decision has been arrived at about the next session of the Asian-African Conference. Neither the date nor the venue has been fixed.

(c) There is no permanent committee.

BETTERMENT LEVY AND WATER TAXES CONSEQUENT ON OPENING OF DURGAPUR BARRAGE

61 SHRI M VALIULLA: Will the Minister for IRRIGATION AND POWER be pleased to state whether any betterment levy and water taxes are being collected for supply of Damodar Valley Corporation water after the Durgapur barrage has been opened?

THE DEPUTY MINISTER FOR IRRIGATION AND POWER (SHRI J S HATHI): Betterment levy and water rates will not be collected by the Government of West Bengal during this year since that Government will not be utilizing the D.V C water this season

INTERNATIONAL TEA AGREEMENT

62 SHRI M VALIULLA Will the Minister for COMMERCE AND INDUSTRY be pleased to state whether any initiative has been taken by the International Tea Committee for a fresh international agreement?

THE MINISTER FOR COMMERCE AND INDUSTRY (SHRI T T KRISHNAMACHARI) Yes, Sir

FINANCIAL ASSISTANCE TO RUBBER GROWERS

63 SHRI M. VALIULLA. Will the Minister for COMMERCE AND INDUSTRY be pleased to refer to the reply given in the House to my Unstarred Question No 260 on the 12th September 1955 and state the extent of financial assistance proposed to be given to rubber growers in India next year?

THE MINISTER FOR COMMERCE AND INDUSTRY (SHRI T T. KRISHNAMACHARI) A sum of Rs 11,30,000 has been provided for this purpose in the Budget Estimates of the Rubber Board for 1956-57.

PETITIONS ON THE HINDU SUCCESSION BILL, 1954

SECRETARY: Sir, I have to report to the House that nine petitions relating to the Hindu Succession Bill 1954, pending before this House have been received by me.

PANDIT S S N TANKHA (Uttar Pradesh): Are they being circulated?

MR CHAIRMAN: They have been referred to the Petitions Committee That is the usual procedure Mr Prasadarao.

THE HINDU SUCCESSION BILL, 1954—*continued.*

Clause 6—Devolution of interest in coparcenary property.

SHRI N D M PARASADARAO (Andhra): Sir, I was dealing previously with equality of sexes Our Constitution has guaranteed equality between sexes. Article 15 of our Constitution says that no discrimination will be made only on grounds of sex But in our life we see that still this discrimination is going on, equality recognised by law is not the equality in life Therefore, we have to make that equality real which is to be exercised by the woman

Sir, unless women are drawn into the field of economic production this equality cannot be there Unless they are rescued from their household drudgery we cannot establish this equality between sexes Therefore, the first step to be taken is giving them equal opportunities not only in jobs but also in succession to property. Sir, the several women that we find in leading positions today are a very very small fragment, a micros-

[Shri N. D. M. Prasadarao.]

copic figure; the overwhelming majority lives in much backwardness, ignorance and remote from playing any part in the field of economic production. So, unless we bring them into the economic field by giving them a share in the property, which is their due, we cannot do this, cannot establish this equality. Therefore, so far as the establishment of equality between the sexes in property relations is concerned, clause 6 will help us.

Sir, this clause has been opposed on certain grounds, one of them being that by giving a share to the daughters the land holdings, *i.e.* the immovable property, which is already fragmented will be further fragmented. But, Sir, this is quite untenable because looking at one symptom and missing the real cause of fragmentation should not be the basis for denying them a right. What is the real cause for fragmentation today? Even without this right being given to the women there is already fragmentation. The cause we have to find in the existing social economy. The census figures give very revealing picture of fragmentation The unchanging pattern of economy of the paternal land and the growing number of dependents on land is the main cause for the fragmentation of land. Among the agricultural classes the number of dependents supported by every 100 self-supporting persons is 207. This number accounts for the unearning dependents. There are another 44 earning dependents which means altogether 251 dependents. This figure is increasing day to day when we compare it with the figures of the last decades. Why is it so? The answer is obvious: because there are no other sources of income available for them. If the industrialisation was going on at a rapid pace this increasing population could be accommodated in that. But up till now the avenues are far too meagre. That is why they are clinging to the land, hence the fragmentation Therefore, if we want really to remove this evil of fragmentation of holdings we have to strike at the root cause and see that our agrarian crisis is solved, industrialisation takes place and all those things—not a denial of right to the women.

Secondly, certain opinions similar to the suggestions of the Rao Committee that women should be given half of the son's share have been expressed on the floor of the House. This is also quite unjust. Why should a daughter be discriminated against? Our Constitution provides that there should be no discrimination between sexes. *But here when we think of* giving a share to the daughter or any woman, simply because they are women, should we discriminate against them? The argument that since the daughters will go to another family and hence should be denied a share is another untenable ground Adopted son, altogether new person in the family, is given an equal share with a natural son. Therefore, it is not a question of going out of the family or coming into the family. Daughters should also be treated just like sons and there is no reason why half share should be given to them. This inequality between sons and daughters shows narrowness of outlook towards society.

Today we speak of equality of sexes but actually there is a large discrimination going on. In a factory a woman is not given the same wages as a man gets for the same work. That is one of the fundamental demands of labour today in our country *viz.* that women should also be paid the same wages for the same work. In agriculture also we find the same thing. This discrimination should be ended. In the property also this discrimination should not be made and females should also be given equal share with the males.

Sir, another point made in the House is that if at all a share is given to women, it should be given only to the unmarried daughters, and not to

the married daughters, the reason being that the married daughters go to a new family and she is no longer a member of the joint family.

[MR. DEPUTY CHAIRMAN in the Chair.]

The argument for denying a share to the married daughter is that she has already been given enough in the shape of dowry and so many expenses were incurred for her marriage. Sir, today, as the position stands, very little attention is given to the education of the daughter as compared to that of the son. As a matter of fact more is spent on the education of the son than what is given to the daughter in the form of dowry. Therefore, the argument that because she is being given a dowry she should not be given a share or should be given half share is not at all reasonable. Similarly the daughter-in-law is also getting a share from her father's property and will compensate for the daughter's share going out of family. It is only for the sake of argument that I am saying this. And therefore to say that the daughter will be going away and therefore she should not be given any share in the property is not a valid reason.

MR. DEPUTY CHAIRMAN: You have to be brief, Mr. Prasadarao. Not more than five minutes each. You have already taken more than ten minutes. We will sit through the lunch hour today.

SHRI N. D. M. PRASADARAO: I would not have quoted the Chinese law, if Mr. Tankha had not quoted the Soviet civil law.

SHRI KISHEN CHAND (Hyderabad): The Soviet people have changed after ten years of experience, and the Chinese also will change after ten years of experience.

SHRI N. D. M. PRASADARAO: The Chinese marriage law has given an equal right to the women in the matter of property. Article 7 of the Chinese marriage law says:

> "Both husband and wife are companions living together and shall enjoy equal status in the home."

MR. DEPUTY CHAIRMAN: We are not concerned with marriage. We are concerned with succession.

SHRI N. D. M. PRASADARAO: Yes, Sir. Then article 9 says:

> "Both husband and wife shall have the right of free choice of occupation and free participation in work or in social activities."

Article 10 says:

> "Both husband and wife shall have equal rights in the possession and management of family property."

Article 11 says:

> "Both husband and wife shall have the right to inherit each other's property."

In the Soviet law also you will be able to find similar clauses. You will thus find that the principle of equal right has been accepted in other countries also. There is therefore no reason why we should not accept it here

Then, Sir, there is the question whether the principle that the daughter should be given a share should be made applicable to the families governed by the Mitakshara coparcenary system. I have moved an amendment in this connection and I have suggested therein that so long as the Mitakshara system is there, the daughter should be given an equal share. If the sons get a share by birth, then let the daughters also get it by birth. That is my position. Some of my friends have said that the retention of the Mitakshara system would lead to all sorts of litigation, and therefore it should be done away with. I would like in this connection to place before the House some points. Of course, the litigation is there. But

[Shri N. D M Prasadarao]

what is the main cause for this litigation? Is this the only matter where we find litigation, or there are certain other matters also where we find litigation? If there are certain other matters where we find litigation, we are not doing away with them. In villages we find so much litigation is going on, and people there have even gone to the extent of going to the Privy Council. I can give many instances Therefore to say that this system should disappear because there will be litigation is not a valid argument.

Then, Sir, there is another thing also Times are changing and new ideas are springing up. What we find is that there is always a clash between the new ideas and the old ideas We find that the sons would be taking a progressive stand whereas their parents would be preventing them from doing so, and obstructing them In such cases we have also to take into consideration other factors. What is going to happen if the fathers deny their sons their share in the property? All these things are there to be considered. It is not so simple to do away with the Mitakshara system.

MR. DEPUTY CHAIRMAN. That will do, Mr Prasadarao

SHRI N D. M. PRASADARAO: Sir, in the end, I would add one thing only We want to give a share to the daughters But while doing that we should see that the existing rights of the sons are not taken away The sons have got a right to property now even by birth While giving any right to women, let us not take away the sons' right. Otherwise there will be more and more difficulties

Sir, there are certain other defects also in the clause as it stands, and for that purpose I have moved certain amendments One of the drawbacks is that as the clause stands, the daughters will get a bigger share than the undivided sons. This is quite unjustified, and therefore, it should be rectified, and it should be seen that the daughters and the undivided sons get an equal share. In this connection I have moved my amendment, and I hope it will be accepted Thank you.

(Dr W S Barlingay rose to speak.)

MR. DEPUTY CHAIRMAN: We have only 3-1/2 hours left, and therefore not more than five minutes each But before you speak, the hon Minister has to say something

THE MINISTER FOR LEGAL AFFAIRS (SHRI H V PATASKAR): Sir, may I just say something for the information of the hon Members? So far as clause 6 is concerned, even at the time of the general discussion considerable importance was attached to the provisions contained in that clause, and very naturally I find that a large number of Members are opposed to clause (b) of the Explanation And I had also myself referred to it in my speech and I had said that probably it might lead, in some cases, to the son getting a share less than what the daughter might get So, in order to avoid some avoidable discussion, I might say that so far as I am concerned, I consent to (b) being dropped. *(Interruption)* It is not a matter of dictation from anybody Any hon. Members who are opposed to clause (b) of the Explanation need not argue on that point And so far as clause (a) is concerned, I would like to leave it to the House to decide as to what should be done about it

Then, Sir, there is one thing which has been discussed, and that is that supposing there is a father and there are two sons and one daughter; and one son is divided and he takes his share and goes away Now some fear has been expressed that as a son he will again come and claim the share of A. So therefore I would be prepared to accept something like this:

"Provided further that a male coparcener who has taken his share in the coparcenary property for separate enjoyment on a partition made before the death of the deceased shall not be entitled to succeed to the interest of the deceased in the coparcenary property."

We will also make it clear that he will not again come and claim his share. I think that is equitable.

MR. DEPUTY CHAIRMAN: What about his descendants?

SHRI H. V. PATASKAR: I think I have not made myself clear. Supposing there is A, and he leaves behind two sons and one daughter. Now A is himself a coparcener in a joint family in which he has, say, a one-fourth share. There are four brothers; A has got three other brothers. A is a coparcener, and he has got Rs. 4,000 in that property. Now according to our provision, after the death of A, because there is the daughter B, we take it as if A had separated just before his death. Now supposing A's share is one-fourth of the whole property. The two sons S1 and S2 may claim some of it. I want the hon. Members to pay some attention to what I say. There are two sons S1 and S2. If both of them are undivided, naturally there is no difficulty, but supposing S1 has already taken his share, this proviso means that when A dies, there is a devolution of interest upon S2, the other son, and daughter. S1 has already separated, and so this says:

"Provided further that a male coparcener who has taken his share in the coparcenary property for separate enjoyment on a partition made before the death of the deceased shall not be entitled to succeed to the interest of the deceased in the coparcenary property."

This is evolved so that S1 may not come again and say, 'I am a son and I am again entitled to share along with S2 and daughters, if any." It is to prevent that that this explanation has been added.

MR. DEPUTY CHAIRMAN: Suppose S1 takes his share but his sons remain with the grand-father. Let us suppose that A is the father and B and C are the sons. B takes away his share but B's sons remain with the grand-father.

SHRI H. V. PATASKAR: Generally the grandsons will have their share through the father.

MR. DEPUTY CHAIRMAN: The question is, "Are they excluded?"

SHRI H. V. PATASKAR: Let us suppose that S1 is the separated son and he has two sons S3 and S4.

MR. DEPUTY CHAIRMAN: In the illustration I gave, B has got two sons, B divides and takes away his share, but let us suppose that B's sons continue to remain with the grand-father, with A, at the time of his death.

SHRI H. V. PATASKAR: They can claim only through their father.

MR. DEPUTY CHAIRMAN: But B's sons remain with the grand-father.

SHRI H. V. PATASKAR: The grandsons will claim only through their father.

MR. DEPUTY CHAIRMAN: Do you mean to say that they will be excluded from the partition?

SHRI H. V. PATASKAR: B's sons can claim only from what their father has already taken.

SHRI B. B. SHARMA (Uttar Pradesh): No, Sir.

DR. P. V. KANE (Bombay): But the point is that B's sons may not want to be separated. The son may break away from the family, but his sons may say, "We want to remain

[Dr P V Kane]

with the grand-father". In that case, no court can separate them

SHRIMATI SAVITRY NIGAM (Uttar Pradesh): They wi l get their share from the father

SHRI H. V PATASKAR: I think there will be no difficulty, after this is added, but if there is, I will look into it

MR DEPUTY CHAIRMAN: Can I take this amendment then as formally moved?

SHRI H V PATASKAR: I will again consider the matter and move it later on.

MR DEPUTY CHAIRMAN: In view of the explanations given by the hon. Minister now, I hope the speeches will be short now.

PANDIT S S N TANKHA (Uttar Pradesh): You have just now said that the sons of the person who has separated from the family can continue to be members of the joint family I doubt that proposition

SHRI B. B SHARMA: You may do

PANDIT S S N TANKHA: Personally I am of the opinion that the moment the father takes away his property, the son's sons also separate from the family It is not possible under the Hindu Law for the sons of that person to continue to be joint with the grand-father This is my personal view.

SHRI N D. M PRASADARAO: We can make it clear here that the divided son and his heirs will be excluded If we do it, this difficulty will be removed.

DR W S BARLINGAY (Madhya Pradesh) Mr Deputy Chairman, I shall be very brief I do not want to waste the time of this House There have been so many amendments with respect to clause 6 that it is very difficult to say which should be accepted and which should not be. So far as I am concerned, as you are aware, I have moved two amendments One amendment, No. 66, says that during the lifetime of the father the sons shall have no right to partition I think this is one of the most important amendments I ought to explain to this House why this particular amendment is being moved To cut a long story short, in substance, most of us at any rate are agreed that the daughter should have the same share as the son in the father's property So far as the separate property of the father is concerned, there is no difficulty whatever. The difficulty arises on account of the fact that the father may have his own self-acquired property, while he has his share of the ancestral property The difficulty is this: In this ancestral or coparcenary property, all those who are coparceners have an interest by birth, whilst so far as the father's self-acquired property is concerned, equally the sons and daughters begin to have an interest in it after the father's death Now, to combine the two and to have the same set of rules for both these cases of property, is a very very difficult matter All the difficulties arise on account of this one fact So far as the ancestral property is concerned, the sons have an interest in the coparcenary property by virtue of their birth Now, this is a principle which is peculiar to the Mitakshara Law That is not to be found, as far as I know, in other parts of the country Now, the best way to achieve our objective is to do away with this Mitakshara system altogether That is the simplest way of cutting short the whole trouble and in this respect I suggest that the amendment which has been put forward by Dr Kane is very much to the point If we accept his amendment, I think there will be no trouble whatever All the trouble arises because in one case people begin to have an interest by birth, while in the other case they begin to have an

interest in the property after the father's death. These two things cannot be reconciled, and the best of reconciling it and achieving our objective is to drop this Mitakshara system altogether and to substitute it by the Dayabagha system. That will be the end of the matter. If you do not want to have Dr. Kane's amendment, which I suggest, is the best among the various amendments proposed, then the other amendment which I have proposed, deserves to be accepted. Because, the root course of the trouble is that the son has an interest in the coparcenary property even during the life-time of the father and he has a right to partition of the property even during the life-time of the father and that creates a lot of these inequalities. If you do away with that right to partition during the life-time of the father, virtually we will be attaining the very same object which Dr. Kane has in view. Now I would remind you that that was actually the position of the original Hindu law and if I may remind you, in one case which was subsequently overruled by the Privy Council and which was not followed, Mr. Justice K. D. Telang of Bombay had held a similar view. I merely want to fortify my argument by saying that this position that I am taking here is not a new position at all. Actually, according to me the real spirit of the Hindu law is according to what I am now saying. All that was considered by Mr. Telang. The whole trouble arises on account of the fact that there have been several interpreters and all of them have begun to interpret the Hindu law according to their likes. Here is a very clear statement of the law by Manu himself:

"उर्ध्वं पितुश्च मातुश्च समत्य भ्रातरः समम्।
भजेरन् पैतृकं द्रव्यमनीशास्ते हि जीवतोः ॥"

So long as the mother and the father are alive, these people have no right to the division of the property. What I am suggesting is that the kind of amendment that I am placing before this House is not a new one or unknown to the Sastras.

PANDIT S. S. N. TANKHA: This is not the position under the present Hindu law.

DR. W. S. BARLINGAY: I know that.

SHRI B. B. SHARMA: This is not the opinion of Mitakshara.

DR. W. S. BARLINGAY: We all know that this is not the present Hindu Law. What I suggest is that this is not unknown to Hindu law although I agree that this is not the present Hindu law. What I want is that this should be the Hindu Law.

SHRI B. B. SHARMA: Then illegitimacy was also not known to Hindus. Every child.....

