these doubts also it is necessary that the words 'Bhumidhari rights' be included. In the Uttar Pradesh, after the abolition of the zamindari, the rights created on the land are the rights of a tenant, but they have been described in various forms, such as Bhumidhars, Sirdars, Adivasis etc. Now, the Bhumidhars have been placed on a better footing than other tenants. The occupancy tenants paid ten times the rent to the Government. They had been given a little bit superior rights over the other rights and these are that *the* Bhumidhars can sell their rights, but they cannot mortgage them. . They cannot sublet them, as other tenants can do. So, the Bhumidhars are something like a mixture of the proprietary rights and the tenancy rights and they have grown within the tenancy rights. They have got Bhumidhari rights. Therefore, in order to make that quite clear, it is necessary that the words 'tenancy rights' be further clarified by the use of the words 'including Bhumidhari rights'. Otherwise, Bhumidhars will be deprived of the benefits of this amendment.

SHRI JASPAT ROY KAPOOR: Sir, I support the latest amendment moved by the hon. Minister in charge of the Bill along with the amendment to that amendment, suggested by my hon. friend, Mr. Gupta and along with that, I would suggest that the following words also be added to the amendment just moved, namely, "including Bhumidhari rights m Uttar Pradesh and similar other rights by whatever name called." This is my suggestion. I support this amendment for two reasons. I am not 'in agreement with my friends over there on the Opposition Benches who like it to be held over, because I welcome this opportunity of a new precedent being established that amendments can be moved even at a late stage even though no previous notice is given.

MR. DEPUTY CHAIRMAN: No, no. It is not a precedent. Because the hon. Minister moved it, I allowed that amendment; not otherwise.

SHRI JASPAT ROY KAPOOR: In this amendment of Mr. Gupta .....But I welcome this opportunity that amendments though not previously given notice of, if they are considered necessary in the interests of the pro per framing of the Bill, whether they come from the hon. Minister or from non-official Members.....

MR. DEPUTY CHAIRMAN: Only the mover in charge of the Bill has got the privilege.

SHRI JASPAT ROY KAPOOR: Only the mover?

MR. DEPUTY CHAIRMAN: It will not be a precedent.

SHRI JASPAT ROY KAPOOR: Well, I do not know, Sir, if you would like to treat it not as a precedent at all because I would respectfully submit that hereafter under similar circums tances, if the hon. Members may also be permitted to have that precedent.....

MR. DEPUTY CHAIRMAN: Each question will be considered on its own merits. The Chair has got ample discretion.

SHRI JASPAT ROY KAPOOR: Anyway, this amendment is a substantial one and is not so innocent as is made out to be by the hon. Minister In charge of the Bill, because the discussion that has taken place so far would obviously show that there is an

important substantial matter that is Intended to be covered by this amendment. It is very necessary that this amendment should be accepted because the land reforms in the various States should not be held up because of Clause 4 of this Bill

In trie matter of land reform laws we are moving very fast and it is necessary that those laws should be enacted according to the necessities and requirements of the various States. No Central legislation should stand in the way of these land reforms being enacted in such a form and in such a manner as is considered necessary in the interests of the various States. I earnestly support the amendment moved by my hon. friend, Mr. Gupta because, as you know, and as Mr. Gupta very well explained, we have given a status to the occupiers of the land which is very much different from that of a tenant and of course, that of the full proprietor of the land. They are given the designation of Bhumidhars. Bhumidhars .must be included herein, to make the position clear. And we should not stop there because there may be other classes of person just like the Bhumidhars, who cannot literally and technically come within the purview of the definition of 'tenants' and their case should also be considered. Therefore, I suggest, if my hon. friend, Mr. Gupta accepts, that after the word 'Bhumidhari rights', we should have the words 'in Uttar Pradesh and similar other rights by whatever name called' so as to leave it open to other States also to have a legislation in such a form as they like and their -case may also be included here. Their case may not be barred.

So, Sir, I move:

117(2). "That in amendment No. 117 in List No. 5 of amendments dated the 25th November, 11)55, after the words 'tenancy rights', the words 'including Bhumidhari rights in Uttar Pradesh and similar other rights by whatever name called' be inserted."

SHRI B. B. SHARMA (Uttar Pradesh): I want to add my support to the amendment.

SHRI K. S. HEGDE: I do not know why so much controversy has arisen about a simple explanatory provision put by the hon. Minister. Personally, I do not think that even without this amendment, there would have been any difficulty in interpreting the law in the manner that the hon. Minister wants. Probably, I think, it is merely as a precautionary measure that he expressed this amendment. Sir, there has been a good deal of misconception about the scope and effect of this amendment. Let me make it very clear that this amendment relates only to the Acts that are in existence today. That in no way effects the acts that may be passed hereafter by the States. In this matter the right of the Government and right of the State is a concurrent one, because it comes under the Concurrent List. Even after this is passed every State will have a right to make any change, but probably they will have to take the sanction of the Parliament, and the Government of India will have an occasion to examine the matter when the matter comes up for sanction but not otherwise. But the consultation right of the State will continue to remain. So unless you' change the Constitution, you cannot make it something which the States will not be able to change hereafter. The question for your consideration 5s whether the amendment in any manner effect certain classes of legislation which are already in existence, legislation particularly about fragmentation, legislation about fixation of ceilings and legislation about devolution of tenancy rights.

Now everybody is agreed and many of us have severely criticized the Bill for giving scope for fragmentation. Many State legislatures have passed legislation about fragmentation. I fail to see, Sir, how this Bill would affect such legislation. Is it the view of the hon. Members that this Bill must control all legislations which are intended

[Shri K. S. Hegde.] to see that there is no fragmentation of the holdings? I do not think that would be our view whatsoever. Again, kindly remember any legislation about fragmentation would not affect the right of the daughter or anybody. Fragmentation laws would merely affect so far as the partition of the agricultural property or immovable property is' concerned. The duaghter might get a share in fnoney value. You cannot deprive her as well as all the others of their actual shares. That is regarding fragmentation.

Now, I come to the question of ceiling. Even when a ceiling is fixed, the legislature will have a right to discuss the share in the property of the brothers and sisters unless it is given as otherwise in any State legislature, otherwise the brother and sister will have a right in getting their share in cash. So far as ceilings are concerned we should better put a restriction.

So far as devolution and the tenancy rights are concerned, I would say a word before I speak about the amendment to the amendment. My friend, Mr. Gupta has moved an amendment which should include Bhumidhars. In my opinion this will create difficulties. I do not know whether the bhumidhari has been interpreted as a tenancy or not? If it is not, it would be wrong to give him this right. It would create further difficulties in law if you include one type of tenancy and not others. So far as the interpretation is concerned, there may be other difficulties too.

SHRI R C. GUPTA: So far as Bhumidhari rights are concerned, there are special provisions in the Land Reforms Act prescribing the devolution. They are not governed by Hindu Law; they are applicable to Hindus, Muslims and Parsees, all alike. Therefore, it is necessary that the words tenancy rights' may be clarified, because a bhumidhari is said to possess something between the tenancy rights and the proprietary rights.

SHRI K. S. HEGDE: Understanding Mr. Gupta, as I do, I think he means to say that bhumidhari is a statutory right, not one governed by the Hindu Law. If that is so you do not come in anywhere at all. If the contention of the hon. speaker is that the bhumidhari's devolution is a statutory devolution and not a devolution under the Hindu Law, then I do not think this Bill can affect the bhumidhar at all because the devolution is statutory. But if it is not statutory, and if the succession is under the Hindu Law, necessarily, they must be controlled by this amendment. I do not seethe reason why it should be excluded. As soon as Mr. Gupta moved his amendment to the amendment, Mr. Kapoor jumped up and added the words, "similar other rights", one of the vaguest terms in the statute which may be fought in a court of law as meaning something like a "bhumidhari right". Sir, it would give rise-to a lot of litigation, if you allow the amendment of Mr. Gupta and the amendment to amendment by Mr_ Kapoor.

Sir, I am on the last clause of the amendment, *i.e.* devolution of the tenancy rights and the necessity of such holdings. Here again, if the devolution of the tenancy right is governed by the Hindu Law, it will be open to changes by the state legislature hereafter unless it is controlled by the statute—the Indian Succession Act. Even in the case of Hindu families it is a statutory devolution. Remember gentlemen, you are not in a position in this Parliament to realise the different state of affairs existing in different States. Different States have different problems, so far as the tenancy is concerned. Now instead of trying to deal with all of them here in this Parliament, it would be far better to leave it to the State legislatures which are intimate with the problems and whose responsibility is no less than ours and whose approach to the problem is the same

as ours. I would request you to trust them as we trust ourselves and not to interfere in the matter which should necessarily and normally be done by the State legislature. Willi this view, I commend this clause lor the acceptance of the House.

MR. DEPUTY CHAIRMAN: Mr. Kishen Chand. Please be brief.

SHRI KISHEN CHAND (Hyderabad) : Sir, the hon. Member who has spoken before me has tried to confuse the issue. The whole point is that according to this law we are giving a share to the daughter. Now, it will take some period before this Bill is passed finally. It will *go* to the other House and then it will be sent to the President for his assent. This may take some three or four months. In the meantime, most State legislatures may have considered this question of ceiling and passed their laws. By the time we pass this law, the tenancy laws will be operative in the States. The calculation of ceiling will involve a number of persons who may be entitled to get a share in that fami y's property. As at present, it will count only male members. I will give a concrete example. Suppose a ceiling is fixed at 30 acres and there are likely to be five male members of that family. Then, upto 150 acres can be kept by that family for distribution amongst its male members. In the other case, suppose there are five sons and five daughters in a family. According to the present law only 150 acres would have been given amongst five sons. But if this succession Bill is passed, then five sons and five daughters would make ten in number and the ceiling would have been 300 acres. The difference of 150 acres is very big. If we are really serious and sincere to give a share to the daughter, naturally we must, in anticipation of any law that may be passed by the States, pass a law here making specific provision for the daughters being counted while fxing fhe ceiling. If you do not want to do it you are defeating the purpose of this Bill. I won't mind because I have been advocating that married daughters should not get a share.

SHRI K. S. HEGDE: By this indirect process you are not going to give a share to the daughter.

SHRI KISHEN CHAND: Sir, by adding this amendment to the clause you are depriving the daughters of their share.

Then, Sir, Mr. Hegde tried to draw his fine di uaction between bhumidhar and tenants, as the words are not used all over the country. There are slight shades of difference in the degree of ownership. I think, hon. Mr. Gupta very clearly explained that the word tenant covers the bhumidhars and yet it does not cover them, because a bhumidhar has got little more of ownership than a tenant. Now, it is very curious that we are trying to protect the tenant but not the bhumidhar. After all, that person was a tenant and he was good enough to pay to his State ten times the land revenue and acquire certain more rights. Certainly, if you are going to protect the tenant you must protect the bhumidhar. I do not see any reason why you should stick to those words? Is it because they are there?

Then comes the question of devolution of tenancy rights. A family owns a certain land. Now his children are going to get the share out of that land. That means it is a devolution of tenancy rights from the father to his children. If, in that devolution, you do not give equal rights to the sons and daughters, what is the purpose of bringing in a legislation which does not apply to 85 per cent, of people of this country. This Bill will be a dead letter: it will be absolutely useless. Therefore, I maintain that the hon. Minister has suggested a very novel way of defeating the purpose of this Bill by stating that this Bill will not be applicable to agricultural lands controlled by the tenancy laws passed in this country. I strongly oppose the amendment of the hon. Minister.