MR. DEPUTY CHAIRMAN: We are concerned only with succession.

DR. W. S. BARLINGAY: What I suggest is if we want to attain our objective *i.e.*, to give equal share to the daughter as the son, there are only three logical ways of doing it. One is to make the daughter a coparcener along with the son in the ancestral property—that is a very straight forward way of doing it and even an orthodox man like Pandit Thakurdas Bhargava, who is not here, has made a proposal of that sort but I think there are some inherent difficulties in making a daughter a co-parcenary in the joint family property. I will not dilate on it. If you leave aside this alternative, there are only two other alternatives. One is the alternative that I have suggested and the other is the alternative which Dr. Kane has suggested which is better. If Dr. Kane's suggestion cannot be accepted, I feel that the amendment I have put forward may be accepted.

SHRI JASPAT ROY KAPOOR (Uttar Pradesh): Sir, may I suggest that those who had not an opportunity

[Shri Jaspat Roy Kapoor.]

to participate in the general discussion, anxious though they were then, may also be provided an opportunity to speak on this important clause?

MR. DEPUTY CHAIRMAN: This is not a question of merely providing opportunities for people to speak. Only those who have sent in amendments will have chance and we are very much short of time. The hon Member knows that we have only 3½ hours out of the 12 hours allotted by the Business Advisory Committee.

SHRI JASPAT ROY KAPOOR: Am I to take it that those who have not tabled amendments but are opposed to the present wording of clause 6 will have no opportunity to speak?

MR. DEPUTY CHAIRMAN: If there is time.

SHRI JASPAT ROY KAPOOR: I would request you to appreciate that this is such a complicated and an important clause in respect of which even the hon. Minister in charge of the Bill is not prepared to give a definite lead.

MR. DEPUTY CHAIRMAN: If the hon. Members cooperate with the Chair and are prepared to confine themselves to five minutes each, we can give them chance.

SHRI JASPAT ROY KAPOOR: Therefore I say that if I had an opportunity, the Chair may find ample co-operation.

DR. P. V. KANE (Bombay): Mr. Deputy Chairman, Sir, on account of many amendments, there is a great deal of confusion. My amendment is simple. My point is this. You talk of Hindu law as a singular but the ancient Hindu law is really a large number. Dr. Barlingay quoted from Manu and said that as long as the parents are alive the son has no right to partition. But there are interpretations again. It does not mean that they have no share by birth. The interpretation says that the father will be the Karta of the family and the sons cannot interfere with the property at all. That is the only meaning. The interpretations have been there. We need not go back. There was a time when the son had no right and what ever the son earned, the father got that property. There were three people—wife, son and the slave—the slave had no right whatever. What they acquired goes to the father—that was the rule at one time. Neither the son nor wife nor the slave had any right. So we need not talk of Hindu law in that breath as if it was a singular. It was being changed all the time. Then came a stage when the eldest son got and then it came to all Now we must go forward one way or the other. This has been the law for 2000 years, *viz.*, from Yajnavalkya and down from Mitakshara for more than 1,000 years. The law has been that anybody who is born in the family gets the right by birth—that is called the right of survivorship and they had also similarly the inherent right to ask for partition. Whether father wants it or not, every son born in the family, every male, up to three generations, has the right to demand partition unilaterally. He has simply to say that he wants to separate and nobody can deny it. That has been law for at least 1500 to 2000 years. That may be bad—I have no objection to that. Therefore I say that if you want really to remove it, do it lock stock and barrel but don't tinker with it. It gives rise to new problems. Take this amendment, that the hon. Minister has suggested that the son who has taken a share will not be entitled after the father's death to get a share. To give an example, there is a man A who has two sons S-1 and S-2. S-1 has two sons X and Y and S-1 goes out of the family but X and Y will say that there is benefit as well as loss in being in the family and they are quarrelling. The father can act for his minor son not for his major sons. So they will be parties and they will say,

'We want to remain joint with our grandfather". Nobody can compel them to separate. The law does not allow the court to compel any person to become separate, unless he wants to become separate. They must express their intention to separate. But if the grandsons say, "We want to remain with the grandfather," then what happens? If the grandfather dies or if the uncle dies, their share may increase. It may decrease also, sometimes. But in such cases, it will generally increase, not decrease. And so they may say, "Let our father go. We want to remain with the grandfather." So these difficulties will arise. You have not included in class I the grandson at all. You simply say "son". So I suggest that if you do not accept my amendment, at least say sons who are not separated will be entitled. Of course in a law you cannot expect to comprehend everything. The law is there and under the law of joint family property, there are two things—the partition and the survivorship. If you want to keep this law, let it remain. Let this Act apply only to the self-acquired property of the father. Even self-acquired property did not go to the daughter, but only to the son. So you will now be admitting the right of the daughter to a share and the daughter should be satisfied. You are not prepared to scrap the joint family property system with this right of survivorship and the right to partition without anybody's consent. My suggestion may be accepted, if you want to avoid all the complications that would arise. There will be numerous litigations. As I said at the beginning, this law would be a veritable paradise for lawyers, if it remained without modification. So do away with the joint family system which, though going, is not yet gone completely. What remains is not the soul of the system, but only the shell, as it were. If you do not have the courage to scrap it, I cannot help. So I say, if you do not accept this amendment, you must say, let the daughter's right be acknowledged. They now get an equal right with the son, but only in the separate property of the father, not under the Mitakshara system. You cannot keep the Mitakshara system and yet give the daughter the right even in the coparcenary property. That would be tinkering with the Mitakshara system. You do not do away with the joint family system. So I say, either accept my amendment, or recognise the daughter's right to a full share, but only in the separate property of her father. The daughter had not this right if there was a son or grandson or great-grand-son. She now gets that right. I frankly say, let the women not ask for too much, for the result will be that the father himself will want to separate from the son. After all, the father has the right to separate from the son, even if the son does not want it. If the father says, "I shall separate from my sons" and then he makes a will giving the whole property to his son, the daughter will get not a pie. As I said, the daughter had not the right previously to a share in her father's property and now you give it to her. Let it remain there. Let us not impose a law which is against the general consensus of the people, for if you do, they will find a remedy to thwart your law Do not do that. If you do, the result will be that the daughter will not get the benefit out of the father's property, if he does not wish. So, I say, let the daughter have share in the self-acquired property of the father. Many will say, "Why not let her have a share in the joint family property also?" But we have to take into consideration the many difficulties and the many new problems that would arise. Everybody will be opposed to it. I myself am opposed to it, for I do not want to tinker with this system.

Sir, I do not want to take any more time. There are many amendments to be considered and so I would conclude with the request that hon. Members should remember the legal position carefully and consider the evils that would arise from the present proposition.

SHRIMATI LILAVATI MUNSHI (Bombay): Sir, I have moved two amendments to this clause. Logically what the hon. Member Dr. Kane has said is true and we should abolish the Mitakshara law and should have another law, in which everybody is getting an equal share.

SHRI H. P. SAKSENA (Uttar Pradesh): What are the numbers of the hon. Member's amendments?

SHRIMATI LILAVATI MUNSHI: They are amendments Nos. 93 and 95.

I was saying that to change Mitakshara law is a logical thing to do, because, we are fighting a conception of the Mitakshara family where every male child inherits as soon as he is born and the female is excluded. But we are creating a new kind of society and this Bill is one step forward. We have gone too far to retrace our steps. So this is being done now by bringing this Bill.

The meaning of my first amendment is almost the same as the original clause for the words I suggest are "to the same rights and liabilities as a male relative who is an heir specified in class I". The substance of my amendment is the same. There are certain misgivings in the minds of some hon. Members here who feel that the daughter would be inheriting, not any of the debts, but only the property. But here the words "to the same extent" mean that after the father's debts are paid she will inherit. She will not inherit before anything is paid off. The original clause means the same thing. I have suggested the amendment with a view to eliminate the fear that any hon. Member may be entertaining on this point. The idea is not to run away with the property only. She will take the property in the just way and that is the meaning that I want to make clear by means of this amendment. I am glad that the hon. Minister has agreed to delete part (b) of the Explanation, because so many complications might have arisen if it had been kept there.

MR. DEPUTY CHAIRMAN: He accepts your amendment, and so no speech is necessary.

SHRIMATI LILAVATI MUNSHI: Yes, Sir. He has also accepted that separated son will not have any right in the father's property. That also meets the point of view of many hon. Members. I also agree with that.

The contentious point is whether part (a) should be retained or deleted. Everyone recognises that the woman should be given an equal share. The only point is whether she should get a share in the father's share of the property or in the joint family property which includes the shares of the brothers also.

The hon. Dr. Kane also said the same thing. Therefore, I think it would be better if this is also deleted. The point is whether a father has right to give a share in the property which does not belong to him. As a first step, we are giving the daughters an equal share in the self-acquired property. Sooner or later, we shall have to recognise the principle of giving an equal share to the daughter in every property.

In regard to the Mitakshara property there is some substance in the argument advanced by some that a person can give away his share in his property but that he should not be in a position to give away a share in property which does not belong to him. That is the only difference between hon. Members who want to give the same right of a coparcenary property to the daughters and the others who say that a daughter should be entitled only to a share in the father's property. The general consensus of opinion outside and also the feeling in the minds of majority of the Members is that the explanation as a whole should be deleted. This would serve the purpose if the amendment is accepted. The daughter would succeed to the same rights and liabilities as a male relative specified

in class I of the Schedule would have in the coparcenary. I am not saying anything new. A woman cannot be a "Karta" as she would be living somewhere else. The same thing applies to partition I hope the House will accept my amendment.

श्रीमती चन्द्रावती लखनपाल (उत्तर प्रदेश) : उपाध्यक्ष महोदय, अभी मैंने डा० काणे तथा श्री बालिंगे इत्यादि जैसे विद्वान महानुभावों के विचार सुने ।

श्री ज० रा० कपूर : आपका कौन सा संशोधन है ।

श्रीमती चन्द्रावती लखनपाल : मेरा संशोधन नहीं है । मैंने श्री उपाध्यक्ष महोदय से विशेष रूप से इस धारा पर बोलने की प्रार्थना की थी और उन्होंने कृपा करके समय दे दिया है क्योंकि मैंने उनका काम बटाना है । उन्होंने मुझे इस समय बोलने का अवसर दिया और मेरी प्रार्थना स्वीकार की, अतः मैं उनको बहुत धन्यवाद देती हूं ।

श्रीमन्, इस समय हम क्लाज ६ पर विचार कर रहे हैं और इस सम्बन्ध में जो विचारधारा है वह यह है कि हम इस धारा द्वारा दो बातें चाहते हैं . एक तो यह कि हम मिताक्षरा प्रथा को भी कायम रखें और दूसरा यह कि लड़की को सम्पत्ति में उसका अधिकार मिले । यह क्लाज ६ उस उलझन को हल करने का प्रयत्न है जो हमारे सामने उठ खड़ी हुई है । इस सम्बन्ध में इस वक्त मैंने जो विचारधारा सुनी, उसके अनुसार ऐसा पता लगता है कि कुछ लोग यह चाहते हैं, या यह समझते हैं कि यह दोनों बातें साथ साथ नहीं चल सकतीं । यानी या तो मिताक्षरा ही रहेगा या लड़की को अधिकार ही मिलेगा । परन्तु मैं आपसे विनम्र निवेदन करना चाहती हूं यह विचारधारा "एक्सट्रीम व्यू" है, ऐसा सोचना एक्सट्रीम्स पर जाना है ।

श्री श्या० सु० तन्खा : यह आपका गलत ख्याल है, यह किसी ने नहीं कहा कि लड़की को हिस्सा न मिले या मिताक्षरा को खत्म कर दिया जाय ।

MR. DEPUTY CHAIRMAN: Let her go on, Mr. Tankha. She is not a lawyer like you.

PANDIT S. S. N. TANKHA: The hon. Lady Member has misunderstood the point.

MR. DEPUTY CHAIRMAN: You have spoken.

PANDIT S. S. N. TANKHA: I have spoken but I want to clear a misunderstanding.

SHRIMATI CHANDRAVATI LAKHANPAL: I have got very little time at my disposal. Therefore, I would request the hon. Member not to interrupt me.

तो मैं यह कह रही थी कि इस तरह की जो विचारधारा है वह गलत है और मैं समझती हूं कि यह एक्सट्रीम पर जाना है । मैं समझती हूं कि क्लाज ६ के द्वारा एक ऐसा भी रास्ता निकल सकता है जिससे हमारे दोनों उद्देश्य पूरे हो सकते हैं यानी मिताक्षरा प्रथा भी रहे और लड़की को भी हिस्सा मिल जाय इसलिए मैं समझती हूं कि इस वक्त मिताक्षरा को बिल्कुल खत्म कर देना एक गलत सी चीज होगी । मैं नहीं चाहती कि वर्तमान परिस्थितियों में जबकि देश के अन्दर मिताक्षरा प्रथा के लिए कुछ मान्यता है क्योंकि वह एक पुरानी व्यवस्था है, उसको बिल्कुल खत्म कर दिया जाय । क्योंकि अगर हम इस प्रथा को खत्म कर देते हैं तो हम देश के अन्दर ख्वामख्वाह एक बेकार का आन्दोलन खड़ा कर देते हैं किन्तु हमें साथ ही साथ यह भी अनुभव करना चाहिये कि हम इस समय जहां पर खड़े हुए हैं वहां पर हमेशा के लिए खड़े नहीं रह सकते हैं । हमें आगे बढ़ना है, हमें अपने देश के अन्दर एक नये समाज की रचना करनी है । इस समय हम एक नये युग की देहली पर खड़े हुए हैं अतः यह हमारा कर्त्तव्य हो जाता है कि हम उन सब लोगों को, सोसाइटी के उस वर्ग को जो कि पिछड़ा हुआ है, अपने साथ साथ ले जायं । हमें स्त्रियों को अधिकार देना है और

[श्रीमती चन्द्रावती लखनपाल]

प्रॉपर्टी में भी अधिकार देना है, इसमें जरा भी शक नहीं है । इसलिए मैं यह चाहती हूं कि हम एक ऐसा रास्ता निकालें जिससे सांप तो मर जाये किन्तु लाठी न टूटे । अर्थात् मिताक्षरा प्रथा भी रहे और लड़की को अधिकार भी मिल जाय । यह हमारी खुशकिस्मती है कि इस क्लाज द्वारा वह रास्ता निकल आया है जिससे हमारे दोनों ही उद्देश्यों की पूर्ति हो सकती है । श्री पाटस्कर जी ने अपनी विद्वत्ता और बुद्धिमत्ता के द्वारा इस क्लाज ६ में जो संशोधन किया है वह बिल्कुल उचित है । मैं समझती हूं कि सदन को इसे स्वीकार कर लेना चाहिये और हमारे सामने जो उलझनें इस समय उठ खडी हो गई थीं वे दूर हो जायेंगी । इस सम्बन्ध में एक उलझन जो मुझे मालूम होती है वह यह है कि जहां अनडिवाइडेड सन और लड़की हैं वहां कभी कभी अविभक्त लड़के को लड़की से भी कम हिस्सा मिलेगा अर्थात् कुछ परिस्थितियों में अनडिवाइडेड सन के प्रति अन्याय होने की सम्भावना है । किन्तु श्री पाटस्कर जी ने जो सुझाव रखा है अगर उसको मान लिया जाय कि जिस लड़के ने अपना विभाजन स्वीकार कर लिया है, जो डिवाइडेड सन है, उसको फिर पिता की सम्पत्ति में अधिकार न दिया जाय । मैं समझती हूं कि इस समय जो स्थिति है उसमें पिता के मरने के बाद वह पैतृक सम्पत्ति में फिर से अपना हिस्सा क्लेम कर सकता है । अगर हम क्लाज "बी" को डिलीट कर दें तो इस तरह की जो अवस्था है वह खत्म हो जायेगी ।

इसके साथ ही साथ अन-डिवाइडेड सन और लड़की दोनों के अन्दर पैतृक सम्पत्ति और सेल्फ एक्वायर्ड प्रॉपर्टी में बराबर बांट दी जाये तो जो अन्याय अविभक्त पुत्र के प्रति होता है वह समाप्त हो जायेगा और सब कठिनाई दूर हो जायेंगी । यह बिलकुल सीधी सी बात है किन्तु इसे इतना पेचीदा क्यों बनाया जा रहा है यह बात मेरी समझ में नहीं आती । वास्तव में बात यह है कि जो लोग इस तरह की अड़चन खडी कर रहे हैं उनके दिमाग में पुरानी मनोवृत्ति काम कर रही है । अभी तक मिताक्षरा के अन्दर लड़की का कोई भाग नहीं था । जब अब तक उसको कोपारसनरी का अंग नहीं माना गया तो आज क्यों माना जाये----यह भावना उनके अंदर उठती है । अतः मैं आपसे कहना चाहती हूं कि यह विचारधारा गलत है । अगर हम समय की आवश्यकता के अनुसार अपने विधान को नहीं बदलते तो समाज के अन्दर ऐसा विस्फोट, ऐसी क्रान्ति पैदा होगी कि हमारी सारी सामाजिक व्यवस्था छिन्न भिन्न हो जायेगी । इससे हम देश को खतरे में डाल सकते हैं । हमारे देश की सामाजिक व्यवस्था हजारों वर्ष पुरानी चली आ रही है परन्तु हमने सदा आवश्यकतानुसार उसमें परिवर्तन किया है । आज भी युग की भावना के अनुसार हमने अपना सामाजिक विधान बदलना है । मैं आप से कहना चाहती हूं कि अगर आप मिताक्षरा प्रथा को रखना चाहते हैं, तो शौक से रखिये । लेकिन लड़की को पैतृक सम्पत्ति में और पिता की सेल्फ एक्वायर्ड प्रॉपर्टी में अवश्य बराबर का हिस्सा मिलना चाहिये । हम यह नहीं चाहते हैं कि अनडिवाइडेड सन को लड़की से कम मिले, उसके साथ अन्याय हो। हम किसी के साथ अन्याय नहीं करना चाहते । लड़का और लड़की, भाई और बहिन दोनों को बराबर का हिस्सा मिलना चाहिये, दोनों के साथ न्याय होना चाहिए, यह हमारा ध्येय है । अगर सदन बहुमत से श्री पाटस्कर जी का सुझाव स्वीकार कर लेता है तो दोनों ही ऊपर के ध्येय पूरे हो जाते हैं । धन्यवाद ।

SHRI C. P. PARIKH (Bombay): As regards (b) of Explanation, I have nothing to add to what has been said already. As regards (a), I do not know whether we can pass any such thing unless we pass an amendment to the Constitution. At present, the sons have inherent rights in the joint family. That right is there and nothing can take away that right from them as the Constitution has laid down that the rights of properties will not be expropriated. Therefore, if this portion has to remain in the

Bill, the Constitution must first be amended. Only then will the father get a right to dispose of the share of his sons. There is another thing; we must also remember that the sons may have sons who do not desire to separate and their shares in that property will have to be determined. It looks absurd to have this provision and this part of the explanation should be omitted. In regard to the father, he should be entitled to give away by will his own share in the property and he can exclude all his sons and give away the whole of his share in the property to his daughters. That will be a good point.