3 P.M.

MR. DEPUTY CHAIRMAN: Now the hon. Minister will reply.

PANDIT S. S. N. TANKHA: Sir, may I have a word on this subject?

MR. DEPUTY CHAIRMAN: I think sufficient opinion has been expressed on the U.P. tenancy law. Mr. Gupta has made it very clear.

PANDIT S. S. N. TANKHA: He did not have the Act before him. I have got the Act before me.

MR. DEPUTY CHAIRMAN: Then you may just read those particular sections only.

PANDIT S. S. N. TANKHA: Yes, Sir. 'o far tenancies in the U.P. were governed by the U. P. Tenancy Act, 1939, under which the devolution of tenancy interest was as follows:

"When a male tenant other than a tenant mentioned in section 34 dies, his interest in his holding shall devolve in accordance with the order of succession given below:

(a) male lineal descendants in the male line of descent;

(b) widow;

(c) father;

(d) mother, being a widow;

(e) step-mother, being a widow:

(f) father's father;

(g) father's mother, being a widow, and so on and so forth."

And the daughter and her descendants had no place. Now this Act has been superseded by the U.P. Zamindari Abolition and Land Reforms Act, 1950, and under this Act, three classes of tenancy rights have been created. And these three rights are, (1) bhumidhari, (2) sirdari and (3) asami. There is a slight difference between each of these three kinds of rights.

MR. DEPUTY CHAIRMAN: Mr. Tankha, can we include every conceivable class of tenancy rights? We can leave it to the court to interpret.

PANDIT S. S. N. TANKHA: But, Sir, how is devolution of these rights going to be governed? That is the question. If we accept this amendment of Mr. Pataskar, I am afraid that all lands and all tenancies governed by the U.P. Zamindari Abolition Act will be exempted from the operation of the present Bill. What I am submitting is that according to the amendment before us it seems to me that the intention of the hon. Minister is that this Bill shall not apply to tenancy rights in land. Therefore, I submit, Sir, that by the acceptance of the amendments proposed by the hon. Minister, the tenancy rights in my State would be governed by the Zamindari Abolition Act, and not by the.proposed Act before us now. The result will be that the daughters will not inherit in those lands. Is it the intention of the House that although it is passing an Act giving a right in property to the women, yet that right should still be denied to them in res- • pect of tenancy lands since the State Act does not allow it? What is the purpose of passing this measure then? That is the question.

MR. DEPUTY CHAIRMAN: They may get a share in the rent. That is the position if I am able to understand the amendment correctly.

PANDIT S. S. N. TANKHA: Supposing the father's property consists of land to which the daughter is entitled to inherit, then what is going to be the position? Is she or is she not to get that land?

MR. DEPUTY CHAIRMAN: The hon. Minister will make it clear.

PANDIT S. S. N. TANKHA: Is it our intention to say, "No. the daughter will not get it since the State Act does not permit it and 'that some third person will get it?" If that is the intention then it is all right. But we must know what we are legislat ing. Personally I think it is very necessary .....

SHRI RAJENDRA PRATAP SINHA: Sir, we want to move an amendment.

MR. DEPUTY CHAIRMAN: How fan you do ft at this stage?

SHRI RAJENDRA PRATAP SINHA: I want to move an amendment in support of what I have already said. I do not want to make any speech.

MR. DEPUTY CHAIRMAN: Mr. Sinha, order, order. I cannot allow any member who has already made his speech to move an amendment at this stage.

SHRI K. L. NARASIMHAM (Madras) : Then. I will move the amendment.

SHRI KAILASH BIHARI LAl^L (Bihar): On a point of order. Sir.

MR. DEPUTY CHAIRMAN: No point of order.

SHRI KAILASH BIHARI LALL: Sir, I have got a right to be heard. I am raising a point of order.

MR. DEPUTY CHAIRMAN: What is your point of order?

SHRI KAILASH BIHAR/M LALL: Even though he has made his spee:h. he has a right to move an amendment. Every Member has got that right.

MR. DEPUTY CHAIRMAN: We cannot go on at this rate. Then, I think I made a mistake in allowing these amendments. We cannot go on at this rate. But this won't be a precedent. Mr. Narasimham will move it.

PANDIT S. S. N. TANKHA: Sir. let me have my say first. Sir, so far as 1 have been able to understand it is not the intention of this House that any female heirs' rights should be exempted from the operation of t lis Act. And, if this amendment is allowed to be incorporated in the Bill, the effect of it will be that a large number of women will be deprived of their rights in tenancy lands and to which they are entitled under the present Bill.

There is however one aspect of the matter which I would like the hon. Minister kindly to consider. According to the law on the interpretation and conflict of statute, the position is this. A special law abrogates the general law. Now as far as this Bill is concerned, it will be a general Act, whereas the tenancy law is a special Act, and wherever there is a conflict between the special law and the general law, the special Act stands, and not the general Act. Therefore in that light also the tenancy law will prevail and not this Act. I, therefore, think it is absolutely necessary to consider this aspect of the question before accepting the amendment.

SHRI K. L. NARASIMHAM: Sir, in order to overcome the lacuna rightly pointed out by Pandit Tankha, I move: —

> 117(3). "That in amendment No. 117 in List No. 5 of amendments dated the 25th November, 1955, to the proposed sub-clause (2), the following proviso be added, namely: —
>
> 'Provided that the rights conferred on female heir under this Act are in no way adversely affected.' "

MR. DEPUTY CHAIRMAN: Now the hon. Minister will reply.

SHRI H. V. PATASKAR: Sir, I had least expected that when this amendment was proposed by me with a view to clarify certain obvious things, there would be so much of an excitement over a matter like this. The object of clause 4 is quite different. I proposed my amendment merely on account of certain wordings in sub-clause (b) of the clause. But it was open to this contention that we are trying indirectly to upset the other legislations or it may be open to anyone to say, as an hon. Member did here, that while passing this legislation for Hindu Succession, we are *go-*

[Shri H. V. Pataskar.] ing to affect that great socio-economic legislation throughout the country which deals with the question of tenancy in lands. We know particularly in the North—it is not so much in the South—where the zamindari system prevailed previously, there have cropped up different classes of tenants like Bhumidhar, etc. There are two or three classes of tenants, not only in the U.P. It is so in Bihar also. Th{:re, there is some other legislation. In Assam, there might be some other legislation and that legislation is meant for solving another problem of a socio-economic nature, applicable not only to the Hindus but to everyone concerned in this country, because that is a larger problem. This is a social measure, whereas the other is a socio-economic problem which, in conformity with the conditions prevailing in the different States, is being tackled by the States. As I said, certainly it can never be the object of any legislation that we pass here *to,* indirectly or in any other way, affect what the States have thought fit to enact in the best interests of the society and the economy of that place. I have, therefore, carefully selected the words in this amendment. I am sorry that it was placed only yesterday, and that has led to some heated argument on the other side by my hon. friends like Mr. Sinha. I myself thought that there was clause 4, there was no amendment to it. There was a good deal of suspicion, and so to clarify the position, I have put in these words. Now, there is one amendment by my hon. friend, Mr. Gupta. He wanted to insert the words 'Bhumidhari rights' to be included after the words 'tenancy rights'. I have put in the words here 'tenancy rights', because I certainly want to make it perfectly clear that I do not want to touch in any indirect manner any legislation regarding tenancy rights, but if someone wants through an amendment to bring in a question like ownership of land, etc., then I am equally opposed to that. Therefore, I have carefully chosen the words in this amendment, and whatever categories of tenants are there throughout the length and breadth of the country, they will be covered, because the names change from place to place and from State to State, as the problem is also being tackled differently from State to State. There was no zamindari in Bombay, but still we have got a tenancy legislation there, and it is in force. The matter is in the Concurrent List and any State can pass any legislation about it, ft is true. The only thing is that they have got to take the sanction of the President.

(Shri *R. C. Gupta* interrupted.)

Any question that he wants to put to me can be put later on. Therefore, let us be very clear in our own minds about it. Just as we do not want to deny women their legitimate share of property, we do not want to affect, in any indirect way, whatever land legislation there may be in the country. There is absolutely no reason to sup-I pose that the States are going to bypass this legislation by any measure of their own and will try to deprive women of their rights. I have no such fears. Let us not run away from the facts as they are, and let us not mix up the two questions. I am clear in my own mind that the words 'tenancy rights' will be more than sufficient, as there is not one system of tenancy throughout the length and breadth of the country. Certainly that problem is as important as the problem we are dealing with now, but the other is a socio-economic measure which applies to Hindus, Muslims, Christians, etc. In order that some people may not take advantage of this measure 'and indulge in unnecessary litigation or create confusions, and it is only with a view to making things clear, I thought there was no harm in putting it down on paper, and it was from that point of view that this amendment was made.

Now, as regards Mr. Narasimham's amendment:—

117(3). "Provided that the rights I conferred on a female heir by this

Act are in no way adversely affected." I know how it has started. Mr. Sinha said that we were going to deprive women of their rights. Nothing of the kind. Suppose there is some other property and there is also some land. The woman is bound to get her share. If she does not get it, she will be compensated. There is nothing that will deprive her of her share. That kind of property is not excluded from being inherited by any male or female.

SHRI RAJENDRA PRATAP SINHA: I am happy that the hon. Minister has explained the position, but let us make it clear in the Bill.

MR. DEPUTY CHAIRMAN: It is quite clear Mr. Sinha.

SHRI H. V. PATASKAR: This only means that if there is any law for the time being in force providing for the prevention of fragmentation of agri cultural holdings or for the fixation of ceilings, or for the devolution of tenancy rights, it shall not be adver sely affected by this Act. This will only not affect devolution of tenancy rights, or c'iny minimum holding that may be fixed. Supposing there are two sons and, on account of the ceiling, one son is not able to get it; that son will get compensation.

DR. SHRIMATI SEETA PARMANAND: The meaning may be very clear to the hon. Minister, but since doubts have been raised here, it is possible that doubts may be raised. in the future also and people may go to court. So. we should make it very clear even now.

SHRI H. V. PATASKAR: If I start listening to the doubts of everyone, I don't know what sort of measure it will be. I -have put in the words which are necessary. The words are very clear. I would appeal to my friends.....

SHRI N. D. M. PRASADARAO: Suppose in any tenancy law, certain provisions were made about inheritance! that sons alone will get a share. That will nullify the provisions of this Bill.

SHRI H. V. PATASKAR: That is not the question. The question is about the devolution of tenancy rights. That question will be decided on the merits of that question as to what would be in the best interests of society and our economy. I would appeal to my hon. friends to leave that matter untouched.

SHRI R. C. GUPTA: In view of the Minister's explanation, I would like to withdraw my amendment.

'Amendment No. 117 (1) was by leave of the House, withdrawn.

MR. DEPUTY CHAIRMAN: Mr. Kapoor's 117 (2) f also goes.

The question is:

117(3). "That in amendment No. 117, in List. No. 5 of amendments, dated the 25th of November 1955. to the proposed sub-clause (2), the following proviso be added:—

'Provided that the rights conferred on a female heir under this Act are in no way adversely affected'."