SHRI H. V. PATASKAR: You have no objection to the father willing away the shares of his sons?

SHRI C. P. PARIKH: No; he cannot have that right. I have already impressed that the father has no right under the Constitution to take away, bargain or do anything with the son's share. That is inherent in the sons. Unless you amend the Constitution that course of action is not possible because the expropriation of the rights to property is not permissible now. The property rights are already there and they cannot be bargained away by anybody.

1 P.M.

Now with regard to the son's share let us see the danger. The father will have daughters and they will be sharing in the property. Therefore why should the sister share in the property of the brother and if this Explanation (a) is retained, it will happen that the sons will demand partition on attaining majority in order that their share might not be reduced by the children subsequently born. Therefore that position is not desirable.

With regard to the point raised by Dr. Barlingay that there should be no right given to a son to have the property partitioned. I think, Sir, it is not the place here in this Bill to put it. I will advocate that the sons should not have a right to partition and if he exercises his right of partition, then share to be given to him should be only half at the time of partition. If his share is reduced, then he will have no inducement to demand partition, and the other half share may be given at the death of the father. His right cannot be expropriated, but his other half share may be postponed till the time of his father's death. That may be under some other law, but in this succession law, in which we are dealing with intestate property, this should not be incorporated.

With regard to the separate property, the daughters will not be deprived of it because the father will have some separate property—I think most of them will have. Now these fathers will be able to give full share to the daughters, if they like. If they think that their sons are taking more property and the daughters are getting less, then a father will be able to give his whole separate property to the daughter as the right of giving his separate property by will or by gift during his lifetime always remains.

Now a point was raised with regard to the son of a son who has separated. That position cannot be accepted because in class I of the Schedule we have already provided for the son of a predeceased son. We cannot provide for the son of a living son who has separated and bring him to share in the joint family property.

MR. DEPUTY CHAIRMAN: You are arguing as though this clause has been accepted. It is yet to be accepted by the House.

SHRI C. P. PARIKH: What I say is that no addition should be tolerated. If the son has separated from his father, from the joint family, then the son's son or the son's grandson should have no right in the ancestral property. That is what I am arguing.

(Interruption.)

[Shri C P. Parikh.]

We are dealing here with intestate property. Where the son has gone away taking his share by effecting a partition, his son and grandson should no longer be allowed to have a right to a share in the ancestral property. That is what I have to say.

MR. DEPUTY CHAIRMAN: The son's son and grandson by bir h acquire a right in the property. Because the son takes out his share and goes out, you cannot compel his son and grandson also to go out of the family.

SHRI C. P. PARIKH: What I mean is that this should be excluded.

MR. DEPUTY CHAIRMAN: That means you want to change the Hindu law as it is to-day.

SHRI H. V. PATASKAR: I have now considered the matter further and I find that if (a) remains, then probably that Explanation will be necessary. If (a) does not remain I would have to reformulate it after the decision on (a) because I tried so many alternatives.....

MR. DEPUTY CHAIRMAN: You mean the Schedule.

SHRI H. V. PATASKAR: If 6(a) is accepted, then naturally the other provision.....

MR. DEPUTY CHAIRMAN: The Schedule will have to be amended.

SHRI H. V. PATASKAR: Even I would like to make the position clear that the son who has separated will not be entitled to a share and I will make further provision that in the joint family property their share shall not be taken in computation for the purpose of determining the share of the daughter. All that will be necessary if (a) is accepted. I will rather hold it over till.....

MR. DEPUTY CHAIRMAN: Therefore you leave it to the House whether to accept it or not.

SHRI H. N. KUNZRU (Uttar Pradesh): May I put a question to my hon. friend Shri Pataskar before the House adjourns so that he may.....

MR. DEPUTY CHAIRMAN: The House is not adjourning.

SHRI H. N. KUNZRU: Anyway I should like to tell him what my point is so that he may have time to think about it. Suppose a man has only one son and no daughter. The son claims partition, takes away half of his property and lives separately from his father. Subsequently the father dies. Then under the law, as my hon. friend Shri Pataskar is trying to amend it, who will inherit the remaining half of the property?

SHRI H. V. PATASKAR: If he has a widow, she will inherit it.

SHRI H. N. KUNZRU: Suppose he had no widow surviving him and his wife died in his lifetime, who will get it?

SHRI H. V. PATASKAR: It is clearly the separated son's.

SHRI H. N. KUNZRU: Is it clear? That is the point that I wanted the hon. Minister to be clear about that if there is no female heir, then the remaining half of the property should revert to the son.

SHRI H. V. PATASKAR: In this case there is no question of reversion.

SHRI H. N. KUNZRU: Suppose there are the father and son and the son has separated already. Then the father becomes the sole owner of his property in the sense that he can deal with it in any way.

MR. DEPUTY CHAIRMAN: But he has no heirs of any kind. If he has not made any will that it goes to somebody else, the divided son gets it.

SHRI H. V. PATASKAR: It must go to the son.

MR. DEPUTY CHAIRMAN: The divided son will get it. When there are other heirs the divided son will not get it, but when there are no heirs naturally it will go to the son.

SHRI H. P. SAKSENA: Under what clause of the Bill it will go to the son?

SHRI H. V. PATASKAR: If people are less educated, matters can be easily adjusted and settled without much trouble.

SHRI RAJENDRA PRATAP SINHA (Bihar): Mr. Deputy Chairman, I would like to submit that no vote should be taken on this clause during the lunch hour. Of course the House is sitting but the attendance is very thin.

MR. DEPUTY CHAIRMAN: You want to go on with this during the whole of the 1½ hours?

DR. SHRIMATI SEETA PARMANAND (Madhya Pradesh): We can go on to the other clauses.

MR. DEPUTY CHAIRMAN: If there is quorum we can take the vote.

SHRI RAJENDRA PRATAP SINHA: But then those other Members who would like to be present and vote on this may not be able to do so during the lunch time as they have gone for lunch.

MR. DEPUTY CHAIRMAN: The Minister will also reply and it may happen that we have to take a vote on this by about that time, after two.

[THE VICE-CHAIRMAN (SHRIMATI CHANDRAVATI LAKHANPAL) in the Chair]

SHRI H. N. KUNZRU: I think we better deal with other clauses and suspend further discussion of clause 6 up to half past two.

SHRI KISHEN CHAND: Madam Vice-Chairman, this clause 6 is so clear and yet we are creating confusion by talking not directly on it but on irrelevant matters.

SHRI JASPAT ROY KAPOOR: What about Dr. Kunzru's suggestion that further discussion on clause 6 may be held over till after 2-30?

SHRI GOPIKRISHNA VIJAIVARGIYA (Madhya Bharat): Voting only.

THE VICE-CHAIRMAN (SHRIMATI CHANDRAVATI LAKHANPAL): We shall carry on the discussion, but there won't be any voting.

DR. SHRIMATI SEETA PARMANAND: But the time is not enough for the remaining amendments to the other clauses, only 3½ hours left he said.

THE VICE-CHAIRMAN (SHRIMATI CHANDRAVATI LAKHANPAL): There won't be any voting now. We shall finish with this as quickly as possible and then we shall take up other clauses.

SHRI KISHEN CHAND: I was trying to say, Madam, that this is a Hindu Succession Bill in which the property of the father is being distributed. Now, it has been pointed out that the Mitakshara system has got some very good qualities and that we should continue to have it. If we continue to have that system, then the sons get a right by birth and how is it fair and how is it possible that the property of the undivided sons should be taken into account when the share of the daughter is being fixed? You spoke a few minutes back Madam, and you raised this question that in a joint family some sons separate out while some sons are loyal and they remain with the family. The son who separates out gets his share without taking into account the presence of the daughters. He gets his share and he goes out of the family. The other sons remain in the family. They are loyal to the family and when their share is being

[Shri Kishen Chand.]

calculated you take the daughters into account. I ask, Madam, is it fair? You believe in equity and you say that the share of the son should be equal. The sons who have remained in the joint family should also get their share as the son who has gone out of the family. The daughter's share can only come out of the share of the father because it is the father's property that is being divided, whether it is self-acquired property of the father or the joint family property. This is a Succession Bill for the father, not for the brothers. If you do not want to give any share to the brothers, then you can say that we do away with the Mitakshara system. Let us have only the Dayabhaga system where the father is the sole owner of the whole thing, and the father's property is divided. But once you agree to continue the system which has been in existence in over 90 per cent. of the country for the last 2,000 years, if you believe that that system has been useful in the economic development of the country because by keeping together the property of the various sons the accumulation becomes large enough for carrying on trade and industry, if you believe in these things, naturally there should be no distinction between the divided son and the undivided son. They should both get equal share. Therefore the daughter's share can only come out of the father's share. That is the simple thing. Otherwise, indirectly you are encouraging the sons to go out of the family and get divided. And if all the sons get divided, naturally only the father's share will remain. That means indirectly without removing Mitakshara, you want really to hit at the system of joint family. If all the sons go out the daughter does not get any benefit. She only gets from the father's share. Therefore you say plainly that you do not believe in the joint family system and in the Mitakshara system and that there should be only the Dayabhaga system That would be a consistent argument. To say in one breath that we want to keep the Mitakshara system and that we want all the sons, whether divided or undivided, to get equal share and then to claim that this Explanation (a) should remain is a contradiction in terms. Madam, I maintain that in fairness the father's property should only be divided. Certain examples were quoted which created some confusion that supposing a son is separated from the family but his children do not want to separate from the family. Then at the time when the son claims partition his share will be calculated in such a way that his children's share, if they want to remain in the family, will be kept in the family. Madam, the simpler procedure will be to omit both Explanation (a) and (b). If you omit both, then what remains is that a daughter will get the share from the father's property in the coparcenary as well as in the self-acquired property. I would beg of this House to examine this question very carefully and retain the good points that are there. The Mitakshara system has served our society very well and we should continue to retain it and if we retain it, we should not try to undermine it by indirect methods by encouraging division of property and making the sons go out of the family if they want to get a full share. Therefore I support the amendment which seeks to delete both (a) and (b) from the Explanation and there is absolutely no further need for having another clause as suggested by the hon. Minister.

SHRI RAJENDRA PRATAP SINHA: Madam, if we.....

SHRI J. S. BISHT (Uttar Pradesh): May I suggest that we go on to the other causes because on this vital clause there will be voting.

(Interruptions.)

SHRI V. S. SARWATE: (Madhya Bharat): If we have to address only empty benches how can we get votes. We shall have to convince Members.

THE VICE-CHAIRMAN (SHRIMATI CHANDRAVATI LAKHANPAL): It has already been decided that we shall go on with this clause.

SHRI V. S. SARWATE: It only means that all the speeches are useless.

THE VICE-CHAIRMAN (SHRIMATI CHANDRAVATI LAKHANPAL): There won't be any voting. There is not much time and we cannot pos pone it.

SHRI J. S. BISHT: It is much better to adjourn.

THE VICE-CHAIRMAN (SHRIMATI CHANDRAVATI LAKHANPAL): The Minister is here and Members are also expected to be here.

SHRI RAJENDRA PRATAP SINHA: Madam Vice-Chairman, this clause as it is drafted amounts to committing a fraud upon the women of India. I charge the Congress Party of violating their election pledges and all their talk which the party has been doing, of giving equal share to the women of India is all tall talk to deceive the women electorate.

SHRI KISHEN CHAND: There is no quorum, Madam.

SHRI KANHAIYALAL D. VAIDYA (Madhya Bharat): There is no necessity for a quorum now.

SHRI RAJENDRA PRATAP SINHA: If we allow the continuance of the Mitakshara system which the Congress Party wants to continue, you cannot think of equality of interests or equality of shares between the daughter and the son. Sir, I have heard the speeches delivered in favour of the continuance of the Mitakshara system. All those arguments were examined by the Hindu Law Committee. They considered all the objections that were raised for the continuance of the Mitakshara system and they came to a decision which I would quote: "And so we are driven from point to point; we can find no logical halting-place until we abandon the right by birth as well as survivorship and completely assimilate the Mitakshara to the Dayabhaga in these respects." It is no good arguing that we can devise some method by which we can be both fair and just to the female heirs and at the same time retain the Mitakshara system. Mitakshara and equality between the male and the female heirs are contradiction in terms. It is impossible. I would therefore urge that the House should accept my amendment No. 15 which I have suggested on the same lines as had been done by the Select Committee of 1948. In the alternative, if you do not want to do away with the Mitakshara system, then accept our amendment No. 66 moved by myself and Dr. Barlingay; that is to say take away the right of partition by the sons during the life-time of the father. If you do that, then alone you can ensure equality between the female and the male heirs. There may be some complications as a result of that but that is the only way by which you can ensure equality between the two. There is no other method to do that if we continue the right of the son to claim partition during the life-time of the father. This point has also been very clearly brought out by so eminent a lawyer as Prof. Kane.

Then, the question is whether we should drop the Explanation (a) and (b) of clause 6. I am very happy that many people have spoken in support of the retention of sub-clause (a). If you are out to retain clause 6 and if you have decided to drop sub-clause (b)—I am told that that is the decision of the Congress Party—then at least retain sub-clause (a), it will do justice... ..

SHRI H. P. SAKSENA: Why the hon. Member is bringing the Congress Party in the discussion is beyond my comprehension.

THE VICE-CHAIRMAN (SHRIMATI CHANDRAVATI LAKHANPAL): That is not necessary.

SHRI RAJENDRA PRATAP SINHA: Because the Congress Party has brought forward this Bill. The Government is composed of the Congress Party and the Congress Party will ultimately decide.....

SHRI H. P. SAKSENA: If the Congress and the Government were one and identical, you would not have been here in this House.

THE VICE-CHAIRMAN (SHRIMATI CHANDRAVATI LAKHANPAL): Order, order.

SHRI KANHAIYALAL D. VAIDYA: There is going to be free voting on this Bill.

(*Interruption.*)

DR. R. P. DUBE (Madhya Pradesh): It is not by the Congress Party please.

SHRI RAJENDRA PRATAP SINHA: How the hon. Member is differentiating between the two?

DR. R. P. DUBE: This Bill has been brought forward by the Government and not by the Congress Party.

(*Interruption.*)

SHRI H. V. PATASKAR: It is not at all relevant for the purpose of discussion of this clause. In all democracy it is true that the Government is formed by the party; but when a measure comes before the House I think it is the Government which brings it forward. And I think it is the House which is in possession of it. Instead of raising all these, let the hon. Member concentrate on some of the fundamental things rather than these Party considerations.

THE VICE-CHAIRMAN (SHRIMATI CHANDRAVATI LAKHANPAL): Let us not refer to the Congress Party again and again.

SHRI KANHAIYALAL D. VAIDYA: Particularly I want to say that no decision has been taken and we are at liberty to speak and express our views and vote as we like.

SHRI RAJENDRA PRATAP SINHA: That is very good. I am very happy. Then, be reasoned out. As regards the Explanation (b), the hon. Minister said that he is going to drop it. Now, as regards (a), probably he would like to accept the decision of the House in this matter. As I have already said, my first recommendation to this House is to accept the abolition of Mitakshara. If they do not do that, then I have suggested amendment No. 66. In case that is not also accepted, then I would at least urge upon them the retention of Explanation (a), which says:

> "the interest of every one of his undivided male descendants in the coparcenary property."

If the sons have not divided, at least there should be equality between the undivided son and the female heirs. This is one step forward. This is what I can say. If we cannot have the full equality, the full interest, let us do as much as we can in order to safeguard the interest of the female heir. That is my submission. Therefore, I would earnestly urge upon the hon. Members if they are guided by a motive to do justice, to be fair to the female heirs and not to, as you have very correctly said, encourage a sex war as there has now been a linguistic war and a caste war, for the retention of Mitakshara means the development of another controversy, the sex controversy in this country. Therefore, I would very earnestly submit, during this limited time that is at my disposal, that we should retain sub-clause (a) of the Explanation, if you do not accept my other proposals.

DR. SHRIMATI SEETA PARMANAND: Madam, I have given notice of an amendment to this clause, amendment No. 65. and it brings out all the points, which will both do justice to the female heir, as also reduce the chances of litigation and yet retain the Mitakshara system in some form. You know that the Mitakshara school of law has been going through a process of change all

the time. And if I may remind you, in the days of *Jimutavahan*, the sons were ordained to give one-fourth of their share as a gift to the sister That means, if there were eight sons, she would get one-fourth from each of them and instead of putting it in law, it was put down as a sort of a precept and the penalty for that was social ostracization or condemnation, and the verse ran like this:

"स्वेभ्यो स्वेभ्यो ऽ अंशोभ्यः प्रदद्युः भ्रातरप्रदद्युः चतुर्थांशो भगिन्योभ्यः पतिताः स्युः अदित्सवः ॥"

If they did not give, they were condemned as *Patit*. So, the argument which has been put forward by some people that giving a share in the ancestral property to the daughter has not been envisaged in the scheme of the present Bill and will lead to a lot of litigation, is never contemplated and will break the Mitakshara system of law, has not much ground. I would say that if sub-clause (a) is dropped in the *Explanation*, then the share that will go to the daughter would be almost worth not touching. Of course, it will include the principle that even a share in the ancestral property that comes to the father and becomes a separate property can be given to the daughter along with the son. But that is hardly worth anything when we are, as a matter of fact, conceding the principle that a daughter will have a full share in the separate property of the father, though that right might remain fictitious in the hands of a father of the type described by Dr. Kane and other speakers inasmuch as they will be empowered to will away that share. It is a sad picture of society and the affection for the daughters who are supposed to be, as far as blood relationship goes, on a par with sons that Dr. Kane depicted when he said that the father will will away his share. Again, I would reiterate that it is a pity that our brothers are giving this kind of certificate to themselves. We sisters would not like to touch on the type of affection fathers, it is said, would show for their own daughters. If that is the attitude towards their own children, that is, the daughters, I do not know what such parents can do in a society which is expected to sacrifice by giving part of their property by accepting a ceiling on their dividends and bank balances and agricultural holdings and all other types of property. However, it is no use at this stage referring to all these except to point out that if this sub-clause (a) is not to be there, then the clause will have no meaning. I will give an instance. If Rs. 20,000 are to be divided between three sons and a father and the partition takes place at the instance of the father or as Dr. Kane said the father would himself ask the sons to divide in order to prevent the daughters from getting their share. Then, only Rs. 5,000 will remain which on his death will be divided equally between his widow, his daughters, and, of course, the divided sons would not get a share again. So, in my amendment No. 65. I have suggested—and it is for the House to consider—that if a son asks for separation from the family, he should be given the share by computing the share of the daughters also in the family, as if they were sons. And after that he, of course, will not have any further interest in that property. That will mean, if there are Rs. 25,000 and three sons and a daughter, the share should be that four sons of the father would get Rs. 5,000 each. The son who breaks away will get Rs. 5,000 and Rs. 20,000 will remain. On the death of the father, the widow would get an equal share and each one of the children, that is the two undivided sons and the widow and the daughter will get Rs. 5,000 each which will be equitable. We know the Mitakshara family has been retained in that scheme of things. My amendment is that though the share of a daughter will be considered equal to that of a son for computing the share, yet the daughter will not be given a right to demand partition which the son has. If this amendment is accepted, there will be no necessity even to say that Mitakshara should be done away with. Only there would be no hardship to the undivided sons who were consi-

[Dr. Shrimati Seeta Parmanand.]

dered to suffer under the present clause by remaining loyal to the father because it was then thought that the divided son will again come in for a share of the property. Now it has been realised that it is not the thing and that he should be deprived to get it beyond any doubt in case there are certain judgments to that effect. Hindu Law is not a sort of a static thing. Even the laws of various law-givers have changed, even the recent judgments of the Privy Council have changed to such an extent that we who are here are questioning the right of a legislature to make a little distinction so that the entire scheme of things as the Mitakshara is not retained and the daughter is given an equal share for computation with the other members of the coparcenary of the father. Those people have to remember the works of foreigners.

On their translations we are given that authority and that authority is accepted to such an extent that even to-day judgments are quoted.

I have got here this Rangachari's Hindu Law from Madras. Bombay High Court *e.g.*, would not go by a judgment given by the Privy Council. In any High Court, it would guide one Bench but another Bench would not go by the very same judgment. If we put up with such confusion created in the interpretation of the principles of Hindu Law, where is the harm in allowing this Legislature to change the present system of Hindu Law as it stands? The real confusion has been brought out; I do not know why this is done by those in charge of introducing the Bill. I do not think every member of the Cabinet has the time to go into the details of the Bill. Those who introduced the Bill and circulated it for public opinion should have realised that without touching the joint family system, how was it possible to give a share to the daughter under the coparcenary system? If it is said that the Mitakshara system was excluded then may I ask a second question? How did they accept this law to be a part of the uniform Hindu Code which was to be a precursor of civi code when 90 per cent. of the people governed by the Mitakshara system were to be excluded? I personally think that the Select Committee has done a very good job out of the situation. It is very easy to blame the Select Committee for what it has done. But if the people who criticized the Select Committee were there, they would have seen how again and again a decision on this clause was postponed for three or four days and a small committee was appointed to go into the question and find out a solution to bring about a position where no injustice will be done to a daughter getting a share in the Mitakshara joint family. It is easy to say as Dr. Kane said in his amendment—"Do away with the Mitakshara family." The whole thing is simple. Objection has been raised to the Select Committee as if it is going out of its scope by deleting the Mitakshara family from clause 5, by which only ten per cent. of the country would have been brought under this rule. What objection would not be taken and would have been taken if the Select Committee with one stroke of pen would have said: "Delete the separate family altogether." We have to come to the country again and if the people are so equality-minded which, I hope, they are, and particularly if the people in this Upper House with their wide experience have to give the benefit of their experience for making a nobler legislation, they will themselves say that this should be done in the life of the present Parliament. So, whatever may be the anomaly, there is the remedy.

Now, the joint family system cannot, in my opinion, be touched in this Bill with all propriety and we cannot possibly say "Do away with the Mitakshara System" without certainly going into the country to get the people's opinion, though I may point out that in most the opinions that have been sent, many have

pointed out that it would be difficult to find a satisfactory solution of shares and other things And we are experiencing that difficulty, now by not bringing the Mitakshara school and the joint family system within the purview of this present Bill. That does not mean that the country has not given adequate opinion on this specific question. With these remarks I press my amendment and the clause 6 as it is at present with the explanation should have the approval of the majority view. If not, I would submit that the House accept my amendment of which I have given notice It is in consistency with the way in which the Mitakshara system of law has operated during the last 2,500 years, except with a slight modification, *viz*, that the share of a daughter is computed with that of a son, but the daughter is not given the right to demand partition I would only appeal to Members that when they have shown generosity of accepting a full share for the daughter and when they have always held that women who have borne the brunt of family life should be given equal status according to their present economic and political status, along with their husbands, they would vote for this amendment of mine. This at least they will do if they cannot accept my amendment along with sub-clause (a) of Explanation; otherwise the share that they will be giving to a daughter will amount to just a mere nothing as the father can will away that share.

SHRI JASPAT ROY KAPOOR: Madam, the more I have heard the speeches on this clause the more I feel and think it is also the case with other hon. Members, that it is making confusion worst confounded I would earnestly ask the hon Member in charge of the Bill and other hon. Members who want that this Bill should be finalised in a proper form achieving its main objective namely that the women should get some reasonable share in the property, is it not necessary that this Bill be referred back to the Select Committee? My object in making this suggestion is not that it should be delayed It may come up again after a few days here But my only object is that the real purpose of the Bill may be achieved. As it is, Madam, this Bill in its present form—I mean the clause in its present form and more so when sub-clauses (a) and (b) of clause 6 are deleted—will amount to giving practically nothing to the daughter. I make this submission for the earnest consideration of everybody whether they really mean to give anything to the daughter or not? Let us be clear in our objective Let us not be working under confusion. Let us be true to ourselves and true to our views and not try to deceive ourselves—though it may be unconsciously—and even deceive the daughters. The trend of the framing of the various provisions of this Bill, including clause 6, is to adopt an attitude of pilfering as it were. In the preceding clauses 4 and 5 too we have adopted the same pilfering attitude. Step by step we are trying to reduce the share of the daughter to oust her from enjoying the right in any property. We have thrown the burden of illegitimate children absolutely on the mother; the father's property is absolutely safe. The mother's burden will be now to look after the illegitimate children—even illegitimate daughters whom nobody is going to marry probably

Coming to clause 4, we have passed that the tenancy rights shall not devolve on the daughter at all So that the majority of the rural property which consists of tenancy rights is not going to be devolved on the daughter. Whatever the intention of the hon. Minister in charge of Bill may be, unless it is specifically provided hereafter (which I do not know if it is to be provided) it will not help the daughters. Madam, it is not the intention that matters, it is the actual phraseology of the Bill that matters, and it is the law as worded that matters. Having not been satisfied there, now we have enacted in clause 5 that the property

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which is saved from the daughters will continue to be safe under any enactment which is in force. We are not going to touch this enactment. That is even outside the purview of clause 6.

Coming to the present chapter we have framed in a negative manner the whole chapter of intestate succession It begins not with a positive phraseology conferring anything on the daughter but it begins with a negative phraseology. Clause 5 provides that this Act will not apply to such and such. Similarly in clause 6 in the initial substantial portion we mean to say that in the ancestral property the daughter shall have no position by birth. In line 24 of clause 6 we say:

> "his interest in the property shall devolve by survivorship upon the surviving members of the coparcenary and not in accordance with this Act."

Again we start with a negative attitude that the daughter has no place even in the family of her father until the time comes when unfortunately for the poor girl the father dies.

THE VICE-CHAIRMAN (SHRIMATI CHANDRAVATI LAKHANPAL): But there is proviso as well as an explanation

SHRI JASPAT ROY KAPOOR: I am coming to that. That is exactly my grievance, Madam, that whatever we want to give them we give them more as a concession, more by exceptions and explanations and not in a straightaway, substantial manner This explanation does not confer any right on the poor daughter by birth. For acquiring any right she has to wait for the death of the father This explanation should be clearly understood, more particularly by the lady Members, who are anxious to secure something for the women and daughters. Even by this explanation the daughter is not going to get anything by reason of her birth in the family up to the time of the father's death The poor daughter has absolutely no place in the family. She is absolutely at the mercy of the father and the brother, and it is only when the father dies that she may claim anything

DR SHRIMATI SEETA PARMANAND. It is the same Dayabhaga school.

SHRI JASPAT ROY KAPOOR: I do not want any interruption. I know my hon. friend Dr. Seeta Parmanand would not like to listen anything which is contrary to her own view, even though what we say may be to her own interest and to the interest of the ladies whom she claims to represent I do not want to be interrupted. Let her have patience to listen.

THE VICE-CHAIRMAN (SHRIMATI CHANDRAVATI LAKHANPAL): Mr. Kapoor, I would request you to come to the point.

SHRI JASPAT ROY KAPOOR: I hope every word of mine is absolutely to the point. Clause 6 is not going to confer practically anything on the daughter and the whole of it must be recast. Let nobody who wants to uphold the cause of daughters and women be jubilant over it.....

DR. SHRIMATI SEETA PARMANAND: Nobody is jubilant.

SHRI JASPAT ROY KAPOOR: Let him regret and let her regret over it.

Madam, now it is suggested that sub-clause (a) of clause 6 should also be deleted. Now, the Government, it seems to me, is not clear in its mind and wants to leave the whole question to the free vote of the House. That is very good. But we would have very much liked the hon. Minister to give some clear lead in the matter. I do not mean to suggest that the united wisdom of the House would be inferior to the superior wisdom of the Minister in charge of the Bill. But since he must have given very careful consideration to the whole question, an indication of

his mind would have been slightly helpful, though we may not have accepted that view-point. My own view-point is that if you delete sub-clause (a) then virtually you are depriving her of almost everything.

Let us take a simple case, for if we introduce complications the more complicated the whole thing would become. Let us take a coparcenary consisting of father, four sons, and a daughter—though not a member of the coparcenary. Now supposing at the time of the death of the father the entire coparcenary property is of the value of Rs. 20,000. Now, what will happen if sub-clause (a) remains or what happens if sub-clause (a) is deleted. After the death of the father, the whole of the property worth Rs. 20,000 would be divided equally among the four sons and the daughter, each getting Rs. 4,000. That is the position if sub-clause (a) remains. I hope I am correct. Now if sub-clause (a) is deleted the position would be as under. The father, in his own life, had a share of Rs. 4,000. When he dies, his share would be divided equally among the four sons and a daughter, each getting Rs. 800. So that out of the coparcenary property worth Rs. 20,000 the poor daughter really gets only Rs. 800. Is that what we really mean? If we mean that, well and good. I for one would pity the daughter's lot. Madam, I do not want that we should make a pretension of doing something for the women and daughters while in reality doing nothing. Sub-clause (a) and the clause 6 make much ado about nothing. They make a show of doing a good deal for them while actually doing practically nothing for them. We have to seriously consider this question. It is no use passing the Bill and having the satisfaction that we have enacted some law, done something illusory for the ladies and women. If you want to have an imaginary satisfaction, well, have it. I for one would not only be not satisfied but I would be simply sorry for this state of affairs. I know we are short of time, but it is necessary that the whole thing should be seriously considered. But then shortness of time should not compel us to pass almost an absurd sort of legislation which goes contrary to the object that we have in view.

THE VICE-CHAIRMAN (SHRIMATI CHANDRAVATI LAKHANPAL): Mr. Kapoor, it is time. You have already taken more than ten minutes.

SHRI JASPAT ROY KAPOOR: As I have already submitted, Madam, if time is essential and not the Bill, well, I need not take even one minute more. I want to know whether we are to be ruled by time or by the consideration of this enactment really.

DR. SHRIMATI SEETA PARMANAND: Time is also a consideration when certain time is allotted.

SHRI JASPAT ROY KAPOOR: I wish I were allowed certain time.

THE VICE-CHAIRMAN (SHRIMATI CHANDRAVATI LAKHANPAL): There are other Members also.

SHRI JASPAT ROY KAPOOR: I am glad that other Members are also anxious to speak. But the hon. Minister in charge of this Bill is not giving us a definite lead in this matter. He says that everything is to be considered and reconsidered, and, Madam, this clause 6 in its final form has not been placed before us by the hon. Minister. He is deleting something, and then he will add something on to clause 6. And since the whole of this clause is going to be recast in view of what we have to submit before the hon. Minister in charge of the Bill, certainly we should be given some opportunity to place before him all the facts. If he had said that this clause shall remain as it is, then naturally we would have said whether we supported it or opposed it. He is out to invite suggestions with regard to the ultimate form in which this clause is going to be adopted.

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Madam, it is said that if we retain sub-clause (a), it would be against our Constitution. Then Dr. Kane refers us to the ancient Hindu law; our friends over there would refer us to the Russian law, and my friend over here—Pandit Tankha—would take us to the U.K. law or some other law. I think this is something of a confusion worst confounded. We would like to have before our mind a very clear and definite stand. We must know whether we are going to start on a clean slate or not. We cannot have amalgamation of the ancient Hindu law, the U.K. law, the Russian law, and all that. Let us be clear in our minds whether we stand by the ancient Hindu law, or we want to start on a clean slate. Madam, looking to the present circumstances I think we should start on a clean slate. And that being so, let us not be fettered by the considerations of the joint Hindu family, the considerations of the Mitakshara law, or this consideration or that consideration. Let us apply our commonsense and let us see what, according to our needs and requirements of the present day, we should have and what sort of law we should have. It is said Madam, that the Constitution is against this sub-clause (a). I do not see how it is. We are not divesting anybody of his property. Now what is the present law?

THE VICE-CHAIRMAN (SHRIMATI CHANDRAVATI LAKHANPAL): Mr. Kapoor, I would request you to wind up now.

SHRI JASPAT ROY KAPOOR: Madam, I accede to your request and I have closed.

SHRI J. S. BISHT: Madam, in the very beginning I made a request that we should have taken up something else for consideration, because on this point there is going to be a voting, and therefore what is the good of my speaking now if I cannot convince the hon. Members who are absent at the moment?

I have moved my amendment No. 94 whereby I have suggested that at pages 4-5, lines 33 to 36 and 1 to 6, respectively, be deleted, that is to say, the whole Explanation be deleted. Here, for enthusiasts like my friend, Mr. Kapoor, I might say that I am as anxious as he is to give a good share to the females in the Hindu families. That is why I have also tabled amendment No. 20 and amendment No. 27 suggesting new clauses 6A, 6B, 6C and 6D, which is quite in conformity with the recommendations of the Select Committee of the Constituent Assembly which was presided over by Dr. Ambedkar. The point is very clear. If you want to give a share to the daughter or to any female in the Hindu family, the only logical course is to abolish the Mitakshara family system and to have the Dayabhaga system, that is to say, to abolish the right of the son by birth in the family property. That will also abolish the right of asking for a partition. And then they will get an equal share, and all these complications will disappear altogether. Otherwise, all these complications will crop up. There is no formula that will steer clear of all these complications. That is utterly impossible. We have been discussing this clause 6, especially the Explanation, for the last three days, and some of the best lawyers have been taxing their brains as to how best to solve this problem, but we are up against all these difficulties over and over again. Now in view of the fact that there is a strong sentiment that the Hindu joint family, especially the Mitakshara joint coparcenary, should remain, and it should not be destroyed outright, we have come to this position that we must find a compromise formula by which the daughter should be able to secure some share in the property of the Mitakshara coparcenary family. And for that purpose this clause 6 has been brought in. But the Explanation makes the position very confusing. My friend, Mr. Kapoor, for instance says that if you take away

sub-clause (a), the daughter will get nothing.....

SHRI JASPAT ROY KAPOOR: I used the word "almost".