(After taking a count) Ayes 7; Noes 23.

The motion was negatived.

MR. DEPUTY CHAIRMAN: I will put the original amendment to the vote. The question is:

117. "That at page 4, lines 1 to 8, the existing clause 4 be renumbered as sub-clause (1) of that clause, and after line 8, the following be inserted, namely: —

'(2) For the removal of doubts it is hereby declared that nothing

tFor text of amendment see col. 623 *supra.*

tFor text of amendment *see col.* 625 *supra.*

[Mr. Deputy Chairman.] contained in this Act shall be deemed to affect the provisions of any law for the time being in force providing for the prevention of fragmentation of agricultural holdings or for the fixation of ceilings or for the devolution of tenancy rights in respect of such holdings.'"

The motion was adopted.

MR. DEPUTY CHAIRMAN: The question is:

"That clause 4, as amended, stand part of the Bill."

The motion was adopted.

Clause 4, as amended, was added to the Bill.

Clause 5—Intestate Succession

MR. DEPUTY CHAIRMAN: Amendment No. 12 is negative. It is ruled out.

PANDIT S. S. N. TANKHA: Sir, I move:

13. "That at page 4. lines 20-21, the words 'or by the terms of any enactment passed before the commencement of this Act' be deleted."

SHRI C. P. PARIKH (Bombay): Sir, I move:

64. "That at page 4, lines 20-21, the words 'or by the terms of any enactment passed before the commencement of this Act' be deleted."

MR. DEPUTY CHAIRMAN: The clause and the amendments are open for discussion.

PANDIT S. S. N. TANKHA: Mr. Deputy Chairman, I have proposed in amendment No. 13 that the following words be deleted:

"or by the terms of any enactment passed before the commencement of this Act."

The clause as it stands reads:

"This Act shall not apply to—

(ii> any estate which descends to a single heir by the terms of any covenant or agreement en tered into by the Ruler of any Indian State with the Govern ment of India....."

So far, I have no objection with the clause as drafted because we have recently entered into various agreements with the Rulers of Indian States regarding the merger of their States on certain conditions and it is only right and proper that this Parliament should allow or permit the Government of India to keep to and honour its pledges. Therefore, I have no quarrel with this part of the clause. But when this sub-clause reads further :

"or by the terms of any enactment passed before the commencement of this Act",

with these words I do not agree. I do not see any reason why, where, by any particular State Act for instance, in Bengal, Bihar or U.P., the estates were descendable through male primogeniture only, this enactment should not be permitted to apply to such States. As far as my own State of U.P. is concerned, the Oudh Taluk-dari and Settled Estates Acts have been abolished and therefore no question of that kind arises in that State, whether we retain those words or not, because that law no longer exists in my State, but I believe there are still some States where such enactments do exist and I do not see any reason why the female heirs of the holders of those estates should be debarred from inheritance in such properties under this Bill. Therefore, I would press that these words suggested by me in the amendment be deleted from the clause, so that wherever there is any enactment against the provisions of this Bill, that Act shall not hold good, and that this Act will govern the devolution of those properties, also for women in those States.

SHRI C. P. PARIKH: Sir, with regard to inheritance by the female heirs, I agree with Mr. Tankha's views. Therefore, all the enactment* by which these rights to estates are given, *e.g.,* the Bombay Baronetcj Act, etc.—all those should not be allowed to have preference when this Bill is passed.

SHRI J. S. BISHT: This Act only applies to Hindus. There are Parsres, Muslims, etc.....

SHRI C P. PARIKH: There are Hindus also.

SHRI J. S. BISHT: There should be a separate Act.

SHRI C. P. PARIKH: This Act is applicable to Hindus and whenever it is applied to Hindus, the other should not be applicable.

AN. HON. MEMBER: You m.;an Muslim Baronets should have separate laws?

SHRI C. P. PARIKH: Yes.

श्रीमती सावित्री देवी निगम (उत्तर प्रदेश) : श्रीमान्, मैं तन्खा साहब के एमेंडमेंट का समर्थन करती हूं । मैंने बड़ी गम्भीरतापूर्वक इस पर अपने विचार सेलेक्ट कमेटी में भी प्रकट किए थे । जमाने की रफ्तार और इन सात, आठ वर्षों में होने वाले परिवर्तनों को देखकर हमें यह कभी नहीं भूलना चाहिए कि हमें किस प्रकार नये मूल्य और नई मान्यताओं पर एक नया समाज बनाना है । जिस प्रकार राजा महाराजाओं और बैरंस को हर स्टेट में एग्रीमेंट्स और कानूनों के द्वारा अधिकार दिये जाते रहे वह सचमुच हमारे देश की सोशलिस्टिक पैटर्न आफ सोसाइटी के लिए बड़ा ही खेदजनक और शर्मनाक भी है । श्रीमान्, संसद् के सभी सदस्य और स्वयं आप भी इस बात से भलीभांति परिचित हैं कि ये राजे महाराजे और अन्य धनी वर्ग के लोग जब उपाधि से प्राप्त हुई प्रापर्टी के होल एंड सोल राइट पाते जायंगे तो किस प्रकार परिवार के जो छोटे सदस्य हैं, जो कि उन अधिकारों से वंचित हैं, जैसे भाई हैं, बहनें हैं, उनको उस सम्पत्ति में हिस्सा मिलेगा । राजा महाराजाओं के परिवार में बड़ा बेटा ही सम्पत्ति को इंहेरिट करता है और परिवार के बाकी सदस्य उसी पर निर्भर रहते हैं और जब वह निकम्मा हो जाता है तो फिर परिवार के उन सदस्यों को सफर करना पड़ता है, यहां तक कि लड़कियां और बहुएं और अन्य सदस्य भिखारी की तरह जीवन बिताने लगते हैं । अपने लाज के अनुसार, जो लोग प्रापर्टी इंहेरिट करते हैं वे पेरिस या ऐसी ही भव्य जगहों में जाकर रीसिंग वगैरा करते हैं और बहुत रुपया बर्बाद करते हैं । इसलिए जब हम ये नये लाज बनाने जा रहे हैं तब हमें यह भी चाहिए कि स्टेट्स में जो विभिन्न प्रकार के राइट्स इन राजा महाराजाओं को दिये गये हैं उनको कैंसिल कर के इस प्रकार व्यवस्था करनी चाहिए जिससे परिवार के सब सदस्यों को समान रूप से, एक से अधिकार मिल सकें । इसलिए मैं तन्खा साहब के एमेंडमेंट का पूरा समर्थन करती हूं ।

MR. DEPUTY CHAIRMAN: But Mr. Tankha's amendment is not what you spoke about.

SHRIMATI SAVITRY DEVT NIGAM: -It is.

MR. DEPUTY CHAIRMAN: श्री तन्खा का एमेंडमेंट इस तरह का है ।

He only wants the deletion of the words "or by the terms of any enactment passed before the commencement of this Act". It has nothing to do with agreements entered into between the Government of India and the Rajpramukhs.

SHRI RAJENDRA PRATAP SINHA: Sir, I want to oppose this entire clause. I will first say a few words about clause 5(i), which reads as follows:

"This Act shall not apply to—

(i) any property succession to which is regulated by the Indian Succession Act, 1925, by reason

I Shri Rajendra Pratap Sinha.] of the provisions contained in section 21 of the Special Marriage Act, 1954;

Sir, as at present worded, this means that this Hindu Succession Bill which we are discussing will not regulate the succession to the property belonging to persons who choose to marry under the Special Marriage Act. We have provided in the Special Marriage Act that the succession to property of any one marrying under the provisions of the Act will be governed by the Indian Succession Act. Now, let us examine the provisions of the Indian Succession Act and see how they differ from the present Bill that we are debating. You will find that in section 33(a) of the Indian Succession Act. the widow is entitled to get only a one-third share and the other lineal descendants will get two-thirds share of the property of the deceased. And then, under section 33(b), the widow gets half and the others, that is to say, those who are kindred to the deceased, get half. According to the provisions of the present Bill, we are going to provide that the widow will get full one share along with the other heirs, and if there are no other heirs or lineal descendants, she will get the entire property. So you will find that the widow will be placed at a distinct disadvantage if she had married under the provisions of the Special Marriage Act. Not only that, but a ceiling has also been placed under the Indian Succession Act that the maximum that a widow can get shall be Rs. 5,000 in cash.

MR. DEPUTY CHAIRMAN: But the Indian Succession Act does not apply to Hindus.

SHRI RAJENDRA PRATAP SINHA: I am just placing my facts before the House. Of course, the Indian Succession Act does not apply to Hindus.
but.....

MR. DEPUTY CHAIRMAN: And so your argument relating to that point is irrelevant.

SHRI RAJENDRA PRATAP SINHA: What I am submitting is that those Hindus marrying under the Special Marriage Act will be debarred from coming under the provisions of this measure.

MR. DEPUTY CHAIRMAN: If they have chosen to marry under that Act, they must take the consequences.

SHRI RAJENDRA PRATAP SINHA: But what we want is this, that we should encourage marriages under the Special Marriage Act. What is the present trouble in our society?

MR. DEPUTY CHAIRMAN: They will marry under the Special Marriage Act and at the same time you want to make the Hindu Succession Act applicable to them? Is that your point?

SHRI RAJENDRA PRATAP SINHA: My point is that the Hindu Succession Act should be applicable to all Hindus, irrespective of whether they married under the provisions of the Hindu Marriage Act or the provisions of the Specia] Marriage Act.

SHRI K. S. HEGDE: What happens if a Hindu marries a non-Hindu?

SHRI RAJENDRA PRATAP SINHA: I might invite the attention of my hon. friend to clause 2 on page J, where in part (b) of the Explanation, it is said:

> "any child, legitimate or illegitimate, one of whose parents is a Hindu, Buddhist, Jaina or Sikh by religion and who is brought up as a member of the tribe, community, group or family to which such parent belongs or belonged;".

SHRI K. S. HEGDE: That means what? How does that come in here?

MR DEPUTY CHAIRMAN: Does not the Special Marriage Act provide I a separate rule for succession?

SHRI RAJENDRA PRATAP SINHA: Yes.

MR. DEPUTY CHAIRMAN: Tl on how do you make this Hindu Sua sion Act applicable to them? The Parliament has already passed that Act.

SHRI RAJENDRA PRATAP SINHA: If we delete this clause, then Hindus marrying under the Special Marriage Act will come under the purview °x this Act. There will be uniformity in rhe law. Sir, each time, arguments have been put forward by hon. Members over there that because a particular Act, the Tenancy Act or the Baronetcy Act, does not belong only to Hindus, because even non-Hin Sua come under that Act, therefore, we should not touch those Acts under this Act or that. Actually, we should ike to enlarge the radical provisions, whether in the Succession Act or in the Marriage Act and what, is more rational should be provided for all the communities in India. We should not fetter our discretion in that respect. At least let us make provision that all Hindus who are governed by the Special Marriage Act, or the Hindu Marriage Act, Hindus who are under the Tenancy Act or the Baronetcy Act, they will come under this very raHical measure that we are enacting now. That is my submission, *so* that we may develop a uniform civil law in time to come. Then we can go forward and say, "Look here, those marrying under the Special Marriage Act also will have inheritance devolving equally on the female." We should amend our Indian Succession Act so that all the people who are under the Indian Succession Act will get the benefit of the most radical succession laws. My submission is that let all Hindus come under the purview of this measure.

The present difficulty, as W(know, is the caste system, and we thought that we would be breaking the barriers of caste if our young mer and women take advantage of the Special Marriage Act and marry outside their own caste. Now we seem to want to fetter them No woman would like to marry now, if.....

SHRI H. V. PATASKAR: I may remind *my* hon. friend that now people belonging to any caste can marry, without resort to the Special Marriage Act. under the Hindu Marriage Act so why should they go to the Special Marriage Act?

SHRJ RAJENDRA PRATAP SINHA: But there are certain advantages in marrying under the Special Marriage Act, for instance, they could do away with all the ceremonies.

MR. DEPUTY CHAIRMAN: And so you want to take the advantages of both?

SHRI RAJENDRA PRATAP SINHA: Certainly, I would like to have the advantages of both the Acts. There are parents who would not permit their child to marry a particular person. Or, they cannot afford to have all the Hindu ceremonies. Therefore, they marry under the Special Marriage Act. Why place a fetter on them now? If they marry under the Hindu Marriage Act, the female partner will always be at an advantage. If they marrv under the Special Mafrriage Act, she will be placed at a disadvantage. I submit that it should be the State policy, it will be to our own interest, to encourage people to marry under the Special Marriage Act. Therefore, my submission is that we should allow all those marrying under the Snecial Marriage Act to take advantage of the provisions of this Bill

Sir, as regards clause 5 (ii), I support the amendment of Pandit Tankha. Of course. I can grant that if there are constitutional guarantees given to the ex-rulers, let us not touch them for the time being. But there is no point in permitting the devolution of pro-

[Shri Rajendra Pratap Sinha.] perty or inheritance to continue under the special Acts of those estates under which the succession and inheritance goes only either by primogeniture or by other rules, to the male member or to the eldest son of the family. Sir. you will find that in clause 7 of this Bill we have done away with the institution of *sthanamdar*. I was told that sthanam property was governed by the law of primogeniture. We thought, it was very improper that we should permit the law of primogeniture in Travancore-Cochin and Malabar to continue under the institution of *sthanam* law.

In the Joint Committee, we brought in provisions to do away with this clause and for breaking away the law of primogeniture in that area. If we have done that in one State, there is no ooint in permitting it to continue in other States. We also wanted to know from the hon. Minister as to the number of such laws; we were not given any such list; perhaps the hon. Minister was not in possession of that information. We are more or less giving a blank cheque to the bon. Minister by saying, " ..... by the terms of any enactment passed before the commencement of this Act". We are absolutely in the dark; we would like to know what those enactments are.

The big zamindaris have been abolished but crores and crores of rupees will go as compensation only to the eldest son of the present holder of the properties. There are the brothers and sisters of the eldest son who will be debarred. We are going towards a socialistic pattern of society; we are going to have a ceiling on lands and we are also going to have ceilings on dividends. We also want to divide the wealth among larger number of people. In that context, this particular clause is an anachronism. This will concentrate wealth in the hands of a few, whereas the whole trend of our present legislation is to brerfk up this concentration of wealth in the hands of a few. Therefore, I submit tnat tne amendment of Mr. Tankha he accepted by the hon. Minister.

SHRI J. S. BISHT: When I was listening to the speech of my hon. friend, Mr. Sinha, T thought that we were at the first reading stage, because he covered a much wider field than what we are concerned with here. What we are concerned with here Is only the Hindu intestate succession and we must see that we touch only those things which govern the Hindus exclusively. The Special Marriage Act is a sort of civil code applicable to all.

MR. DEPUTY CHAIRMAN: I suggest that you too should not dilate like that.

SHRI J. 3. BISHT: I am not dilating. The Special Marriage Act governs everybody, Hindu, Muslim, Christian, etc., and that is the reason why this law has exempted that particular clause. That being so, why does he want to do away with it? Why should such people come again into the joint Mitakshara family coparcenary which we are going to keep under clause 6? In the Special Marriage Act, we have said that a person belonging to a Hindu joint mitakshara family marrying under that Act will be deemed to have separated from the coparcenary. In that case, succession to his property and to the property of his descendants will be regulated by the Indian Succession Act. It is quite plain and simple and yet Mr. Sinha wants that those who marry outside the Hindu fold, *e.g.*, a person belonging to the Muslim, Christian or any other faith, should haVe his inheritance regulated by the Hindu Succession Bill. He wants them to come into the coparcenary and create trouble. That is not what we desire and it is the reason why this particular provision has been made.

Shri Tankha wants the words " ..... or by the terms of any enactment passed before the commencement of this Act" to be deleted. So far as

that particular point is concerned, in 1 the State of Uttar Pradesh, for Ins- tance, there are two Acts, the Avadh Settled Estates Act and the Agra Settled Estates Act, in which the law of primogeniture has been accepted. The zamindaries have now been taken over but previously, under these enactments, only the eldest son e;uld succeed and the others were given maintenance. With the abolition of zamindaries, those enactments have practically got no value now.

SHRI RAJENDRA PRATAP SINHA: What about compensation?

SHRI J. S. BISHT: The Avadh Settled Estates Act and the Agra settled Estates Act apply to everybody irrespective of who he is. a Hindu, a Muslim, a Christian, an Anglo-Indian. The property ot anyone who came within the purview of these Acts descended according to those enactments. If you do not like those enactments, let the U.P. Legislature abolish it but to say here t lat the Hindus coming under those enactments—there may be a Bihar Act also like that—should be penalised is not correct.

SHRI C. P. PARIKH: We are not touching the laws of other ccm-znunities.

SHRI J. S. BISHT: Why affect only the Hindus?

SHRI C. P. PARIKH: We are touching only the Hindus at present.

SHRI J. S. BISHT: In that case, you abolish the whole thing. We thought that there should be exceptions and that is why it has been provided and I think the hon. Minister was very right and correct in keeping this clause as it is and I support it.

SHRI BHUPESH GUPTA: I do rot understand why clause 5(ii) shculd remain. It seems that we are orce again up against the gentlemen of the polo ground and race horses. 1 do not understand why an exemption in their favour should be made. Mr. Tankha has suggested an amendment in that way because he does not like to go the whole hog as he would like to respect some of the agreements entered into by these hon. gentlemen with the hon. Government. I do not think we should be particularly concerned about those agreements. When we are changing the time-honoured laws and customs of our society which had enjoyed much greater veneration m the times past we should not be afraid of treating the agreements entered into by the princes with the Government of India on a different footing as far as devolution of property is concerned.

SHRI J. S. BISHT: They are protected by the Constitution.

SHRI BHUPESH GUPTA: I know that they are protected by the Constitution. Then again, I am up against the Constitution. In these cases, you must sometimes think of these things a little deeply. The Constitution protects these agreements; all right, but then we should change the Constitution so far as these matters are concerned. I am against the whole principle I am opposed to continuing the old system of inheritance and devolution of property so far as th* princes are concerned. I am opposed TO this law of primogeniture. I do not know how many such legislations are there and to what extent this particular provision would nullify the other provisions that we are having in this law. The hon. Minister should have told us, in connection with this particular clause, or in connection with some other clause, as to how the devolution of property or the succession would be affected by it.

We should have some such ideas. Otherwise it mav be that a large number of people in the community will not enjoy the benefits that are
I sought to be given under this Act.
I Therefore I say, that this is a matter which has got to be gone into and the

TShri Bhupesh Gupta.] amendment suggested by Mr. Tankha deserves support from us and I think, it also commends itself for acceptance by the Government. As far as the agreement entered into by the ruler of any Indian State with the Government of India is concerned. I think thev have got enough properties, and the more the shareholders the better and certainly the women should come in. There is no need for this kind of provision particularly when we have dealt with the question of the illegitimate children already. There was a provision for illegitimate children here and naturally we were a little concerned about this provision when we came to the princes, because, sometimes, well, if you have that provision, then that may have to be looked into also in the case of princes Since that is gone, I say, let this also go. It is no good thing that you are making an exception with regard to such people who enjoy all the privileges, who are responsible for much of the social injustice and injustice of the sort which we are fighting under this Bill. If you make an exception in their case it is something which, according to me. is very repugnant to good sense. The hon. Minister should do the needful if the Constitution presents any difficulty and bring the Indian princes along, within the scone and operation of the normal provisions of this Bill, instead of placing them outside the pale of this law. This is all that I want to say. I am not particularly keen on these princes nor on their rights and privileges. In fact, it is necessary to encroach upon their vested interests in order to promote social justice and here also is an occasion when we should do something about it. Therefore, I say that we cannot support this particular sub-clause as it is.

SHRI JASPAT ROY KAPOOR, I wanted to speak against the whole clause, Sir.

MR. DEPUTY CHAIRMAN: It has already been opposed and the Minis-*er will r'eply now.

SHRI JASPAT ROY KAPOOR: But not for the reasons that I was going to put forward.

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MR. DEPUTY CHAIRMAN: Anyway, I have called on the Minister to reply.

SHRI JASPAT ROY KAPOOR: I thought I had long before caught your eye; perhaps I was wrong.

MR. DEPUTY CHAIRMAN: Yes, Mr. Pataskar.

SHRI H. V. PATASKAR: Sir, this clause 5 now only contains two subclauses. The first is :

> "any property succession to which is regulated by the Indian Succession Act, 1925, by reason of the provisions contained in section 21 of the Special Marriage Act, 1954."

I will not go into an exhaustive discussion of this question, but a few facts are enough to make us realize what the significance is. The Special Marriage Act was passed before and the Hindu Marriage Act was subse quently passed, and I know that under the former Special Marriage Act of 1872, the idea was that two persons, where they belonged to different castes or they belonged to different religions, could not marry under the then existing laws and therefore, the recent Special Marriage Act had to be passed. Now, at that time, some people also preferred to marry under the Special Marriage Act because of the rigidity of the law regarding the marriage amongst Hindus both with respect to inter-caste marriages *a.%* well as with repect to the dissolution of marriages in certain cases, but I am inclined to think that, more and more, the only people who will natur ally take advantage of the Special Marriage Act, 1954, after the passing of the Hindu Marriage Act, will be persons who want to marry, where one of the parties belongs to one of the religions and the other some other and they choose to marry persons belonging to different religions.

Normally, Hindus, after the passing of the Hindu Marriage Act, will h no reason to resort to the provisions of this Special Marriage Act. Tha' is one thing. The next thing is, after the passing of the Special Marriage Act, the persons who will marry under that Act are not the persons whose marriages are brought about by their parents or guardians but they are expected to be persons who choose their own form of marriage and their own partners in life, and if they ultimately decide that they should marry, not under the Hindu Marriage Act, which has been passed with all the consequences provided for therein, but they should marry only under the Special Marriage Act, it is but fit and proper that they should be governed also in the matter of succession by the provisions of that Act. That will lead to less confusion and more uniformity and conform to the provisions of the different Acts which are intended for different purposes. So I believe the provision there, in sub-clause (i), as hon. Members will find, is a very reasonable one.