SHRI J. S. BISHT: I agree. But that position you cannot avoid in any case, because if a community is determined not to give anything to the daughter, nobody can help it, especially under the Mitakshara system. The only solution for that is to abolish the Mitakshara system and have the Dayabhaga system. And even there the father can will it away, can gift it away, and we can do nothing. So today no law can force the people to do what they do not want to do. So we should not cry on that point. The position is this. If we retain sub-clause (a), will it help in any way? If we want to retain the Mitakshara joint family system, will it help us to do so? That is the first question. Secondly, if we want to give the daughter a share in the property, will it help us to do so? If it is going to serve neither of these purposes then why do you want to keep this provision here at all? If you retain sub-clause (a), it will act as a catalytic agent and will dissolve all the Mitakshara families. You may take it that 99 per cent. of the families will be dissolved. I would like to illustrate it. Supposing there is a joint family consisting of the father, three sons and three daughters. Now at present every son has got a vested interest in that joint family property. Now the three sons and the father have got a joint property worth about Rs. 1 lakh. Then each sharer is entitled to Rs. 25,000. Now one son, say the eldest son, walks out of the family and he takes Rs. 25,000 away. The rest of the property is worth only Rs. 75,000. Now what you say is this. When the father dies, this property worth Rs. 75,000 shall be distributed among the remaining heirs, that is to say, among the three daughters and the two sons. That means that they will get Rs. 15,000 each. Now under these circumstances, knowing this position very clearly, do you expect any son to remain joint with the father? It is utterly impossible. No son will do it. When a son sees that his elder brother, or one of his brothers, has walked away with Rs. 25,000, and he is going to get only Rs. 15,000, that is to say, Rs. 10,000 less than what his elder brother has got, how is he going to remain in the family? Therefore, what I am submitting is this. If you retain this sub-clause, apart from its unconstitutionality, it is going to act as a catalytic agent and is going to dissolve every Mitakshara family, and every family is going to divide itself.

DR. SHRIMATI SEETA PARMANAND: So much the better.

SHRI J. S. BISHT: It is not going to be better. In the alternative, what does the daughter get out of it? They will all separate themselves and the father will be left with only Rs. 25,000, and the daughters can share only in that Rs. 25,000. That is all. They can get nothing else. And please remember one thing. If the Mitakshara family is dissolved by partition, then the father can will away that property. That is to say, his Rs. 25,000 can be willed away by him. I would submit that, if you omit this clause, what will ordinarily happen is that the family will remain as it is. If one brother does not go out of the family, the others also will not go away from the family, because they will think that, when their father dies, they will all share equally, and if their sisters get a share in the property, that share will come out of the whole family property, and they will be pleased to share with them. The difficulty is there: If they think that one brother is going to get an undue advantage over the others, then you can take it from me that nobody is going to remain undivided.

2 P.M.

DR. SHRIMATI SEETA PARMANAND: It is a far-fetched example.

SHRI J. S. BISHT: It is a very clear-cut example. That is what is going to happen.

Secondly, this is a matter of intestate succession. Intestate succession means succession to the property of a person who dies without making a will. That is very clear. Now, you are going to give succession to the property of the people who are living, that is to say that of the undivided sons. You are going to give away their property to their sisters. You cannot do that under any system of law, and as my friend, Mr. Tankha, has already pointed out in his minute of dissent very clearly, article 19(f), so long as it remains, it is very clear that a man has got a fundamental right to acquire, hold and dispose of his property. Now, if a man has property, you cannot divest him of his property except by payment of compensation. If you pass such a law, it will be challenged in the court. There is no doubt about it that it will be successfully challenged. It will be jeopardising the whole of clause 6 to include this sort of unconstitutional provision in it. If this case goes to the Supreme Court, what will they think of this Parliament if it tries to give away the property of people who are living, not of one who is dead, but giving away the property of the brothers who are still living? You cannot do it.

(Shri Jaspat Roy Kapoor interrupted.)

The point is very clear. I quite agree with that point. Abolish the Mitakshara completely and substitute Dayabagha, as I have myself tabled an amendment. After all, the Rau Committee, a committee of experts, went throughout the country and spent three or four years over their work. Another committee, the Ambedkar Committee, spent a lot of time over it. If they could have devised some formula, they would have done it, but no formula is capable of being devised in this case. You can give away the property of the father who dies, but you cannot give away the property of anybody else. The share may be one-tenth or one-twelfth. If you do that now, people will get accustomed to it. Once the people get themselves accustomed to it, there will be no difficulty. Some of my friends also forget that there is clause 21. Clause 21 clearly lays down that "If two or more heirs succeed together to the property of an intestate, they shall take the property as tenants-in-common and not as joint tenants." Why are we saying that? I think that if by clause 6 we gradually accustom people, the vast mass of the people, especially in the rural areas, the orthodox section of the people, to the daughter getting into the family succession, maybe one-tenth or one-twentieth, everything will become all right in the next generation, but by trying to do this in clause 6 you are neither saving the Mitakshara family nor are you safeguarding the interests of the daughter in any way. You are only taking the risk of the whole thing being declared invalid and *ultra vires* by the Constitutional Bench of the Supreme Court. If you leave out this clause (a), there will be no reason for division of the property, because everybody will think that everyone of them is going to get a share, and if the sister gets a share, it will be from the share of everybody and that no one is going to get an undue advantage or no one is going to be adversely affected. But if you put it as a proposition of law that the undivided sons' property will be reduced, no one is going to remain undivided, you may take it from me.

SHRIMATI LAKSHMI MENON (Bihar): Madam, you have heard during the last few hours front-rank legislators complaining about the confusion resulting from clause 6. I would like to point out that the confusion is only in their own minds, for the simple reason that they are trying to give expression not to their beliefs but to the opposite of their beliefs. They do not want women to have the right to property, but they want to put forward arguments to show to ignorant people that they are

all for the rights of the women, they are for the protection of their rights, that they are ever so anxious to bring about equality of status, and that they really do not want to oppose this bit of legislation. Madam, if they think that we are foolish just because we do not think in the tortuous way in which lawyers think, they are mistaken. The women of India know what they want and what they want is very simple. If the Mitakshara system and its concept of coparcenary stand against the equality of women and do not admit of women being included in succession, then we want that the Mitakshara system should be abolished. You cannot build a new structure on a dilapidated old one. Everybody admits that the Mitakshara joint family is no more, that, if this legislation brings in the daughter into the family as a member of the family inheriting succession rights, then the coparcenary also will disappear. Let us face facts clearly and squarely. The purpose of this legislation is not to perpetuate something which is unjust, which has been unjust, which has caused innumerable hardships, which has driven women to suicide and which has brought disgrace to family life. We want social justice; we want the daughter to be regarded as a member of the family because she is a member of the family as much as are the other male members of the family, because she is the legitimate and acknowledged child of her parents. The very fact that she belongs to another sex does not mean that she does not have the rights that the other children have. Madam, those speakers who have been so solicitous about the rights of daughters seem to forget the statements that they have made at other times and in other places. We are literate and we read what they say and if we recollect their honest beliefs that they hold, then we find that they are not true to themselves when they advance these arguments saying that women will get greater rights if sub-clause (a) is deleted. Madam, I was very surprised to recall some of the specious arguments of the previous speaker—Shri J. S. Bisht. He said that if we retain sub-clause (a) of clause 6, then the women will get nothing. It is quite possible that sons, according to him, being what they are, would claim partition and there will be nothing left for the daughter. Even then the son's children.....

SHRI JASPAT ROY KAPOOR: Even then, the father's share will be there.

SHRIMATI LAKSHMI MENON: Never mind, even if the father's share is nominal and the daughter does not benefit, even then the son's daughter will inherit equally with the grandsons. He completely forgot that aspect of the question.

DR. SHRIMATI SEETA PARMANAND: Deliberately.

SHRIMATI LAKSHMI MENON: We grant that sometimes the nature of man seems to be somewhat abnormal. According to Shri Bisht, the moment they hear that the Hindu Succession Bill is passed, sons—the sons that are supposed to look after their fathers' spirit after their fathers' death—will claim partition even during their life-time. That is their noble ambition and are we to believe that these are the people who are going to protect the rights of daughters, the rights of their sisters and the rights of the female grandchildren? Madam, I don't believe all that. The best thing will be for them to say "We are against this legislation, we are against this because we don't want the daughters to be brought into the Mitakshara family."

Before I conclude I wish to say one thing. The picture is very clear before us. The picture is that we are working against a certain background, a certain background of society built on the Constitution of India, a certain pattern of living which is based on a socialist pattern of living, a certain pattern of living in which women are asked to contri-

[Shrimati Lakshmi Menon.]

bute their best, not as women, not as members of the Mitakshara family or Dayabhaga or *marumakkattayam* or *aliyasantana* family but as citizens of this country and our Constitution generously gives us those opportunities and I want this House to recognize that fact. Much has been made of the disgrace that is going to fall on this—the legislature of this country—when this Act will be challenged in the Supreme Court. The disgrace is already there. If it has not fallen on the country, it is because we women have been decent enough not to challenge the Hindu Law under the Constitutional clause in the Supreme Court. I think if we had brought the existing law before the Court, it would have been challenged and the disgrace would have been on us—on all of us and the country in general. We are asked "Why are you so impatient? Can you not wait till we come to article 20?" I should like to ask my brothers "Why are you so mean and stingy? Can you not give with both hands? Why don't you show that your professions are honest, that you are sincere when you say that you are more interested in the protection of women's rights than the rights of your own sons?"

Madam, now Mr. Kane's amendment—I don't know how he means what he says. If all these people who want to abolish Mitakshara are so unanimous in their opinion, the problem is very easy. Why not abolish this system—that is what they have said. Let us abolish it, they say. Why not they do it? There are so many amendments which say that the Mitakshara should be abolished. In that case, I think the job of the hon. Minister for Legal Affairs will be easy. He will not have to frame another amendment or present a new formula. (*Interruptions.*) They may not. It means that everybody is not quite honest in what he says. If they are all agreed, as they say they are agreed, that we must have a simple procedure by which the daughters' right can be included in the Mitakshara family, by all means do it. The fundamental question is not that of maintenance of the Mitakshara family. The fundamental question is, are you going to be just to your daughters? Are you going to have justice done to the female members of coparcenaries of a Mitakshara family? One thing I must say is that in the previous clauses, we have already brought within the purview of the Hindu Law all those other systems of law in which women already enjoy equal rights with men, where the daughters inherit equally with sons and what is the point of bringing in provisions which will create utter confusion or more confusion because you have brought in legal systems in the country which have been for centuries just unfair to the daughters? Now instead of tinkering with this and bringing in amendments which will cause more confusion, the best thing will be to evolve a formula which does not mention either of these things—Mitakshara or coparcenary or any of those tortuous things—but bring in a straight clause. I like the amendment proposed by my hon. friend Shrimati Parvathi Krishnan because it is very clear. It says what it means and it will remove all the confusion that our lawyers have generated in this House. With these few words, Madam, I conclude.

श्रीमती शारदा भार्गव (राजस्थान) : उपाध्यक्षा महोदया, इस धारा ६ पर बहुत अधिक बहस हुई हैं और मैं समझ रही हूं कि इस बहस के अंदर कुछ और ही मतलब दिखाई देता हैं । हालांकि सब तो नहीं, पर हमारे कुछ भाई तो सही तरीके से सोचने का और समझने का प्रयत्न करते हैं किन्तु कुछ यह कहते हैं कि इसमें स्त्रियों को धन दिया जा रहा हैं । मेरी समझ में नहीं आता कि यह क्यों कहा जाता हैं कि स्त्रियों को धन दिया जा रहा हैं, या यह स्त्रियों का विधेयक हैं । यह न तो पुरुषों का ही विधेयक हैं और न स्त्रियों का ही । मैं तो यह समझती हूं कि

साधारणतया यह समाज का विधेयक हैं । समाज के विधेयक का अर्थ यह हैं कि समाज में जो कुछ कमियां हैं उनको हम इस विधेयक द्वारा दूर करने का प्रयत्न करते हैं । हमारा संविधान कहता हैं कि समाज में पुरुष, स्त्री, छोटे या बड़े किसी में किसी प्रकार का अंतर नहीं होना चाहिए । हमारी कांग्रेस ने भी बराबर यह कहा हैं कि हम किसी में कोई अंतर नहीं करना चाहते, हम देश में समाजवादी समाज की व्यवस्था लाना चाहते हैं । क्योंकि हम नहीं चाहते कि एक परमपिता की जो संतान हैं उसमें कोई अंतर किया जाय । पर श्रीमन्, हम कांग्रेस वाले परमपिता की संतान को बराबर बराबर ऊंचा उठाना चाहते हैं, एक साथ आगे ले जाना चाहते हैं और ऐसा देश भर में ही नहीं करना चाहते बल्कि दुनिया भर में करना चाहते हैं । परन्तु जब एक व्यक्ति की संतान का प्रश्न आता हैं तब वे प्रश्न और पुत्री में भेदभाव की नीति रखते हैं । कहा जाता हैं कि स्त्रियों को बड़ा अधिकार दिया जा रहा हैं । मैं कहती हूं, जब भी हम समाज में उन्नति करना चाहते हैं तो हमारा यह प्रयत्न होता हैं कि समाज में जो पिछड़ा हुआ वर्ग हैं उसको हम ऊंचा उठायें और किसी प्रकार साथ लेकर एक सामाजिक व्यवस्था बनाएं । यही हमारे सब लोगों का कर्त्तव्य होना चाहिए जैसा कि हम रोज कहते आए हैं । हमें यह भी सोचना चाहिए कि हम उस पर कितना अमल करते हैं । हमने देखा हमारा हरिजन वर्ग बहुत पिछड़ा हुआ था, हमने यह प्रयत्न किया कि जो ऊंचा उठा हुआ वर्ग हैं उसकी बराबरी में हमें उस पिछड़े हुए वर्ग को लाना चाहिए जिसके लिए हमने उनको स्पेशल रिप्रेजेंटेशन दिए, स्कालरशिप्स रखे और भी दूसरे काम किये । तो क्या इससे हम समझते हैं कि हमने हरिजनों के साथ कोई विशेष रियायत की । हम हरिजनों के साथ कोई विशेष रियायत नहीं करते, हम जो कुछ भी करते हैं समाज को सुधारने के लिए करते हैं, पिछड़े हुए वर्ग को उठाने के लिए करते हैं, इसलिए हम रियायतें देते हैं । अगर हम बराबरी का ही सिद्धान्त रखेंगे, इक्वेलिटी के बारे में सोचेंगे, तो तब तक हम उनको ऊंचा नहीं उठा सकेंगे जब तक कि हम उनके साथ इक्विटी का व्यवहार नहीं करेंगे क्योंकि नहीं तो जो पिछड़ा हुआ वर्ग हैं उससे जो ऊंचा वर्ग हैं वह बराबर आगे बढ़ता जायगा और पिछड़ा हुआ वर्ग उसके साथ साथ नहीं चल सकेगा । इसलिए हम पिछड़े हुए वर्ग को उठाने का प्रयत्न करते हैं । महिला वर्ग भी एक पिछड़ा हुआ वर्ग हैं अतः उसको बढ़ाने का प्रयत्न करना समाज के साथ न्याय करना हैं ।

अब तक हमारे मिताक्षरा कानून में जो चला आया हैं उसके अनुसार लड़कों को ही सम्पत्ति में अधिकार मिलता हैं । आज हम सोचते हैं कि एक व्यक्ति की संतान में, चाहे वह लड़का हो या लड़की हो, किसी प्रकार का भेदभाव नहीं होना चाहिए और संविधान में भी कहा गया हैं कि व्यक्ति व्यक्ति में अंतर नहीं होना चाहिए । हमें स्त्री और पुरुष में जो भेद हमारे कानूनों में बना हुआ हैं उसको मिटा देना हैं । जो लोग हिन्दू संस्कृति की बड़ी भारी दुहाई देते हैं और कहते हैं कि मिताक्षरा कानून कायम रखना चाहिए उनसे मैं कहती हूं कि हिन्दू संस्कृति हमेशा समय के अनुसार, तथा आवश्यकता के अनुसार बदलती आती रही हैं । तो आज हम क्यों सोचें कि हमारा जो मिताक्षरा कानून हैं उसको हम रत्ती भर नहीं हटाएं ? यह हमारा गलत सोचना हैं । वर्षों से पुरुष धन और सम्पत्ति का उपभोग करते आए हैं जब कि महिलाएं हमेशा दुःख पाती रही हैं और सदा पति या पिता या भाई की दया के आश्रित रहीं, उनके पास न कभी धन रहा, न ऐश्वर्य रहा, न सम्पत्ति रही । इसलिए एक व्यक्ति की संतानों में कोई अन्तर करना मैं बहुत बड़ा पाप मानती हूं । अच्छा यह होता कि मिताक्षरा कानून रखते हुये उसमें यह संशोधन कर दिया जाता कि मिताक्षरा कानून वैसे का वैसा रहेगा, सिर्फ इतना अन्तर रहेगा कि लड़कों के बजाय एक व्यक्ति की सब सन्तानें बराबर मानी जायंगी । मैं इसके भी खिलाफ हूं कि एक व्यक्ति की सब संतानों को बराबर अधिकार देकर उसमें

[श्रीमती शारदा भार्गव]