With respect to sub-clause (ii), there are two matters. To whom doe? it not apply? "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". It is well-known to all hon. Members that after the attainment of independence we have tried successfully to dissolve something like more than 500 Indian States. We know of the conditions then existing, and under (hose conditions, solemn agreements and covenants were entered into with the rulers of those States with respect to certain matters, one' of which, in many cases, is also the question of inheritanice or (succession. There is the Constitution also. I will not go into details, but as the members are aware. the Constitution also provides that there is some sanctity to whal we have done. Mr. Bhupesh Gupta suggested that it should be done by amending the Constitution or by any other means. That apart, is it desir able that we should) within seven 01 eight years of our having entered into a solemn agreement with the States, which was necessary in order that our country could progress in the direction in which it is progressing, in the direction of a socialistic pattern of society, annul it simply because we have.....

SHRI BHUPESH GUPTA: Why make exceptions for the princes?

SHRI H. V. PATASKAR: I say: let us not look upon them merely as princes of the past and not also from the angle that we want to perpetuate anything. The then Government simply ratified the decisions of the Constituent Assembly by making suitable provisions in the Constitution. To undo the thing within seven or eight years of the Constitution coming into force will create an impression that we are not the sort of people who could be depended upon, whatever be the arguments that are put forward now to do so. Therefore, I am sure you will not agree with the view that it should be undone. (Interruption. 1

I am sure you will not agree with me and I do not expect it. Anybody can go to any extreme by saying, "No, everything should be .....

SHRIMATI SAVITRY DEVI NIGAM. I was only telling that his amendment does not affect the agreement.

SHRI H. V. PATASKAR: There are people who have spoken against them.....

SHRI BHUPESH GUPTA: Only about 500 gentlemen.

SHRI H. V. PATASKAR: Probably the hon. the lady Member did not, follow it in her enthusiasm for pro viding for the extreme.....

SHRIMATI SAVITRY DEVI NIGAM. I have been following it very carefully. I was telling that the amendment is not affecting the agreement

[Shrimati Savitry Devi Nigam.] by the Government, but the new enactments.

SHRI H. V. PATASKAR: I am not replying to Mr. Tankha at this stage or to your arguments. I am replying to Mr. Bhupesh Gupta's argument. So I would advise hon. Members that it is our duty to observe whatever agreements we have entered into solemnly with them, of which we are reaping the advantages, and not go back on them for these small Acts. Whatever race-courses and other things might have existed in the past, 1 think, people are now after horses and elephants. It will be a sort of violent process, but let us not fall into that error of promising one thing yesterday and trying to break it to-day. That is the point of view for which this provision is made.

SHRI BHUPESH GUPTA: The horses of these gentlement are getting better treatment than many of the children.

SHRI H. V. PATASKAR: Then, the other part of this sub-clause is, "by the terms of any enactment passed before the commencement of this Act." Of course, I can straightaway confess that beyond a few Acts which I have been able to know, it has not been possible for me to search all the different Acts from 1827 or 1833 up to now and to find out the position, but I am aware that there are some Acts even in respect of Hindus. For instance, in Ahmedabad there is the Baronetcy Act. It was for different conditions.

SHRI N. D. M. PRASADARAO: My friend does not know all the Acts; still he wants to exclude them.

SHRI H. V. PATASKAR: I know that there is the Baronetcy Act for Ahmedabad, which was passed by the Bombay Legislature. I will tell you a little story which my friend, Mr. Parikh, knows. Probably, it was on account of certain conditions then, that they thought it fit that that family should be preserved. That was an old idea. Therefore, the Act was passed. Would it not be proper.....

SHRI C. P. PARIKH: That family is disrupting.

SHRI H. V. PATASKAR: I am not enquiring about that and I am sure that such families are not going tc last long under the stress of the new circumstances. So I am not bothered about that. The point is that if there are even some enactments passed in the past by a certain legislature with respect to certain individuals who are likely to be very few, I would say.....

SHRI C. P. PARIKH: It was 50 years back.

SHRI H. V. PATASKAR: ....that it is much better that that should be repealed by the Bombay Legislature direcely, rather than by an indirect method from here, when we are not here legislating for those baronets. We are here legislating for the common Hindu man. Therefore, I am sure that, in course of time, if it has disrupted—naturally nobody will be able to keep up that standard—the Bombay Legislature will take care of it. It is much better that, whenever we have to solve a problem, it should be a pointed thing. It should be definite and we should not try to do anything indirectly. So we view It from that point of view. It is ordy in respect of such estates or such persons, where the rule of primogeniture had been fixed by an enactment, anr? there we say that it is much better that we don't make this Act applicable just now. You can also make a representation after the passing of this measure—not before that—that it is advisable, and I think, they themselves will realise that it is much better to bring that law in uniformity with our laws.

4 P.M.

SHRI N. D. M. PRASADARAO: But their properties and families are large.

SHRI H. V. PATASKAR: I am not concerned with it. The only question is whether this primogeniture will apply cr not. That will, therefore, be decided by those who want to repeal that and they will be the best persons to consider at that time what to < o and what not to do. It is much better, therefore, that in a general legislali >*n* like this, which is intended for ordinary Hindus in our society, we do not interfere with that because we do not know what the consequences will .>e and such small cases may be left to be dealt with by the respective Stoto legislatures who have given them t le right. I say, therefore, that this is a wholesome clause, which exempts only a small class of people and I hope it will be adopted. I know that some people are opposed in principle to any vested interest being continued, but I think in the larger interests, a id in the manner in which it has been done, I hope everybody will agree to this provision.

DR. SHRIMATI SEETA PARMANAND: I want to know from the hon. Minister whether he does not think that as far as section 21 of tlie Special Marriage Act applying to a couple married under that Act, where both the parties are Hindus, is concerned, the best place for giving the benefits of this Act would not be by bringing an amendment to the Special Marriage Act or not. I just want an answer.

SHRI H. V. PATASKAR: That s a different matter which will be considered after watching the results of this legislation.

SHRI JASPAT ROY KAPOOR: Since admittedly, covenants and agreements entered into by the President of the Union with the States rulers are protected by a specific provision in the Constitution, may I know, what is the special reason for having the first part of sub-clause (ii)? Is it not unnecessary and redundant because all these rights and privileges are protected by the Constitution? i Must we reiterate them here. Obviously, as you have been pleased to Observe, we must respect them, but they will continue to be respectea under[1] the Constitution. Why again repeat them here giving an impression that unless we go on repeating them time and again they are in jeopardy? If that goes, then of course remains the amendment of Mr. Tankha which may be considered on its merits.

SHRI H. V. PATASKAR: I did not expect this from an experienced legislator like my hon. friend. When you are legislating on a particular subject, it Is not better, instead of leaving it to be inferred, that we specifically state that this will not apply in such and such cases? I think that is the right and the correct way. It does no harm. And why leave it to inferences and arguments?

MR. DEPUTY CHAIRMAN: What about your amendment, Mr. Tankha?

PANDIT S. S. N. TANKHA: I do not press it, Sir.

♦Amendment "No. 13 was, by leave, withdrawn.

SHRI C. P. PARIKH: I press my amendment, Sir.

SHRI JASPAT ROY KAPOOR: May I then suggest that sub-clause (i) and (ii) may be separately put and then thirdly the amendment because .....

MR. DEPUTY CHAIRMAN: Order, order. The question is:

> 64. "That at page 4, lines 20-21, the words 'or by the terms of any enactment passed before the commencement of this Act' be deleted."'

(After a count) Ayes 11; Noes 15.

The motion was negatived.

MR. DEPUTY CHAIRMAN: *The* amendment is lost. The question is:

•For text of amendment, *see* i col. 639 *supra.*

[Mr. Deputy Chairman.]

"That clause 5 stand part of the Bill."

The motion was adopted.

Clause 5 was added to the Bill.

Clause 6—Devolution of *interest in coparcenary property*

PANDIT S. S. N. TANKHA: Sir, I move:

14. "That at pages 4-5 for the existing clause 6, the following be substituted, namely:—

•6A, *Birth in family not to give rise to property.*—On and after the commencement of this Act, no right to claim any interest in any property of an ancestor during his lifetime, which is founded on the mere fact that the claimant was born in the family of the ancestor shall be recognised in any court.

Explanation.—In this section, i "property" includes both movable and immovable property, whether ancestral or not, and whether acquired jointly with other members of the family or by way of accretion to any ancestral property or in any other mariner whatsoever.

6B. *Joint tenancy to be replaced by tenancy-in-common.*—On and after the commencement of this Act, no court shall recognise any right to, or interest in, any joint family property, based on the rule of survivorship, and all persons holding any joint family property on the day this Act comes into force shall be deemed to hold it as tenants-in-common as if a partition had taken place between all the members of the joint family as respects such property on the date of the commencement of this Act and as if each one of them is holding his or hei own share separately as full owner thereof:

Provided that nothing in this section shall affect the right to maintenance and residence, if any, of the members of the joint family other than the persons who have become entitled to hold tkjir shares separately and any such right can be enforced as if this Act had not been passed:

Provided further that in the case of any female who becomes entitled to hold any share separately under the provisions of this section, she shall not take it as an estate known as the Hindu women's estate under the law in force before the commencement otf this Act and on her death the property shall devolve on the heirs entitled thereto under the provisions of this Act.

6C. *Rule* of pious *obligation* of *Hindu son abrogated.*—(1) After the commencement of this Act, no court shall, save as provided in sub-section (2), recognise any right to proceed against a son, grandson or great grandson for the recovery of any debt due from his father, grandfather or great-grandfather or any alienation of property in respect of, or in satisfaction of, any such debt on the ground of the pious obligation of the son, grandson or great-grandson to discharge any such debt.

(2) In the case of any debt contracted before the commencement of this Act, nothing contained in sub-section (1) shall affect—

(a) the right of any creditor to proceed against the son, grandson or great-grandson, as the case may be, or

(b} any alienation made in respect of, or in satisfaction of, any such debt, and any such right or alienation shall be enforceable under the rule of

pious obligation in the same manner and to the same extent as would h£ve been the case hid this Act not been passed.

Explanation.—For the purpose of this sub-section, the expression son, grandson or great-grands in' shall be deemed to refer to the son, grandson or great-grandscn, as the case may be, who was born or adopted prior to the commencement of this Act.

6D. *Liability of members of joint family for debts before passing of Act not affected.*—Where a debt, has been contracted before t the commencement of this Act by the manager or *karta* of a joint fam ly for family purposes, nothing herein contained shall affect the liability of any member of the joint family to discharge any such debt, and any such liability may be enforced against all or any of the persons liable therefor in the same manner and to the sane extent as would have been the case if this Act had not been passed'. "

21. "That at page 4, lines 29-30, after the words 'interest of the deceased', the words 'along with the other heirs specified~in the sSid Class of the Schedule' be inserted."

24. "That at pages 4-5 lines 33 to 36 and 1 to 7, respectively, be deleted."

26. "That at page 5, after line 6, the following further provisos be inserted, namely: —

'Provided further that on a partition made after the passing of this Act, and before the death of the deceased, no male descendant shall be entitled to take for his separate enjoyment any share In excess of that which would become due to him in the presence of the female heirs at the death of the deceased:

Provided also that no male descendant who has taken his share for separate enjoyment on a partition made either before or after the passing of this Act and before the death of the deceased shall be entitled to any further share in the property of the deceased'."