इफ एंड बट लगा दिया जाय कि वह बेच नहीं सकती, वह खा नहीं सकती, वह यह नहीं कर सकती, वह वह नहीं कर सकती । इसके माने यह हैं कि एक तरफ आप कहते जाते हैं कि सब को बराबर अधिकार दिया जाता हैं और दूसरी तरफ यह हैं कि लड़का अपनी जायदाद बेच सकता हैं या जो चाहे कर सकता हैं चाहे कितना निकम्मा और बेकार वह क्यों न हो, मगर लड़की को पिता की सम्पत्ति में से किसी भी प्रकार के उपभोग का अधिकार नहीं हैं जब तक कि उसका बाप जिन्दा हैं । इसके कोई माने नहीं हैं । यदि एक बाप ६०, ७० वर्ष का हो कर मरता हैं तो उसकी लड़की चाहे जितना दुःख पाये, किन्तु उसको अपने बाप की सम्पत्ति में कोई अधिकार नहीं होगा । मैं इसे समाज के साधारण सिद्धांत के खिलाफ मानती हूं कि आप इस प्रकार का कोई भेदभाव करें । एक ओर तो आप भेदभाव कर रहे हैं और दूसरी ओर आप यह कहते जा रहे हैं कि हम बहनों को, स्त्रियों को, महिलाओं को, लड़कियों को समान अधिकार दे रहे हैं । मैं कहती हूं कि आप कहां समान अधिकार दे रहे हैं ? आप कुछ भी नहीं दे रहे हैं । केवल देने का शब्द कहने से कुछ नहीं दिया जाता हैं । कहीं दीजिये तब मालूम पड़े कि आप सचमुच दे रहे हैं । इसलिए अच्छा यह होगा कि पाटस्कर महोदय यह करें कि प्राविजो वगैरह सब निकाल कर मिताक्षरा कानून में सिर्फ इतना रख दें कि एक व्यक्ति की संतान, चाहे लड़का हो या लड़की, कोपार्शनरी प्रापर्टी में भी बराबर का हिस्सा बांटेगी । यदि मिताक्षरा में इतना संशोधन हो जाय तो उसके बाद सब सही हो जायगा और फिर उसमें न प्राविजो की जरूरत रहेगी और न एक्सप्लेनेशन की जरूरत रहेगी । सब को बराबर मान कर चलिये, चाहे लडका हो चाहे लडकी । लड़का जब यह देखेगा कि बाप नालायक हैं तभी पार्टिशन करेगा । जब तक वह यह देखेगा कि पिता कमा सकता हैं तब तक वह कभी पार्टिशन नहीं करेगा । आप इस तरह का प्राविजन कर रहे हैं कि लड़का पार्टिशन कर सकता हैं । मैं तो एक्सप्लेनेशन (बी) के निकालने के भी खिलाफ हूं । कारण इसका यह हैं कि कुछ भाइयों ने यह दलील दी हैं कि एक्सप्लेनेशन (बी) से यह होगा कि जो लड़का पार्टिशन कर लेगा उसको ज्यादा मिलेगा और बाकी जो लड़के पिता के साथ रहेंगे उनको बहनों से कम मिलेगा । इसका अर्थ यह हैं कि जो भाई पार्टिशन करता हैं उससे कम यदि बहनों को मिलता हैं तो कोई बात नहीं हैं, कम मिलने दो, क्योंकि उनका अधिकार ही कम हैं । परन्तु जो भाई पिता के साथ में रहते हैं उनको अगर कम मिल जायेगा तो बड़ा भारी अत्याचार हो जायगा । मैं कहती हूं कि भाई भाई का ज्यादा हिस्सा ले रहा हैं, बहन भाई का हिस्सा नहीं ले रही हैं । एक भाई ज्यादा हिस्सा ले लेता हैं, इस लिये दूसरे भाई को कम हिस्सा मिलता हैं । बहनें अपना ही हिस्सा ले रही हैं, वे भाई का हिस्सा नहीं ले रही हैं । इस लिए एक्सप्लेनेशन (बी) को हटाने की आवश्यकता नहीं मालूम होती ।

एक्सप्लेनेशन (ए) को भी हटाने की बातचीत चल रही हैं । इसके माने यह हैं कि पिता का जितना हिस्सा रह जाय उसमें से लड़की को मिले । यदि एक पिता के दो लड़के और चार लड़कियां हैं तो क्या होगा ? पार्टिशन करके दोनों लड़के दो तिहाई हिस्सा ले लेते हैं और एक तिहाई बाप के पास रह जाता हैं । उसमें सब का हिस्सा होगा । इसके माने यह हैं कि एक लड़की को जो मिलेगा वह बिलकुल नामिनल रह जायगा । इस प्रकार एक ओर तो लड़की को कुछ भी न मिले तो हम संतुष्ट हैं । दूसरी ओर यदि कहीं भी किसी खास वजह से किसी एक भाई से बहन को जरा ज्यादा मिल जाय तो उसको हम कम करना चाहते हैं क्योंकि बहन भाई से जरा भी ज्यादा नहीं ले सकती । इस प्रकार (ए) के हटाने के माने यह हैं कि आप यह चाहते हैं कि सचमुच बहन को कुछ भी न मिले । हमारे मिनिस्टर महोदय ने एक यह संशोधन रखा हैं कि जो लड़का पार्टिशन कर लेता हैं, डिवाइडेड सन हैं, उसको पिता की मृत्यु के पश्चात् सम्पत्ति में कोई अधिकार न मिले ।

अगर यह किसी कारण से न माना जाय कि मिताक्षरा में लड़के और लड़की को बराबर अधिकार हैं, जैसा कि मेरा सुझाव है, तो मैं यह चाहती हूं कि पाटस्कर महोदय ने जो संशोधन दिया है वह स्वीकार किया जाय और उसमें मैं एक अमेंडमेंट देना चाहती हूं। श्री कुंजरू ने एक यह दिक्कत बताई थी कि मान लीजिये किसी के एक लड़का है और वह लड़का अपने बाप के हिस्से में से आधा हिस्सा अलग कर लेता है तो बाकी हिस्सा किस को मिलेगा। तो मिनिस्टर महोदय के अमेंडमेंट में यह रखा जा सकता है कि शिड्यूल ए में जो अधिकारी हैं उनमें से अगर कोई जीवित न हो तो वह हिस्सा भी उस लड़के को मिल जाय। मतलब कहने का यह है कि आधा हिस्सा पार्टिशन करके वह ले ही लेगा, बाकी आधा हिस्सा जो है वह पिता की मृत्यु के पश्चात्, शैड्यूल ए के जो हिस्सदार हैं यदि उनमें से कोई न हो तो उसका वही लड़का हकदार हो सकता है। इस प्रकार मिनिस्टर महोदय ने जो संशोधन दिया है उसमें यह संशोधन कर सकते हैं कि जो लड़का पार्टिशन कर लेता है उसको पिता की मृत्यु के बाद, यदि शिड्यूल ए के कोई भी अधिकारी जिन्दा हों तो, कोई अधिकार नहीं मिलेगा और यदि शिड्यूल ए के कोई भी अधिकारी जिन्दा नहीं हैं तो वही लडका हकदार हो सकता है। यह मेरा सुझाव है और मैं चाहती हूं कि माना जाय।

SHRIMATI PARVATHI KRISHNAN (Madras): Madam Vice-Chairman, listening to the discussion on this clause, I was left wondering whether the rights of daughters to inherit property are being upheld in this House or whether it is a last ditch defence of the coparcenary system, leaving woman out of all rights to succession. *De jure*, some rights may be given, but *de facto*, if certain amendments that are being proposed, for deleting the whole Explanation to clause 6 are carried, then it would mean that whatever little rights are now included in this Bill as it stands, even those rights would be denied to daughters. Again and again, we have seen one speaker after another going into various hypothetical cases and trying to show how the law stands and how the law is operating etc. etc. Indeed, one gets the feeling that far from wanting to administer justice, there seems to be only an attempt to administer the law, with all its mountainous ramifications. Let me submit to the House that women have not come to ask for the right to property with a beggar's bowl. Women come forward to demand this right to inheritance on the basis of the record of all women in India who have participated in the national liberation movement, of all women who have participated in the struggle that has led to the granting of equality of rights to woman and man in the Constitution. It is in the light of that, in the light of the historic events and social events that have taken place in this country over the past so many years, it is in that context that we have got to discuss this Bill.

The underlying principle is the giving of equal rights to men and women. This being a property Bill, a Bill of Succession, obviously it comes down to equal succession rights to men and women. It is in this light, feeling that if Explanation (b) does not go, it does not give equal rights, in the sense that an undivided son will suffer, that the amendments have been tabled by Mr. Prasadarao and me to overcome that lacuna and to guarantee equal rights to men and women, that is, to ensure that the daughter should be given an equal share in the property with the sons. At the time when a son wants to demand partition for any reason whatever, the share of the daughter should also be computed so that, after the death of the father she does not suffer because of her share not having been computed at the time of partition. In essence, this is what it amounts to. There have been fears expressed here that fraternal love is going to be destroyed in this country, that the framework of society is going to be overthrown that volcanic upheaval in the filial

[Shrimati Parvathi Krishnan.]

law is going to be witnessed, that the various shades of love between brother and sister, between father and son and between father and daughter are all going to be jeopardised and poisoned. It is amazing that people with a sense of responsibility should get up and maintain this stand when we know it for a fact that all over the country today, there are any number of cases where there are discarded wives and abandoned wives who are supported by the brothers. There are many cases where when the wife is thrown out by her husband or when the widow with a large number of children is thrown out by her husband's family, the brothers have come forward with a helping hand and have helped these abandoned women to live a respectable life of their own and rear their children and educate them to have some sort of independent life. When this is the tradition of our country, when this is part of the cultural outlook of both men and women in our country by and large, I fail to see how, when that position is legalised by law, suddenly men are going to change and the brothers are going to lose all affection for their sisters, that the sons are going to lose all affection for their father. This is really a stand just to continue the Mitakshara system as it stands today, denying all property rights, denying equality and social justice to the women who have the misfortune to be born in families governed by that law. It is because we want to set right that position, it is because we want to draw closer the bonds of affection between the brothers and sisters, between the father and the sons, it is because we want to overcome the failings that exist today in that some sections, the women particularly, are being discriminated against, that this Bill has come into being and it is to overcome this lacuna that we have proposed this amendment. The hon. Minister has said that he is prepared to accept the deletion of clause (b) of the Explanation and, on the floor of the House, there have been quite a number of speakers who have been vociferous in their demand that clause (a) should also be deleted. In that case, we once again come back to the position where we think that the beggar has come to the door and that the beggar has to be turned away. It is only if clause (a) is retained and clause (b) is deleted that the women born in the Mitakshara families will get some measure of equality. Though I press for the amendment, I appeal to the hon. Members to think over this coolly and in the light of social justice and to forget the various hidebound prejudices that they have. If they do that, I am sure they too will see eye to eye with us and will give their whole-hearted and unstinted support to our amendments.

श्री कन्हैयालाल दाँ० वैद्य : उपसभाध्यक्ष महोदया, इस सदन में इस धारा पर जो बहस हो रही है उसमें जो प्रतिक्रियावादी हैं वे क्रान्ति का चोला पहन कर प्रतिक्रियावादी तत्वों को हमारे सामने रख रहे हैं। हमारे अपोजीशन के माननीय सदस्य श्री सिंहा ने एक आवाज उठाई कि कांग्रेस पार्टी ने देश को जो वचन दिया था उसको वह पूरा नहीं करना चाहती है। उनको अपने कलेजे पर हाथ रख कर सोचना चाहिये कि वह इस तरह की बातें इस सदन में करते हैं...

SHRIMATI PARVATHI KRISHNAN: It is not general discussion. Let him speak on the amendment.

श्री उपसभाध्यक्ष (श्रीमती चन्द्रावती लखनपाल) : आप किस पर बोल रहे हैं ?

श्री कन्हैयालाल दाँ० वैद्य : जो सदन के सामने धारा है। मैं उनका विरोध नहीं कर रहा हूं, यह माननीय सदस्या को मालूम होना चाहिये। इतनी हिन्दी तो वह समझती ही हैं। जो प्रतिक्रियावादी मनोवृत्ति यहां पाई जाती है उस मनोवृत्ति का मैं विरोध कर रहा हूं। श्री सिंहा ने यहां तक कहा कि यहां सेक्स वार छिड़ जायगी। मैं नहीं मानता कि हिन्दुस्तान में जहां हम पंचशील के सिद्धांतों को ले कर संसार को

शान्ति का पाठ पढ़ाते हैं वहां कोई भी व्यक्ति युद्ध की भाषा में बात कर सकता है या युद्ध की भाषा को सोच सकता है । शायद श्री सिंहा युद्ध की भाषा में सोच सकते हों परन्तु इन सरकारी बेंचों पर बैठे हुये लोग और हमारी सरकार युद्ध की भाषा में नहीं सोचती । मैं नहीं समझता कि हम अपनी बहनों के साथ किसी तरह भी युद्ध पथ पर चल सकते हैं । जहां तक हमारी बहनों का सवाल है मैं मानता हूं कि हमारी बहुत सी बहनों के साथ अन्याय हुआ है, हमने बहुत से अन्याय उनके साथ किये हैं । जब इस बिल पर जनरल डिसकशन हुआ था तब भी मैंने कहा था कि दो हजार वर्ष की गुलामी प्रथा को कायम रखने के लिये हमारे बहुत से लोग प्रयत्नशील हैं और आज भी उसी मनोवृत्ति का प्रदर्शन किया जा रहा है । आज भी लोग प्रयत्नशील हैं कि वह गुलामी प्रथा कायम रहे और संविधान के विपरीत इस कानून की टांग तोड़ ताड़ कर उसका ऐसा स्वरूप बना दें कि जिससे यह पार्लियामेंट कहने के लिये संतोष कर ले कि हमने कोई कानून पास कर दिया है पर वास्तव में जो क्रान्तिकारी तत्व हैं उनको निकाल दें । श्री सिंहा का एक अमेंडमेंट सदन ने पास किया और उस अमेंडमेंट के पास करने पर सदन के बाहर जो आलोचनाएं हुई हैं उनसे मालूम होता है कि एक प्रतिक्रियावादी चीज का हमने समर्थन किया है ।

श्री सुरेन्द्रनाथ द्विवेदी (उड़ीसा) : प्रतिक्रियावादी कौन हैं ?

श्री कन्हैयालाल वाँ० वैद्य : वह तो आपके कृत्यों से देश जानता है कि कौन प्रतिक्रियावादी हैं । मैं इस वादविवाद में न पड़ते हुये केवल इतना ही कहूंगा.....

श्री उपसभाध्यक्ष (श्रीमती चन्द्रावती लखनपाल) : आप विषय पर ही बोलिये । समय बहुत कम है ।

श्री कन्हैयालाल वाँ० वैद्य : मैं पांच मिनट से अधिक नहीं लूंगा ।

मेरा यह कहना है कि स्वतंत्रता प्राप्ति के बाद संविधान को ध्यान में रख कर इस सरकार का यह कर्त्तव्य हो जाता है, वह संविधान की रक्षा करे । दूसरे देशों में जहां कि क्रान्तियां हुई हैं वहां उसी पार्टी से और उन्हीं लोगों से जनता ने क्रान्ति की अपेक्षा की है जिन्होंने कि क्रान्ति को लाने में लीड किया, प्रतिक्रियावादी लोगों से या दूसरे लोगों से यह अपेक्षा नहीं की है । तो हमारा देश आज हमारी सरकार से यह अपेक्षा करता है कि वह हमारी माताओं और बहनों को विशेष रूप से कम्प्लीट इक्वालिटी दे । हमारे कानून मंत्री जी ने जिस तरह के अमेंडमेंट यहां पेश किये हैं, जिस तरह के भाषण उन्होंने यहां किये हैं और इस धारा पर आगे वह जो कुछ भी कहेंगे उससे उन सदस्यों को, जो कि कानून की खामियों को ध्यान में रख कर, उस हैं, शंकायें हुई हैं और उन्होंने कहने का साहस किया है कि उनको उनसे लीड नहीं मिल रही है । मैं स्पष्ट रूप से कहना चाहता हूं कि सरकार को चाहिये कि वह वास्तव में, इस कानून की खामियों को ध्यान में रख कर, उस क्रान्तिकारी स्वरूप को कायम रखे और उन अधिकारों को माताओं और बहनों को दे जो कि संविधान के अन्तर्गत हमारी माताओं और बहनों को मिला है । एक प्रतिक्रियावादी और एक मुर्दा कानून बना कर देश के सामने रखने से कोई लाभ माताओं और बहनों को नहीं होने वाला है । यदि धाराओं को तोड़ मरोड़ कर हमारी माताओं और बहनों को इक्वालिटी के सिद्धांत से वंचित करना चाहते हैं तो बात दूसरी है परन्तु इसके लिये स्पष्ट भाषा में यह कह देना चाहिये कि हम वास्तव में इक्वालिटी के सिद्धांत को नहीं मानते । हम अपनी संतानों को, अपनी कन्याओं को बराबरी का अधिकार नहीं देना चाहते हैं । यदि इस चीज को स्पष्ट कह दिया जाय तो उन्हें कुछ संतोष होगा बजाय इसके कि आप इन धाराओं की टांग ही तोड़ दें और इसको एक प्रतिक्रियावादी रूप दे दें । इसलिये मेरा निवेदन है कि वे तमाम संशोधन जो कि इस धारा के विरुद्ध हैं, जो कि इस प्रकार के अधिकारों को बिल से निकालना चाहते हैं, उनको स्वीकार

[श्री कन्हैयालाल दाँ० वैद्य]

न किया जाय । मैं इसका समर्थन करता हूं कि कन्याओं को लड़कों के बराबर शेयर मिले । इसकी व्यवस्था होनी चाहिये और यदि इस विषय में कोई आवश्यक संशोधन हो तो स्वीकार किया जा सकता है परन्तु यदि किसी संशोधन की आवश्यकता न हो तो अच्छा यही होगा कि जिस रूप में धारा है उसी रूप में उसको रखा जाय ।

SHRI P. T. LEUVA (Bombay): Madam Vice-Chairman.....

THE VICE-CHAIRMAN (SHRIMATI CHANDRAVATI LAKHANPAL): Only five minutes.....

SHRI P. T. LEUVA: It will not be possible to finish this in five minutes.....

THE VICE-CHAIRMAN (SHRIMATI CHANDRAVATI LAKHANPAL): Try to.

SHRI P. T. LEUVA: Madam Vice-Chairman, this clause has created a lot of controversy as a result of which I have reason to support amendment No. 94, which has been moved by my hon. friend, Mr. Bisht. Now in order to appreciate this point, it is necessary that we must closely and carefully scrutinise clause No. 6 which stands in the Bill as reported by the Select Committee. If you carefully consider the implications of the clause, as it stands now, it means that on the death of the father his interest in the coparcenary will devolve on other co-parceners by survivorship. That is the first part of clause 6. Then there is a proviso that in case there is a female relative living at the time of the death of the father, then his share in the co-parcenary property would be shared by the daughter with the other sons. That is the meaning of clause 6 with its proviso. Then the question arises as to how to compute the share of the daughter in case the father dies. The method of computation has been laid down in the Explanation in clauses (a) and (b). Now if we retain both the clauses of that Explanation, it means that, when the father dies, if before the death of the father, any of the sons have separated themselves, their shares will also be included in the whole co-parcenary property for the purposes of computing the share of the daughter. The ultimate result would be that in respect of the person who has already divided himself and taken his share, his share will not be affected at the time of the computation of the share of the daughter, but the shares of the sons who have remained undivided in the co-parcenary with the father would be further reduced for the fact that the share of the son who has divided himself will be included in the pool for the purpose of the computation of the share of the daughter. It is an iniquitous provision, and therefore there is no doubt about the fact that clause (b) of the Explanation should be deleted altogether. The non. Minister has accepted this that so far as clause (b) is concerned he agrees that there is an anomaly. He agrees further that the undivided son is at a great disadvantage. Now the next question that arises is with respect to clause (a) of the Explanation. Now what is the position in law? At present a co-parcenary property might consist of ancestral property as well as joint family property, joint family property in the sense that the brothers, the father, the sons, the grandsons and the great grandsons might work together. There might be a joint venture. There might be a joint business because of the joint efforts of these co-parceners. There might be a property which might increase in value because of the efforts of all the co-parceners. That is known as the joint family property.

SHRI P. S. RAJAGOPAL NAIDU (Madras): "Joint Hindu family property" includes everything, ancestral as well as the property acquired by the joint efforts of all the co-parceners of the family.

SHRI P. T. LEUVA: The distinction is very fine and I have no objection in accepting the suggestion made by

my friend. My only point is this that a person generally gets his ancestral property without any effort on his part while a joint family means a co-parcenary and the property itself might consist of ancestral property as well as the property acquired by the joint efforts of the co-parceners. This ancestral property and the joint Hindu family property will constitute one joint Hindu family.....

SHRI P. S. RAJAGOPAL NAIDU: Joint Hindu family property would include ancestral property and the property acquired by the joint efforts. (*Interruption.*)

SHRI P. T. LEUVA: That is what I say. Ancestral and self-acquired property is quite different. Now if the joint Hindu family property is there, there might be a co-parcener who might have got his own self-acquired or separate property and so far as this is concerned there is unanimity of opinion that the daughters should have a share in the separate and self-acquired property of the father. There is no dispute and everybody agrees that the daughters should share equally with the sons so far as self-acquired property of the father is concerned.

THE VICE-CHAIRMAN (SHRIMATI CHANDRAVATI LAKHANPAL): But ancestral property may not include joint family property.

SHRI P. T. LEUVA: Ancestral property always becomes joint.

THE VICE-CHAIRMAN (SHRIMATI CHANDRAVATI LAKHANPAL): May not necessarily in joint family property.

SHRI P. T. LEUVA: Ancestral property means a property inherited by a person from his father, grand father or great grand father. Ancestral property always becomes joint property because there might be sons, grandsons and great grandsons. Therefore ancestral property is always joint family property which is known as co-parcenary. There is no doubt about it. The only short question is this. So far as the self-acquired property and separate property of the father is concerned everybody agrees that the daughter should get a share in such property of the father. The question arises as to whether a female heir should be given any right in the co-parcenary property of the family. This is the only question that we have to decide. Now as I have already said there is the Explanation for the purpose of computing the share of the daughter, and I have also pointed out that by retention of clause (b) of the Explanation the anomaly is there and the hon. Minister has already agreed that he would accept the deletion of that clause (b). My purpose is to put before the House that in order to do justice to women, to the female heirs, we should not lose sight of one factor and that is that we should not do injustice to the male co-parceners. The hon. Lady Member is nodding her head, but I would advise her.....

SHRIMATI SAVITRY DEVI NIGAM: I am entirely against you.

THE VICE-CHAIRMAN (SHRIMATI CHANDRAVATI LAKHANPAL): She might be against your arguments.

SHRI P. T. LEUVA: She might be. I have no objection if she is against me. I would be only sorry if she is with me. The whole point is this: When there is a co-parcenary property, what is the right of a son, grandson and great grandson? How do they get their share in the property? It is a well known fact that under the Mitakshara system, the son, grandson and the great grandson get vested right in the co-parcenary property by reason of their birth. There is no doubt about this fact. The only thing is that he must be a child born in the co-parcenary family and by reason of birth a person acquires a vested right in the co-parcenary property. To-day a female is not even an heir in the self-acquired property of the father. Take the instance

[Shri P. T. Leuva.]

of the Dayabagha system. Even under this system the father is the sole owner, absolute owner of his property. He may dispose of the property in any manner he likes. He may will away his property. He may give over a l the property to one son or he may give all his property to his daughters to the exclusion of all his sons. Nobody can dispute this fact. Let those persons who are the champions of the Dayabagha system realise it and compare these two provisions and see as to where is the advantage to a daughter if you accept the Dayabagha system, whether it is in this system or in the formula which I am suggesting to you.

[MR. DEPUTY CHAIRMAN in the Chair.]

Under the Dayabagha system even to-day the female heir has no right of inheritance. I am one with those persons who say, "Let us remove this Mitakshara system", but on different grounds altogether. Suppose we introduce the Dayabagha system at this very stage, what is the position? The daughter will share in the property of the father equally with the son. There is no dispute about this fact. The further fact you must remember is that under any system of Hindu law a sister does not inherit a brother simultaneously with his other heirs. Suppose a person dies, his sister never inherits him along with his son. The sister comes in much later when all other heirs are not in existence. Each coparcener, son, grandson, great-grandson is the owner of a share in the coparcenary property by reason of his birth. He has got his own share; he is the owner of it; he is the master of it. If you retain Explanation (a) what is the position? Normally, the share would have devolved on the other coparceners on the death of the father. But now we say no, the daughter has got a share in her father's property. The female heir has a share in the interests of the father. Now with the retention of Explanation (a) we not only give her a share in the property of the father who is now dead but also a share in the property of the other coparceners who have got vested rights. They are the masters of the property and succession cannot open unless and until those other coparceners die but now during their lifetime by a process of computation you are depriving the undivided members of the joint Hindu family of their property and giving it away to the daughter. So far as the divided son is concerned by deletion of (b), his share will not be counted in the coparcenary property at all. Merely because those persons committed a mistake or a blunder of remaining united with the father, you want to further penalise them by giving a share to the daughter in their property. Now, surely in our enthusiasm to do justice to the female heirs, why should we do an injustice to the male coparceners who have remained with the father?

SHRI JASPAT ROY KAPOOR: Let them divide.

SHRI P. T. LEUVA: My hon friend Mr. Kapoor has always got the habit of putting novel suggestions under the guise of some other intentions. He has got different intentions altogether, and he puts forward a novel suggestion in order to champion the cause of women, but I am not going to fall in his trap. So far as I am concerned, there might be persons.....

SHRI JASPAT ROY KAPOOR: My hon. friend claims to know more about me than I know.

SHRI P. T. LEUVA: That is always so because every person does not want to make clear his intention while others want to expose it. That is the reason why others are more competent and better judges of other men. In order to remove any anomaly or inequity which might be committed against the brother, I would suggest that the only alternative, short of doing away with the

very conception of the Mitakshara system, is to accept the amendment which has been moved by my hon. friend Mr. J. S. Bisht. I have already said that I personally believed that the Mitakshara system was a very good system. It might have served a useful purpose in olden days when the social conditions required it. Now, everybody thinks that Mitakshara system is disintegrating and that it might itself come to an end but the difficulty is that we have got so many deep-rooted sentiments about that system and in our country it can be said that the time is not still ripe to do away with that system, which has worked for years together, with a single stroke of the pen. (*Time bell rings.*) Mr. Deputy Chairman, you are ringing the Bell. I know that we are very anxious to pass this measure as early as possible but I will appeal to you, Sir.....

(*Interruptions.*)

Sir, this clause deals with a very important and vital question of our society and we should give deep thought and consideration, and each and every word that has been used in the clause should be scrutinised very carefully before we give our approval. It is no use making a law which is bad in its interpretation. We should make it very clear so that the people who are going to be affected may understand the implications of the measure. I would therefore request that those persons who do not want to retain this system of coparcenary under the Mitakshara law must now reconcile themselves that short of doing away with the Mitakshara system we can still do justice to each and every heir. I am quite satisfied that in course of time if you accept the proposal before the House which means the deletion of the Exp'anation you will achieve *the objective of making a uniform law* on the basis of the Dayabhaga system, but this is the way of gradualness so that the people at large and the masses of this country will get themselves reconciled in course of time. In order to avoid any anomaly, likely injustice or inequity to any person I will appeal to the House to delete this Explanation (a) and (b) and I hope the House will agree to the amendment which has been moved by my friend Mr. Bisht.

श्रीमती सावित्री निगम : उपाध्यक्ष महोदय, श्रीमन्, मैं एक बार फिर से यह कहना चाहती हूं कि सारी दुनिया का वैभव, सारी दुनिया की प्रॉपर्टीज इन्सान और इन्सानियत की रक्षा के लिए होती हैं । कोई भी प्रॉपर्टी इंसान और इंसानियत से बड़ी नहीं होती । लेकिन श्रीमन्, यहां, हमारे सदन में जिन सदस्यों ने स्पीचें दी हैं इस क्लाज ६ पर, उनसे ऐसा प्रतीत होता कि वे यह सोचते हैं कि अगर लड़की को सम्पत्ति में कुछ हिस्सा मिल जायेगा तो प्रलय हो जायेगा । अभी हमारे माननीय मित्र श्री लंडवा इस सम्बन्ध में जो भाषण दे रहे थे उसका बेसिस भी इसी पर था । उनके सारे आरग्यूमेंट का आधार यह था कि अगर लड़की को कुछ हिस्सा दिया जायेगा तो लड़के का हिस्सा कम हो जायेगा । श्रीमन्, मुझे आश्चर्य होता है, मैं हैरान हो जाती हूं इन सब बातों को सुनकर । आमतौर से ये लोग उत्तर की ओर जाना चाहते हैं और वे साफ साफ कहते हैं कि साऊथ पोल को जाना चाहते हैं । इस तरह से यहां पर उल्टी बात चल रही है, यह कितनी बड़ी हिपोक्रिसी है । स्त्रियों के अधिकारों के बारे में तो वे बहुत बड़े समर्थक मालूम देते हैं किन्तु जब स्त्रियों को अधिकार देने की बात आती है तो तरह तरह के आरग्यूमेंट देने लगते हैं । अच्छा होता कि जिन स्पीकरों ने इस सम्बन्ध में अपने विचार प्रकट किये हैं वे साफ साफ कहते कि वे सोलहवीं सदी की विचारधाराओं से इतने प्रभावित हुए हैं कि अपने दिमागों में नये विचार घुसने नहीं देना चाहते । किन्तु मैं बहुत अदब से उनसे कहना चाहती हूं कि जमाना बहुत तेजी से बदल रहा है । आजकल का एक साल पिछले जमाने के सौ साल के बराबर है, इस तरह से जमाना तेजी के साथ बदल रहा है । कितने ही संयुक्त परिवार कितने ही जॉइन्ट फॅमली सिस्टम बिना किसी कानून के अपने आप टूटते जा

[श्रीमती सावित्री निगम]

रहे हैं । इसका मूल कारण यह है कि ये प्रथाएं बेइन्साफी के आधार पर बनाई गई थीं । श्रीमन्, कोई भी आरग्यूमेंट ऐसा नहीं है कि जिससे हम यह समझें कि हमारे संसद् के सदस्य स्त्रियों को बराबर का अधिकार देना नहीं चाहते हैं किन्तु मैं यह कहना चाहती हूं कि जो कानूनी पंडित हैं, जो अपनी लियाकत पर विश्वास रखते हैं, वे क्यों नहीं ऐसा अमेंडमेंट लायें जिससे जॉइन्ट फैमिली सिस्टम पर भी चोट नहीं आने पाती और स्त्रियों को भी अधिकार मिल जाता । किन्तु यहां पर देखने में यह आया कि लड़कों के अधिकार के बारे में ही ज्यादा चिन्ता दिखलाई गई है । अगर लड़की के बारे में रत्तीभर भी चिन्ता प्रकट की गई होती तो सदस्यों के आरग्यूमेंटों में और विचारधारा में अवश्य परिवर्तन होता । अगर वह इस बात को गम्भीरता से सोचते कि अगर लड़के को कुछ कम मिल भी जायेगा तो इससे कोई बहुत भारी अनिष्ट होने वाला नहीं है । अगर एक लड़का बेहूदा हो जाता है निकम्मा हो जाता है तो भी भीख मांगकर अपनी इज्जत रख सकता है । किन्तु एक लड़की है उसको भीख मांगने की भी इजाजत नहीं दी जाती और उसे भूखों मरना पड़ता है । अतः मेरा निवेदन यह है कि सदस्यों को लड़की के प्रति अधिक उदारता दिखानी चाहिये और उन्हें इस बात की रत्तीभर भी परवाह नहीं करनी चाहिये कि लड़के को कम मिलने पर किसी प्रकार का प्रलय हो जायेगा ।

3 P.M.

लड़के को यदि कम भी मिलेगा तब भी वह आपके आशीर्वाद से योग्य और पढ़ा लिखा होने के कारण कमा खायेगा और इज्जत से रह सकेगा । पाटस्कर साहब ने कहा है कि वे क्लाज (बी) को डिलीट करने जा रहे हैं । इस प्रकार इस क्लाज के कारण जो खामियां और गलत फहमियां पैदा होने वाली हैं, जो कानूनी और टैकनिकल झंझट पैदा होने वाली हैं वे इस क्लाज के खत्म होने से अपने आप खत्म हो जायेंगी । इसके साथ मैं यह अनुरोध करती हूं कि क्लाज (ए) ज्यों का त्यों रखा जाय ।

अन्त में श्रीमती पार्वती कृष्णन के अमेंडमेंट के बारे में भी मैं दो शब्द कहे बिना नहीं रह सकती । मैंने उनके अमेंडमेंट को पढ़ा और मैं सदन के सभी सदस्यों से यह प्रार्थना करूंगी कि यदि वे उनके अमेंडमेंट को पढ़ेंगे और सर्वसम्मति से पास करेंगे तो दोनों ही झंझटें दूर हो जायेंगी, न स्त्रियों के अधिकारों पर कोई चोट आयेगी और न जैसा कि कुछ सदस्यों ने शंका पैदा की कि अनडिवाइडेड सन्स को कम हिस्सा मिलेगा, वही होगा । इस लिये मैं फिर अनुरोध करूंगी कि श्रीमती पार्वती कृष्णन के अमेंडमेंट पर जरूर विचार किया जाय ।

SHRI H. V. PATASKAR: Sir, it is true that clause 6 of this Bill is a most important clause of this measure. I know that the clause has been attacked right from its being unconstitutional to its being meaningless and not serving the proper purpose and what not. I do not find how any of the provisions contained in this clause is either in conflict with article 19 or article 31, as amended. But I believe that it is those very people, who said that particularly this provision in this clause is unconstitutional—they themselves at least some of them—had suggested that we should have abolished the joint family with all its incidents directly in this Bill. If that is not unconstitutional, I do not understand how a partial modification of those rights or of those incidents connected or rather notional convictions would be. I would like to say it is something like that, these notional incidents which are attached to the coparcenary. I am surprised to find that there will be nothing unconstitutional according to them if we were to say that the whole joint family system of the Mitakshara type is once and for all abolished, we abolish the right by birth, we abolish the corresponding right by survivorship. There is nothing wrong, there is nothing unconstitutional in that. But if I only say that instead of doing that, for the purpose of providing a share to the daughter some of these notions in

certain aspects are altered then that is challenged on the ground that it is unconstitutional. I have carefully examined the position both from article 19 and 31 and I am quite convinced that there is nothing unconstitutional which is tried to be done in this Bill. And one need not create fears of a decision by the Supreme Court or by any other Court, because as I have been always saying the courts in India are guided—as they are elsewhere—by the public sense of justice and I expect them, and I am sure they will interpret whatever we lay down from that angle of interpretation which is there.

Then, Sir, it is stated: "Well, why not abolish here and now the Mitakshara joint family system." That is one attack on this clause. Well, I am not sure whether all of them who are attacking this measure from that point of view really want it to be abolished. I have, on more than one occasion, explained that it is because of the history of this measure that so far as this Bill is concerned, I am unable to go to the length of saying that the joint family system is entirely abolished. Why? I would, again, briefly try to explain, because it is likely to create an amount of misunderstanding. After a good deal of enquiry and legislation, a Hindu Code complete in its form—which naturally everyone would agree should be complete in all its aspects—was brought forward. Unfortunately—I will not go into the details of that story—it could not succeed. It was later decided, some years back, to take this Hindu Code by parts. And now when we come to the part relating to succession, when I am trying to confine it, as far as possible, to succession itself a charge is made: "Why don't you abolish altogether the joint family system, which is very consistent, very logical." And as my friend, Dr. Kane, said very rightly when he was a Member of that Committee, the whole Code was to be there. Well, it is not as if we are not aware of all facts. If it were possible, it would have been desirable to have one Code, complete in all its parts, passed in this House. But experience has shown otherwise. I do not blame anybody. After all for thousands of years people have been accustomed to al notions based on the system of joint family, which regarded joint family as a unit of society. It was, therefore, found that it is much better to deal with this matter in parts. And, therefore, this Bill had to be brought in. I think that would be enough.