DR. P. V. KANE (Nominated): Sir, I beg to move:

19. "That at pages 4-5, for the existing clause 6, the following be substituted, namely: —

'6. Abolition *of Mitakshara system.*—The Mitakshara joint family system is hereby abolished and on the date of the commencement of this Act all persons who are members of a coparcenary in a Mitakshara joint family shall become tenants-in-common'."

SHRT J. S. BISHT: Sir, I beg to move:

20. "That a pages 4-5 for the existing clause 6, the following be substituted, namely: —

'6. Birth *in a family not to qive rise to rights to property.*—On and after the commencement of this Actt, no right to claim any interest in any property of an ancestor during his life-time, which is founded on the mere fact that the claimant was born in the family of the ancestor, shall be recognised in any court.

Explanation.—In this section, "property" includes both movable and immovable property, whether ancestral or not, and whether acquired jointly with other members of the family or by way of accretion to any ancestral property or in any other manner whatsoever'."

94. "That at pages 4-5, lines 33 to 36 and 1 to 6, respectively, be deleted."

DR. SHRIMATI SEETA PARMANAND: Sir, I beg to move:

65. "That at pages 4-5, for the existing clause 6, the following be substituted, namely—

'6. The sons and daughters of a male Hindu, dying after the commencement of this Act, having at the time of his death an interest in the Mitakshara coparcenary property, shall have aft equal share in the deceased (father's) property inclusive of coparcenary property and in the event of a partition of the property being opened by a male heir of the coparcenary In the life time of the deceased, the shades of the daughters, being equal to those of the sans of the deceased, shall be taken into consideration for determining the individual share of the members:

Provided that the daughters shall not enjoy the right or demanding a partition for the settlement of their share during the life-time of the deceased:

Provided further that the divided son shall be debarred from any subsequent interest in the property of the deceased with effect from the date of his partition.

Explanation.—For che purpose of this section, the share of the deceased in the coparcenary property shall be determined and shall accrue in the same manner as at present, and in the event ol a male heir exercising his right of claiming a share in the life-time of the deceased, the daughter's shate will be computed as if she were a son. The daughter, by virtue of her birth in the family, shall not suffer from any disqualification beyond her not being given the right of opening a partition enjoyed by male members oi the coparcenary.' "

DR. W. S. BARLINGAY (Madhya Pradesh): Sir, I beg to move:

66. "That at pages 4-5, for the existing clause 6, the following be substituted, namely: —

'6. *Devolution of interest in coparcenary* property.—(1) 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:

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 (which for the purpose of this section shall. include the interest of his male descendants, if any, in the coparcenary) to the same extent as she would have done if the interest of the deceased had been his separate property.

(2) After the commencement of this Act, no member of a Hindu Mitakshara coparcenary shall have the right to claim partition of the coparcenary property during the life time of his father.' "

(The *amendment alio stood in* the *name of Shri Rajendra Pratap* Sinha.)

126. "That at pages 4 and 5. for lines 27 to 36 and 1 to 6, respectively, the following be substituted, nataely: —

'Provided that if the deceased had left him surviving any female relative specified in Class I of the Schedule or any male relative specified in that Class who claims through such female relative, such female or male relative shall be entitled to succeed to the interest of the deceased to the same extent 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.

Expla.nctij.on.—For the purposes of the proviso to this section, the interest of the deceased shall be deemed to include the interest of everyone of his undivided male descendants in the coparcenary property.' "

SHRI C. P. PARIKH: Sir, i beg to move:

67. "That at pages 4-5, for lines 35-36 and 1 to 4 respectively, the following be substituted, namely: —

'the interest of everyone of his undivided male descendants in the coparcenry property, and no male descendants who has taken his share for separate enjoyment or a partition made either before or after the passing of this Act and before the death of the deceased shall be entitled to any further share in the property of the deceased.'"

SHRIMATI LILAVATI MUNSHI (Bombay): Sir, I beg to move:

93. "That at page 4, lines 29 to 32, for the words "to succeed to tie interest of the deceased to the same extent as she would have done hid the interest of the deceased in the coparcenary property been allotted to him on a partition made immediately before his death" the following be substituted, namely: —

'to the same rights and liabilities as a male relative who[1] is an heir specified in Class I of the Schedule would have in the coparcenary property provided, however, she will not have the right to enforce partition or to exercise the rights of a managirg member'."

94 R.S.D.—4.

95. "That at page 5, lines 1 to 4 be deleted."

(Amendment No. 95 also *stood in the names of Messrs. K. S. Hegde and T. J. M. Wilson.)*

SHRI RAJENDRA PRATAP SINHA: Sir, I move:

15. "That at pages 4-5, for the existing clause 6, the following be substituted, namely: —

'6, *Birth in family not to give rise to rights in property.*—On and after the commencement of this Act, no right to claim any interest in any property of an ancestor during his life-time, which is founded on the mere fact that the claimant was born in the family of the ancestor, shall be recognised in any court.

Explanation.—In this section "property" includes both movable and immovable property, whether ancestral or not, and whether acquired jointly with other members of the family or by way of accretion to any ancestral property or in any other manner whatsoever.

6A. *Joint tenancy to be replaced by tenancy-in-common.*—On and after the commencement of this Act, no court shall recognise any right to, or interest in, any joint family property, based on the rule of survivorship; and all persons holding any joint family property on the day this Act comes into force shall be deemed to hold it as tenants-in-common as if a partition had taken place between all the members of the joint family as respects such property on the date of the commencement of this Act and as if each one of them is holding his or her own share separately as full owner thereof.

6B. *Rule of pious obligation of Hindu son abrogated.*— (1) After

[Shri Rajendra Pratap Sinha.] the commencement of this Act, no court shall, save as provided in sub-section (2), recognise any right to proceed against a son, grandson or great-grandson for the recovery of any debt due from his father, grandfather or great-grandfather or any alienation of property in respect of, or in satisfaction of, any such debt on the ground of the pious obligation of the son, grandson or great-grandson to discharge any such debt.

(2) In the case of any debt con tracted before the commencement of this Act, nothing contained in sub-section (1) shall affect—

(a) the right of any creditor to proceed against the son, grandson or great-grandson, as the case may be, or

(b) any alienation made in respect of or in satisfaction of any such debt, and any such right or alienation shall be enforceable under the rule of pious obligation in the same manner and to the same extent as would have been the case had this Act not been passed.

Explanation.—For the purpose of sub-section (2), the expression "son, grandson, or great-grandson" shall be deemed to refer to the son, grandson or great grandson, as the case may be, who was born or adopted prior to the commencement of this Act

(3) Where a debt has been con tracted before the commencement of this Act by the manager or *karta* of a joint family for family purposes, nothing herein con tained shall affect the liability of any member of the joint family to discharge any such debt, and any such liability may be enforced against all or any of the persons liable therefor in the same manner and to the same extent as would have been the case if this Act had not been passed.' "

(The *amendment also stood in the name oj Dr. Barlingay.)*

SHRI N. D. M. PRASADARAO: Sir I move:—

16. "That at pages 4-5, tor the existing clause 6, the following be substituted, namely: —

'6. (1) After the commencement of this Act, an interest of a male heir in a Mitakshara coparcenary property shall be limited to a share determined by the number of heirs in the family, the female relatives who are heirs specified in Class I of the Schedule being counted as heirs for the purpose of determining this share.

(2) When a male Hindu dies after the commencement of this Act, if the deceased has 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 and equal extent as other undivided male heirs specified in Class I of the Schedule, and for this purpose, the interest of the deceased shall be treated as his separate property, from the succession of which the son or sons and his or their heirs, male or female, who have already partitioned before the death of the property-holder, shall be excluded.' "

17. "That at pages 4-5, for the existing clause 6, the following be substituted, namely: —

'6. After the commencement of this Act, the females in the Hindu family shall get all and equal rights in the property that the males enjoy, irrespective of whether the devolution of property is governed by Mitaksharr

or dayabhaga or marumakkat-tayam or *aliyasantana.* or any other system applicable to a Hindu, Buddhist, Jaina or Sikh'"

22. "That at pages 4-5, for lines 27 to 36 and 1 to 6, respectively, the following be substituted, namely:

"Provided that, if the deceased had left surviving a female relative who is an heir specified in Class I of the Schedule, such female relative shall be enti.led to succeed to the interest of the deceased to the same extent as other undivided male heirs specified in the said Class I of the Schedule, and for this purpose, the interest of the deceased shall be treated as his separate property, from the succession of which the son or sons and his or their heirs, who have already partitioned before the death of the prpperty-holder, shall be excluded."

(The *amendments also stood in the name of Shrimati Parvathi Krishnan)*

(Amendments Nos. 18, 23. 25 and 92—hon. Members not present.)

MR. DEPUTY CHAIRMAN: The clause and the amendments are pen for discussion.

PANDIT S. S. N. TANKHA: Sir, clause 6 is to the effect that when a male Hindu dies after the commencement of this Act, having at the time of his death an interest in a *mitak-shara* 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. Thus Sir, the effect of the first portion of this clause is that the succession law which we are now making will not affect the ;oint coparcenary property. Thereafter, we have a proviso to the clause, namely, that if the deceased leaves a female relative named in the Schedule she 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. According to this proviso, as I understand it, even though the deceased may have been a coparcener, if he leaves behind any female relative, then that coparcenary property will also be liable t^ division.

And the clause further states as to how that devolution is to pa3s. Further on, the clause reads:

"Explanation.—For the purpose of the proviso to this section, the interest of the deceased shall be deemed to include—

(a) the interest of every one of his undivided male descendants in the coparcenary property, and

(b) 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 che decejesed, the partition notwith standing;"

So Sir, the effect of this sub-clause is that even though a male coparcener has divided his property after the passing of this Act and before the death of the deceased, even then, the share of the property which he has taken away for his separate enjoyment shall also be deemed to be a part of the property left by the deceased. And it is, according to this formula that the extent of the interest which is to go to the female heirs will be tabulated. My first objection to this clause is that one specific property which is coparcenary property will now, after the passing of this Bill, be governed by two different methods of devolution. One part of it will be governed by the first paragraph of clause 6 namely, that it will not be affected by the presence of the female heir, but it will pass on th« death of the holder by survivorship

[Pandit S. S. N. Tankha.] to his coparcenary heirs. And further the same property by the second paragraph, or rather by the proviso to the clause will be governed by a separate method of devolution in which not only the male members of the family but also the female members of it will participate. I might make it clear that my objection is not to giving a share to female heirs in the property of their father. I wholeheartedly support that, and I shall be only too glad If the daughter and other female heirs will hereafter get their due share in the property of the male deceased. But what i cannot quite understand is that two different methods of distribution of property should be applied over the same specific property. I am well aware that under the present Hindu Law, a person governed bv the Mitakshara law who owns property may hold it under two separate heads—one that which is the joint coparcenary property and in which devolution is according to the law of coparcenary and in which interest passes by survivorship; and the other, his separate property which will descend according to another rule of devolution of property I can well understand that. But the unit of the property being the same and that being governed by two' different systems of law, I am unable to understand whether this can work smoothly at all. My own fear is that this is not possible and will lead to difficulties and litigation in every family.

Now, Sir, I will give you an illustration. A joint family consists of two brothers A and B. A has a son SI and a grandson S2. A also has a daughter D. Now, in the coparcenary, according to the present Hindu law the position is that A, B, SI and S2 are the joint owners of the coparcenary and D has no interest. Hereafter, the position will be that, on the death of A, D will also become a co-sharer in the- small coparcenary consisting of SI and S2. According to the first paragraph of clause 6, when A dies, his interest in the coparcenary shall pass to the remaining co-sharers. Now, who are the remaining co-sharers? Leaving out the daughter D, the remaining co-sharers in the property, dre B, the brother; SI, the son; and S2, the grandson. A's interest on his death is, therefore, to pass by survivorship to B and SI and S2. This is according *to* the first paragraph of clause 6. But what does the second paragraph say? If A leaves any female heir, that is to say, a daughter then his interest in the property shall pass in such a manner that it will be deemed that before A died, a division of property had taken place between him and his brother B. If the division of the property takes place before A dies, then what is the position? A was owner of half the property and B was owner of the other half of the property. A along with his son and grandson, on a partition, was entitled to half a share; and B was entitled to half a share. Now, what I have not been able to follow is as to what is the share of A which will pass to B on A's death, Personally I think, that according to clause 6— whatever may have been the intention—if a partition takes place before A's death, then A or his family will not be entitled to anything more thaw half the share of the property, and, therefore, B does not get any share in the coparcenary.

So Sir, it is no good mentioning in clause 6, paragraph (1) that certain interests of the deceased would pass on by survivorship. Let us now look at the position of Sr and S2. On the death of A if the division of property takes place, the daughter will be entitled to a share in the property. On her coming into the coparcenary. A's share will now be divided between
51 and D and S2, the grand-son, gets nothing. I do not know .....

SHRI P. S. RAJAGOPAL NAIDU-
52 will claim.....

PANDIT S. S. N. TANKHA: He can ask for a partition from his father on a division of the property, but on A's

death, S2 gets nothing, whereas if he had asked for a partition before the death of A, then he would be entitled to a share which will be half that of his father.

SHRI P. S RAJAGOPAL NAIDU: Does not S2 always claim through SI? That is what I am asking. S2 is the grand-son and SI is the son. What I am asking is: does not the grand-son claim through his father?

PANDIT S. S. N. TANKHA: What I am submitting is that, if S2 is to seek partition within the life-time of A after the passing of this Act, then S2 will be entitled fo a share of the property which will be half that of SI, his father, whereas if the division of property takes place on the death of the grand-father, say at the instance of D, the daughter, then S 2 gets nothing.

SHRI B. B. SHARMA: Why is he also included?

PANDIT S. S. N. TANKHA: A living son's son is nowhere in the Schedule. He gets nothing. Pre-de-ceased son's son's case is different. So Sir, this seems to be a very great anomaly.

SHRIMATI CHANDRAVATI LAKHANPAL (Uttar Pradesh): I want to ask a question. Can a grandson claim directly or through his father only?

PANDIT S. S. N. TANKHA: According to the present Hindu Law, he can claim in spite of the presence of his father. If his father is living, the grand-son can ask for a partition of the property in which his grand-son and father are co-sharers.

SHRIMATI CHANDRAVATI LAKHANPAL: But will he not be entitled to his father's share only?

MR. DEPUTY CHAIRMAN: Against the grand-father? Suppose the father is living, can the grand-son ask for a partition?

PANDIT S. S. N. TANKHA: Yes, Sir, I can quote the Hindu Law.

MR. DEPUTY CHAIRMAN: Even if the father does not claim a parti-ton?

PANDIT S. S. N. TANKHA: I may be permited to cite Mulla's *Hindu Law,* page 393, paragraph 307:

> "Every adult coparcener is entitled to demand and sue for partition of the coparcenary property at any time.
>
> In Bombay, it has been held that without the assent of his father, a son is not entitled to a partition if the father is *joint* with his own father, brothers, or other coparceners, though he may enforce a partition against the father if the father is *separate* from them."

MR. DEPUTY CHAIRMAN: If the father is divided, he can.....

PANDIT S. S. N. TANKHA: That is only in Bombay:

> "The other High Courts do not recognize any such exception."

Now, an illustration is given. Illustration (b):

> "A joint Hindu family consists of A, B. and C. A being C's grandfather, and B being C's father. C— that is to say, the grandson—sues A and B for a partition of the joint family property."

The question is: Is C entitled to a partition?

> "According to the Bombay High Court he is not, unless his father B consents to the partition. In the view taken by that Court the father *obstructs* the son's right to a partition. According to the other High Courts, C—that is to say the grandson—taking as he does a vested interest in the ancestral property by birth can compel a partition even during the life-time of his father B."

[Pandit S. S. N. Tankha.] So that it is very clear Sir, that except in the Bombay State, the grandson can compel and ask for a partition during the life-time of his father throughout the other States of India, but after the .....

SHRIMATI CHANDRAVATI LAKHANPAL: What is the share?

PANDIT S. S. N. TANKHA: Half the share of the father. But, as I have stated, according to clause 6, if the grandson is obedient and good enough not to claim a partition during the life-time of his grandfather after the passing of this Act, then the penalty for it is that he loses his share in the property, whereas if he is disobedient and does not care for the sentiments cf his father and grandfather and claims a partition, against them, then he gets a partition, in spite of the fact that his father and grandfather are living and the presence of the daughter will not debar him from inheritance. That is the correct position of the law from which we are taking away the right of the grandson. You will see, Sir, as I have indicated in my minute of dissent on this very subject, that I am inclined to think that Article 19(f) of the Constitution bars such a change being made. Article 19 (f) of the Constitution is:

> "All citizens shall have the right (f) to acquire, hold and dispose of property."

Now, the question of acquisition does not arise here, but the right to hold the property is guaranteed, that is to say that both the son and grandson have a vested right, as I read out to you from Mulla, in the ancestral property and their possession cannot be disturbed, and as such I am saying that we are going against the Constitution in taking away this right of the grandson in the property.

SHRI J. S. BISHT: But it is only that a grandson .....

PANDIT S. S. N. TANKHA: My friend is absolutely incorrect in saying that grandson's right is not a vested right. It is a vested right.

SHRI J. S. BISHT: It is not a vested right?

PANDIT S. S. N. TANKHA: Yon may read the rule.

I may be permitted to read:

> "I lay particular emphasis on the word 'hold' which according to me denotes guarantee under the Cons titution that every person shall be permitted to retain and enjoy such portion of his property which vests in him immediately before the passing of this Act and as such it is not within the competency cf the " legislature to make any law which would infringe his funda mental right by letting in addition al coparceners in the person of the female heirs. If ever this point is contended in a court of law, there is every danger of this provision being held *ultra vires* of the Constitution."

Therefore, to obviate this difficulty. I have suggested, and particularly in order to guarantee the rights which were given to female heirs under the Act that the joint family should be done away with at the passing of this Act and the joint coparcenary system of devolution of property should be abolished.

SHRI J. S. BISHT: My hon. friend has himself moved an amendment *to* the effect that the right by birth should be abolished. How can he abolish the right, if his contention is right, when he holds an interest in the property?

PANDIT S. S. N. TANKHA: That *is* exactly what I am going to say. It is from this point of view that I urge the doing away with the coparcenary system of Hindu Law. On the passing of this Act a notional division of property may be deemed to take place

m all coparcenary families so that the share of each of its members may be determined and all properties held by their owners therefore, should be deemed to be their self-acquired property and not joint coparcenary property so that all those persons who have coparcenary rights will no longer have any rights left in them.

SHRI J. S. BISHT: Will the sons be divested with the rights?

PANDIT S. S. N. TANKHA: All he property will be deemed to have been partitioned and will then be the self-acquired property of each owner and nobody will have a claim over it for partition. From that point of vi< *w,* I have suggested my amendment. No, 14, which reads as follows:

14. "That at pages 4-5, for the existing clause 6, the following be substituted, namely: —

'6A. *Birth in family not to gwe rise to property.*—On and af er the commencement of this Act, no right to claim any interest in. any property of an ancestor during his lifetime, which is founded on the mere fact that the olaimant was born in the family of the ancestor shall be recognised in any court.

Explanation.—In this section, "property" includes both movatle and immovable property, whether ancestral or not, and whether acquired jointly with other men-bers of the family or by way of accretion to any ancestral property or in any other manner whatsoever.

6B. *Joint tenancy to be replaced by tenancy-in-common,*—On and after the commencement >f this Act, no court shall recogni;p any right to, or interest in, any joint family property, based rin the rule of survivorship, and all persons holding any joint f ami y property on the day this At comes into force shall be deemed to hold it as fonants-in-common as if a partition had taken place between all the members of the joint family as respects such property on the date of the commencement of this Act and as if each one of them is holding his or her own share separately as full owner thereof:

Provided that nothing in this section shall affect the right to maintenance and residence, if any, of the members of the joint family, other than the persons who have become entitled to hold their shares separately and any such right can be enforced as if this Act had not been passed:

Piovided further that in the case of any female who becomes entitled to hold any share separately under the provisions of this section, she shall not take it as an estate known as the Hindu woman's estate under the law in force before the commencement of this Act and on her death the property shall devolve on the heirs entitled thereto under the provisions of this Act."

MR. DEPUTY CHAIRMAN: It is not necessary to read all the amendments. The copies have been distributed to the Members.

PANDIT S. S. N. TANKHA: I should read it since I have to make my comments on them.

MR. DEPUTY CHAIRMAN: You need not read all that.

PANDIT S. S. N. TANKHA: Unless f read them out how shall I comment upon them?

SHRIMATI LILAVATI MUNSHI: This is a long amendment and everybody should understand what it exactly means.

PANDIT S. S. N. TANKHA:

"6C. *Rul- of pious obligation of Hindu son abrogated.*— (1) After

[Pandit S. S. N. Tankha.]

the commencement of this Act, no court shall, save as provided in sub-section (2), recognise any right to proceed against a son, grandson or great-grandson for the recovery of any debt due from his father, grandfather or great-grandfather or any alienation of property in respect of, or in satisfaction of, any such debt on the ground of the pious obligation of the son, grandson or great-grandson to discharge any such debt.

(2) In the case of any debt contracted before the commencement of this Act, nothing contained in sub-section (1) shall affect—

(a) the right of any creditor to proceed against the son, grand son or great-grandson, as the case may be, or

(b) any alienation made in res pect of, or in satisfaction of, any such debt, and any such right or alienation shall be enforceable under the rule of pious obliga tion in the same manner and to the same extent as would have been the case had this Act not been passed.

Explanation.—For the purposes of this sub-section, the expression "son, grandson or great-grandson' shall be deemed to refer to the son, grandson or great-grandson, as the case may be, who was born or adopted prior to the commencement of this Act.

6D. *Liability of members of joint family for debts before passing* of *Act not affected.*—Where a debt has been contracted before the commencement of this Act by the manager or *karta* of a joint family for family purposes, nothing herein contained shall affect the liability of any member of the joint family to discharge any such debt, and any such liability may be enforced aSainst all or any of the persons liable therefor in the same manner and to the same extent as would have been the case if this Act had not been passed.".

This meets all those objections also which may be taken against the abolition of coparcenary particularly with respect to its dealings with other persons, because by the abolition of coparcenary various effects can be produced, namely such as will affect the past dealings of the karta with others in respect of coparcenary property. Therefore, I have met all these points.

Sir, this position was considered by the Select Committee appointed In 1948 on the Hindu Code, 1948. With reference to the matters before it, it considered carefully as to how the Act should be suitably amended. With regard to that I have to draw your attention to the minutes of the 1948 Select Committee Report, on page v. It says:

"With regard to Parts V and VI, one member of the Committee was of opinion that they should not form part of the Code. There was another view expressed in tha Committee, namely that these Parts should be left out of the Bill for the present and should be taken up for consideration at some future date. The majority of us are, however, of the opinion that the Bill will not be complete without these provisions.

Clause 1 and 2 of Division I of Part III—A of the original Bill embodied a radical departure from the whole basis of the law of joint family of the Mitakshara school and consequently we have now considered it proper to devote a separate Part to this subject.

Clause 87.—In order to make the Code really effective, we have considered it necessary to go further and put an end to the tenure of joint family property in extt-

tence at the commencement of the Code by converting such tenure into a tenancy in common *an* if there was a partition at the commencement of the Code. Clause of Division I of Part III-A of the original Bill sets only the result and not the cause.

Clauses 88 and 89.—While abrogating the rule of a pious obligation of a Hindu son to discharge his ancestor's debt, we have included a provision whereby all debts contracted before the commencement of the Code by the father or manager are saved from the operation of these provisio is."

So the Select Committee of the 948 Hindu Code decided upon this for mula which I have tabled as an amendment to clause 6. They consi dered that it would be quite a work able proposition to effect a notional partition of all coparcenaries on the passing of the Act and thus *to do* away with the joint coparcenary system and to treat all properties as self-acquired properties. If this amendment is accepted, Sir, I have no doubt that the difficulty which 1 mentioned just now will be done away with, that is to say, there will no longer be two systems of devolu tion of property in respect of the same property, nor will any shari; in the property of the coparceners be affected adversely by the passing of this measure, because taking my own illustration again, if the property of A is now treated as the, self-acquir ed property, then a division having taken place immediately before the death of A, the son of A and his grandson S2 will be entitled to their share. And on the death of A, what will be divided will be the share el A, alone and nothing more as if a division had taken place between his son and the grandson. And this share of A will on his death be divided between his son and the daughter. That is how I understand it.

SHRI B. B. SHARMA: Will you not then be depriving S2 of his rijjht?

94 R.S.D.—5.

PANDIT S, S. N. TANKHA: No. Since th-2 division will be deemed to have taken place immediately before the death of A, between the coparceners A, SI, S2 and B. So all these four persons only will join in the division of the property, and will get their shares as its separate owners.

SHRI B. B. SHARMA: If we accept your amendment, will it not affect the interests of S2?

PANDIT S. S. N. TANKHA: That is exactly what I am trying to explain. What I am trying to explain is that since the partition will be deemed to have taken place before the death of A.....

SHRI B. B. SHARMA: I think the position is this. If we accept your amendment, the result will be that S2 and SI, both of them, will be divested of their interest which they hold today in the property. Don't you there-fore think that it will go counter to your suggestion, and don't you think that this legislation will be deemed to be ultra *vires,* in so far as it will affect the interests of SI and S2 both, and not only one?

PANDIT S. S. N. TANKHA: Well, Sir, that certainly is a point to be considered, as my learned friend has put it. But my own view was that since the notional division of the property would be deemed to have taken place before the death of A.....

MR. DEPUTY CHAIRMAN: How much more time do you propose to take?

PANDIT S. S. N. TANKHA: I will lake quite a little more time.

MR. DEPUTY CHAIRMAN: You know the time is limited. We have still got so many clauses, and there are a large number of speakers.

PANDIT S. S. N. TANKHA: This is the most important clause, Sir.

MR. DEPUTY CHAIRMAN: Yes, yes. Every clause is important. But

[Mr. Deputy Chairman.] you will have to ration your time and allow some time to the hon. Minister.

PANDIT S. S. N. TANKHA: My own view, Sir, is that on the passing of this measure, a partition will be deemed to have taken place immediately before its passing and the share of each coparcener will thus be determined and only the share of the person who dies will be open for distribution, and not the property as a whole; upon the passing of this measure the shares will be determined only notionally. There will not be any actual partition. For example, if the property is worth Rs. 20,000. share of each will be to the extent of Rs. 5,000. I do not think that there will be any divesting of the interest of any of coparceners. Now, Sir, this was one point of view which I had to place before you with respect to this clause. The other point of* view is that which I have indicated in my minute of dissent.

Then, Sir, the other aspect of this clause 6, to which I am opposed, is its Explanation and sub-clauses (a) and (b) which, according to me, make matters worse. In respect of sub-clause (b), I have given some illustrations in my minute of dissent. And I may be permitted to read these very illustrations instead of making out new illustrations.

MR. DEPUTY CHAIRMAN: Mr. Tankha, we cannot go on at this rate. I am sorry .....

PANDIT S. S. N. TANKHA: But, Sir, these are the main points.

MR. DEPUTY CHAIRMAN: You make your points and be done with them. You know the Business Advisory Committee has fixed the time.

You please wind up in two or three minutes.

PANDIT S. S. N. TANKHA: What I am trying to show is that if the share of a female heir is determined by the rule, as is given in sub-clause (b), it will adversely affect not only the share of the grand-son, which I have already said will be wiped out "completely according to this provision, but the interests of those sons who do not separate themselves from the family will also be adversely affected. That is to say, the share of the sons who choose to remain joint with their father and do not divide the property in his life time, will become less upon computation being made according to sub-clause (b). I think it is absolutely necessary to give some illustration, and therefore I want with your permission to give the illustration I have mentioned in my minute of dissent.

MR. DEPUTY CHAIRMAN: They have already been read by the Members.

PANDIT S. S. N. TANKHA: I do not know whether they have read them and followed them carefully. I am only trying to convince the House that the Bill, as drafted, is very defective and that it needs radical alterations to make it acceptable to the public. Therefore, if you think that these illustrations need not be read, I -will not read them.

MR. DEPUTY CHAIRMAN: It is not necessary to read them.

SHRI JASPAT ROY KAPOOR: Does not this sub-clause mean just the reverse of what you think it means?

PANDIT S. S. N. TANKHA: The effect of sub-clause (b) undoubtedly is that the share which was taken by the partitioned son wM be notionally brought back into the joint family coffers for the purpose of calculating the amount of share of the daughters. The effect of this will be that even though the remaining property is less the amount of share allotted to the daughters or other female heirs will be greater than would be the case if the remaining property alone was divided, and therefore instead of the son who remains with his

father throughout his lifetime being encouraged, he will be at disadvantage.

MR. DEPUTY CHAIRMAN: Has not this point been mentioned in the general debate?

PANDIT S. S. N. TANKHA: I.had rot spoken in the general debate.

MR. DEPUTY CHAIRMAN: You need not elaborate the same point and waste the time of the House.

PANDIT S. S. N. TANKHA: Therefore, I have tabled an amendment. No. 26, which, if accepted may remove this difficulty. The amendment is to t lis effect:

> 26. "That at page 5, after line 6, he following further provisos be inserted, namely: —
>
> 'Provided further that on a partition made after the passing of this Act, and before the death of the deceased no male descendant shall be entitled to take for his separate enjoyment any share in excess of that which would become due to him in the presence of the female heirs at the death of the deceased."

Now, according to this, after the passing of this Act and before the death of the deceased, a son shall be allowed to take away only that share which he can get in the presence of the female heirs on the death of the father and no more, so that, if this is accepted, the interests of the sons who will remain with the father will not be adversely affected in any manner. I have further added:

> "Provided also that no male descendant who has taken his share for separate enjoyment on a partition made either before or after the passing of this Act and before the death of the deceased shall be entitled to any further share in the property of the deceased."

Now, according to me, as clause (J is worded now, I do not think there is anything in it to debar or to stop a separated son from claiming his share in the property again after his lather's death, however small that share of his may come to. According to me, he will still be entitled, on the death of the father, to claim a share in the property, and this will act very adversely *to* the interests of the others. Therefore, I have suggested that he should not be given any share on the death of the deceased person, if he has already taken away his share from the coparcenary property.

MR. DEPUTY CHAIRMAN: I want to call at least one other Member to speak today. If Members were to go on like this, even the whole Session will not be sufficient to finish this. Please wind up.

PANDIT S. S. N. TANKHA: Related to the same subject, I have tabled some more amendments in regard to the quantum of the share which should be given to the daughters, specially unmarried daughters, and I shall speak on them at the appropriate time.

SHRI K. S. HEGDE: On a point of information. I crave your indulgence for this reason. I know that the Rules would not normally entitle me to have a chance now, but the question is that, if this clause is passed as it is, there will be no provisions for other systems of law like Marumakkattayam, Aliya-santanam, etc. For this reason, may I crave your indulgence for a few minutes. Otherwise, the Bill will be wholly defective if this clause is passed. That is why, if you will permit me to move my amendment No 18, I shall be much obliged.

MR. DEPUTY CHAIRMAN: The hon. Member was not here. About the rest, he can leave it to the Minister to take care of the Bill.

SHRI P. S. RAJAGOPAL NAIDU: That is a very important amendment.

DR. SHRIMATI SEETA PARMANAND : Shall we sit tomorrow to get more time for every amendment?

MR. DEPUTY CHAIRMAN: If the House is agreeable, I have no objection.

MANY HON. MEMBERS: No, no.

SHRI N. D. M. PRASADARAO: Sir, this is perhaps the most important clause in this Hindu Succession Bill. On this, of course, there is a lot of divergence of opinion. This is the bone of contention of the whole Bill. This deals with two issues; one is about the succession that governs a Hindu family; the second is the right of women also to property in a Hindu family. So far as the right to property of women is concerned, it is a very welcome step. And I wholeheartedly support the spirit of this. So far we have accepted equality of women only in law but this judicial equality is only a fiction, is only in name, so long as proper conditions are not created for the exercise of that right. Today property is one of the most important things and so long as the woman does not get that right in the property, that equality of both the sexes of male and female is not fully established. Therefore this right to the women in the property is a proper thing to be discussed.

This equality of women accepted by the law without the property—what does it mean? Today, is there equality? Generally we use that word 'equality' for each and every case. Suppose it is a case of a labourer and an employer. There also it is said that both are equal. The labourer is equal in law. He can work or may not work. Similarly the employer also has got the same right.

MR. DEPUTY CHAIRMAN: We are not cencerned with labour problems now?

SHRI N. D. M. PRASADARAO: I am giving examples.

MR. DEPUTY CHAIRMAN: Come to the Hindu Succession Bill.

SHRI N. D. M. PRASADARAO: There also, it is the same equality. What is that equality? It is an equality established by law, but inequality in practice. A labourer simply because he is considered to be equal, cannot exercise his right of equality because he is without .....

MR. DEPUTY CHAIRMAN: Will you take more time?

SHRI N. D. M. PRASADARAO: Yes,

• MR. DEPUTY CHAIRMAN: You can continue on Monday." The House stands adjourned till 11 A.M. on Monday.

The House then adjourned at two minutes past five of the clock till eleven of the clock on Monday, the 28th November, 1955.