Then, when this Bill was introduced and referred to a Select Committee, the Select Committee was faced with two propositions. If we were to exclude with respect to the inheritance of a daughter or a female heir altogether the Mitakshara joint families, practically the Act would not be applicable to eighty per cent. of the Hindus in this country. As a matter of fact, at the consideration stage of this Bill, that was the main attack which was made—and to some extent with some force indeed—by hon. Members of this House. The Select Committee, no doubt, had a very difficult task. And they had to devise some method of abolishing the joint Hindu family in this Bill. I deliberately say "this Bill" because the other part relating to the joint family will be brought before this House and I expect the same hon. Members who are now vociferously in favour of abolition will again go on to support it—whenever it comes to my lot or to that of my successor. And I hope that probably by that time there will be no change in their opinions. So far as this Bill is concerned, therefore, as I said we were trying to find a *via media*, a remedy by which while giving the right of succession to a female heir in the joint family property, we wanted not to abolish it here and now. Then, again, let us consider what would happen if there was a clause as in the old Code. Now, I am only comparing so as to see what little we are trying to do so far as this measure is concerned. Supposing there was a clause which says, here and now the right by

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birth and its corresponding right by survivorship—the two main features of the joint Hindu family system known as the Mitakshara system—are abolished here and now. I know that it will lead to many complications, for as I pointed out and as is admitted by all hon. Members, by and large in the rural areas—I am to d, it is a little exaggerated—there are only joint families and nothing else. Then what would be the result if we were to abolish it here and now? What we are trying to do is much less than that. By the passing of this measure, no joint family is going to be immediately abolished. And I have come across Members who asked me: What about the daughter? Will the daughter come to the father even now or after the passing of this? I can assure them that nothing is going to happen and it will create no complication in the system of joint family. The only thing that this Bill seeks to do is that, if this Bill is passed, the joint family may continue; of course, with some variations; I cannot keep it intact. But normally so far as the male members of that family are concerned, there is an attempt to make the least interference. Nothing will happen. But if there is a female heir of Class I, when we come to it, we will find out if there is a daughter or a widow who is a limited owner and she will be made an absolute owner. That is all. There is a daughter or a female heir. Then what is laid down here is that whenever a contingency arises that some other member of a coparcenary dies, if he leaves all male heirs, nothing happens; but if he leaves a female heir entitled to succeed, in that case she will be entitled to a share on a certain basis. That is what we are providing for and I do not know what is the other method of being just to the female heir. Even this can be done in the Bill of Succession. It is difficult for you to realise. Mr. Kapoor and some other friends have asked about it from time to time and even now I think a reference was made. Let her have the right in the property of her husband. This succession Bill which my friend, Mr. Kapoor wants to make—whenever that Bill comes, it will be open for me to consider. But so far as this is concerned, I would certainly say one thing. We all say that the coparcenary which was based on the idea of the family being one and from which the daughter was excluded because she went into another family, that coparcenary is now crumbling on all hands on account of the social and economic conditions. We can revive it in some novel form by admitting the daughter as a coparcener before marriage and by admitting the daughter-in-law as a coparcener. There is a girl and she continues to be a member of the coparcenary until she is married and she becomes a coparcener in the other family after she is married. Well, that, of course, will be considered in detail when the joint family comes. But so far as the succession goes, it deals with the rights of women in a joint family. I have said it on a previous occasion. I do not think that that is the right approach of a progressive society. However, that matter may be considered when it comes before the House. But so far as this Bill is concerned, therefore, the Select Committee have tried their utmost not to interfere with the joint family and at the same time provide a share to the daughter. No one need think as if this simple proposition of the elimination or the immediate abolition of the joint family is an easy task and it did not occur to any of the gentlemen who devoted so much attention. But it is the inevitable consequence of circumstances by which we are moulded and we are devising a formula. Now, what is this formula? "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 sur-

viving members of the coparcenary and not in accordance with this Act." This only requires a decision with respect to Mitakshara coparcenary.

Certainly when we say 'provided' it means an exception. But it is not proper to comment on this merely as it is something which is contradictory. Are there not exceptions and provisos provided in other pieces of legislation? Is it for the first time that an exception is being made? Therefore, that argument, to my mind, is, of course, a little difficult to understand. "Provided that, if the deceased had left him surviving a female relative who is an heir specified in class I of the Schedule, such female relative shall be entitled to succeed to the interest of the deceased to the same extent as she would have done had the interest of the deceased in the coparcenary property been allotted to him on a partition made immediately before his death." As I said earlier, more or less this is based on the analogy of the Indian Estate Duty Act. We have provided there that wherever a coparcener of a joint family of that type dies, his share will be liable for taxation. Of course, the concession is there. But the problem was similar because if the rule of survivorship was to continue, then Government would not be able to tax the interest of that person, because as soon as he dies. it goes by survivorship to somebody else. Naturally they had to find out some solution. Because the times have changed, some solution has to be found. That was why we did it. What is wrong in this so far as this proviso is concerned? If there is a female heir mentioned in class I, then this proviso lays down that she shall be treated as if the deceased had separated from the joint family or the coparcener, which is proper and to that extent she will be entitled to a share. Why are the exceptions added? Let us examine them as if we are rightly trying to approach a question from a particular angle and under certain difficult circumstances which cannot be avoided. Therefore, explanation (a) is given. "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." The question is like this. A is the father. He has got two sons, S and S1.

AN HON MEMBER: Only two sons? Why not three sons?

SHRI H. V. PATASKAR: If I take an example, some talk of three sons. Supposing both the sons are undivided and there is a daughter and A's interest is to be taken as if he had separated himself from his brother. What does it mean? For the purpose of determining the share of this, the undivided son's share is also included Otherwise if A is not there, what will be the result? A's share is one-third according to the Mitakshara Law. In the A's interest in the coparcenary is included the interest of S and S1 who are the sons, and by birth, they have got the right. It is better that this right is subjected to fluctuation. If there are more births, it diminishes. If there are deaths, it increases Whatever it is, there is a legal opinion created for the purpose of the Mitakshara family. Otherwise this is not a normal thing for the purpose which was fulfilled by that opinion. I resort to this legal fiction or opinion—whatever you may call it—that the interests of A are created in the family by birth.

Now, suppose if sub-clause (a) is not there. S on account of his right by birth is entitled to one-third, S1 on account of right by birth is entitled to another one-third The father is entitled to one-third. The result will be that the daughter will get only one-third share in the one-third interest in the coparcenary of A, while the sons get one-third each and one-third by right of birth They will again equally get one-ninth with the daughter. Therefore, they will all get one-third plus one-ninth each and the daughter will get only one-

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ninth which is her share in the interest of A Now you can go on multiplying daughters and sons and different results will follow. But the main thing to be considered is that if sub-clause (a) is not there what will the daughter get who will be the female heir in class I? A share disproportionate to the share of the son, and why? Of course, when asked, everybody says, "No, the daughter should get equal share with the son". But the next moment they say, "you are flopping something by trying to take away the birthright of S and S1, who had, by their birth got one-third share in the property". Therefore, so far as the question of determination of the share of daughter is concerned to that extent sub-clause (a) does not operate I am not entirely trying to take away the right by birth of all people, as proposed by some Members, but in such cases when there is a female heir, naturally it does mean that for the purpose of determining her share I say that that notion will stand abrogated.

SHRI J S. BISHT: May I ask a question?

SHRI H V. PATASKAR: You may do it at the end. Therefore, as a matter of fact what we are trying to do is that one notion is being replaced by another notion We do not entirely take away the right by birth of the son, but we say that for the purpose of determining the share of the daughter it shall include also the share of S and S1, who are undivided. I am coming to the question of divided later.

Then, I believe, it is not right trying to say that we are going to view the daughter or to treat the daughter equally with the son so far as property is concerned, because we want to stick to the idea that S, the son had by birth acquired something which is so sacrosanct that we do not want to interfere with it even for the purpose of giving an equal share to the daughter. That is what it comes to. In that connection I may point out to those hon. Members who have raised the question of Constitution that people are prepared to see that we abolish this right by birth altogether and S and S1 do not get anything hereafter In this there is nothing unconstitutional But for the purpose of giving share to the daughter, I say that this notion will not apply. I fail to understand how that part of it alone that tries only to modify this right for certain purposes is going to be attacked on the ground of being unconstitutional? Therefore, my own view is that if we want to be fair to the daughter, it is necessary that we keep sub-clause (a) as it is, and we should not worry in any manner some part of the notion about joint family and its incidence is indirectly altered in this case

Then, Sir, we come to sub-clause (b) It was suggested that it may be that out of the same illustration, one son of A, who has got two sons and a daughter, gets himself separated. Now what happens? If the property is worth about Rs 3,000, S, when he separates, takes away his share which is about Rs. 1,000 Then remain only the son and the daughter. What sub-clause (b) meant was that for the purpose of determining the share of the daughter, it should be taken as if the whole thing included a share of S I can understand that in certain cases, because S had got the right to separate, and we are not prepared to go to the length of abolishing the joint family, it would create complications and hence the right of partition should be taken away. I know some Hon. Members have given an amendment to that effect. But, I think, all these matters should better be considered, so far as succession is concerned, in another Bill when it comes—I do not know when it will come. But the result of keeping sub-clause (b) will be that in certain cases the undivided son will be at a disadvantage as compared with the divided son

And to avoid that I suggested that we may omit (b) from this clause.

Then, Sir, I am told that if we pass this law after accepting the deletion of sub-clause (b) the other son will as well partition from his father and all the sons wi l get themselves divided. What will be the plight of the daughter? The father may as well will it away. I know wherever you pass a law, which some section of society wants to avoid, there are innumerable ways of doing it. Is there any law which cannot be avoided? Take the Income Tax Act. How many lawyers are attacking it? How many partnerships abuse it? What is happening after the passing of the Estate Duty Act? Is that any reason that we should not pass a law like that—neither the Income Tax Act nor the Estate Duty Act? But there is a principle involved in it also. The law gives a sort of a general trend which should be followed by the society. If there are people who could avoid it, then, at any rate I do not think we can find any law which can never be avoided. The only thing is that so far as we are concerned we should do something which is fair, just and proper and which should serve as a guide to the society. If you really feel that the ordinary conscience of the people should tell them to treat their daughter and son as equals, I do not apprehend that in future fathers will go on willing and sons will go on separating just for the sake of depriving their daughters or sisters of their rightful share. I know why the question agitates our minds. We have been accustomed to look upon this as if daughter is one who has nothing to do with the father's family, as if she is dead in the family in which she was born. I do not accept that that will continue to be the state of affairs and the sentiments for all times to come hereafter. We are changing, we have made certain provisions in the Constitution, the social conditions are forcing certain conditions upon us. So far as the natural feelings of a father towards his son or daughter are concerned, I am sure, the longstanding sentiments will vanish. It might take some time but at the same time I do not accept that the father of any Indian society, —to whichever class they may belong —will be such as to combine with their sons so that their daughters do not get the least. I am not afraid. I cannot believe that everybody will do that. That is an unfortunate society which clamours for justice but by its own actions wants to be unjust. What can we do if that is the state of affairs. There is a Marathi saying which says if the mother wants to beat her child who can prevent her. So if the father and brothers themselves want to combine against the daughter, what law or State can prevent such a thing from happening? But I have faith in human nature and natural sentiments which may, for the time being, be obliterated by certain other things but which have now become a thing of the past. I would therefore appeal to the Members that they need not consider all those things, and so far as this Bi l is concerned, as I said, I agree that sub-clause (b) is probably going too far, and therefore it can be deleted. But so far as sub-clause (a) is concerned, I have just explained to the hon. Members what the consequences are going to be, and it is for them to consider the matter a little coolly and dispassionately, and I would appeal to them not to be swayed by present consideration and present prejudices. If it is true that we are all of us wedded to the progress of society, let us not be afraid of what some people might misunderstand or mind it. I also know that there are very strong feelings on the subject, and I do not know what the result will be, but if they choose to throw it out, well, we cannot help it. But I am sure that my appeal to them will not be lost in vain.

MR. DEPUTY CHAIRMAN: So you are accepting amendment No. 9 only?

SHRI H. V. PATASKAR: Yes.

MR. DEPUTY-CHAIRMAN: And lines 5 and 6 will remain and the word "and" will have to go?

SHRI J. S. BISHT: I would like to know, Sir, how the hon. Minister would reconcile this conflict of law in this very clause. He has himself, in the proviso, defined the interest of the deceased. He says that the interest of the deceased is the property allotted to him on a partition made immediately before his death. But in the Explanation he says that that is not the interest of the deceased but the interest of all undivided sons. How will this conflict be reconciled?

SHRI H. V. PATASKAR: The interest of the deceased is there, and the Explanation amplifies it by saying that the interest of the deceased shall be included.

SHRI J. S. BISHT: But it is said here that the interest of the deceased is the property allotted to him on a partition.

DR. P. V. KANE I think my amendment should be put to vote first—Amendment No. 19—and if it is negatived, then others can be taken up.

MR. DEPUTY CHAIRMAN: Yes, I will put Dr. Kane's amendment first. The question is:

> 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.' "

The motion was negatived.

MR. DEPUTY CHAIRMAN: Now we will take up amendment No. 94.

The question is:

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

(The Division Bell was rung)

SHRI H. N. KUNZRU: This includes two parts for the deletion of the entire explanation.

MR. DEPUTY CHAIRMAN: No. 95 is for the deletion of (b) only, No. 94 is for the omission of the entire explanation.

SHRI JASPAT ROY KAPOOR: I hope that the defeat of this amendment will not mean that we mean to retain both these parts.

MR. DEPUTY CHAIRMAN: If this amendment is not accepted by the House, I will put No. 95.

SHRIMATI LILAVATI MUNSHI: I want to know this: Both (a) and (b) are included in this amendment. If the proposition is defeated, then (b) also is defeated. So, how can it be put to the vote again? Both should be put separately; otherwise, (b) also is defeated, and you cannot put No. 95 to the vote.

MR DEPUTY CHAIRMAN: What is the legal opinion?

SHRI H. V. PATASKAR: The question is about amendments Nos. 94 and 95. No. 94 says that both (a) and (b) should be deleted. If it is accepted, it is accepted. If it is defeated, then No 95 can be put.

SHRI N. D. M. PRASADARAO: If it is defeated, and if the whole explanation goes, then there is my amendment.

MR. DEPUTY CHAIRMAN: If it is defeated, the original clause remains, and then I will put No. 95 which is acceptable to the Minister.

SHRI S. N. MAZUMDAR: There is another amendment in the name of Mr. Prasadarao.

SHRI N. D. M. PRASADARAO: The amendment No. is 22, which is for substituting this by another clause.

MR. DEPUTY CHAIRMAN: That is substitution. Let us put the omission first and then the substitution.

SHRI H. V. PATASKAR: Is there any amendment which deals only with (b)?

DIWAN CHAMAN LALL (Punjab): May I draw your attention to this fact? If this particular amendment No. 94 is carried by the House, that is to say for dropping both (a) and (b) of the explanation, then you will not be able to put to the House No. 95 which deals with (b) alone.

MR. DEPUTY CHAIRMAN: If it is defeated, then the entire clause remains.

DIWAN CHAMAN LALL: Quite right. If it is defeated, you are then within your right to put No. 95, but suppose it is carried, while the House wants No. 95 to be accepted, *i.e.* (b) alone to be dropped and not (a).

MR. DEPUTY CHAIRMAN: If the House wants 95, then it will automatically defeat No. 94.

DIWAN CHAMAN LALL: May I draw your attention to this: You are really concerned with the opinion of the House in regard to both these matters (a) and (b). It is unfortunate that it has come to you in this particular manner, in this *ad hoc* manner. I suggest that you may be pleased to put this amendment in two parts (a) and (b). That will give a better indication of what the House really wants and what it does not want.

SHRI H. V. PATASKAR: In view of this controversy, No. 95 may be put to the vote first and disposed of.

SHRI J. S. BISHT: You have already put No. 94 to the vote and Division has been called.

MR. DEPUTY CHAIRMAN: I have not yet called the Division. The present position is this: Mr. Bisht's amendment is for the deletion of both sub-clauses, *i.e.* the entire explanation. Now, the hon. Minister is prepared to accept the omission of the latter part and that is covered only by No. 95. There is no separate amendment for the deletion of sub-clause (a) only. So, if the House agrees—it is only with the concurrence of the House that I can do it; I have no powers to do it—I will put the two clauses separately. That is to say, for the deletion of sub-clause (a) first, and then put No. 95. Do I have the permission of the House?

HON. MEMBERS: Yes.

SHRI KISHEN CHAND: If the House wants No. 94 to be put to the vote.....

MR. DEPUTY CHAIRMAN: No. no. I will explain the position again. No. 94 is for the deletion of both the sub-clauses (a) and (b). If this is accepted, I do not know if I can put No. 95. There may be legal objection, but if the House permits me, I can split up No. 94 and put the deletion of the two clauses separately.

SHRI JASPAT ROY KAPOOR: This is a matter in which the Chair should exercise its discretion for obtaining the views of the House in a proper manner. It is not for us to suggest what method the Chair should adopt.

MR. DEPUTY CHAIRMAN: That is why I am obtaining the permission of the House, for only with the permission of the House I can split it and put it to the vote.

HON. MEMBERS: Yes, Sir.

MR. DEPUTY CHAIRMAN: The whole of No. 94 is not before the House.

The question is:

"That at page 4, lines 35 and 36 be deleted."

That is, the explanation (a) "the interest of every one of his undivided male descendants in the coparcenary property, and".

SHRI KISHEN CHAND: That is only part of 94.

MR. DEPUTY CHAIRMAN: I am putting the first part only to the House with the permission of the House.

PANDIT S. S. N. TANKHA: Why not please take the latter part first?

MR. DEPUTY CHAIRMAN: All right.

SHRIMATI LILAVATI MUNSHI: Why not put No. 95 first?

MR. DEPUTY CHAIRMAN: I will put amendment No. 95 first.

The question is:

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

The motion was adopted.

MR. DEPUTY CHAIRMAN: Do you press your amendment Mr. Bisht?

SHRI J. S. BISHT: Yes.

MR. DEPUTY CHAIRMAN: The House has accepted for the deletion of (b). What remains is only part (a) and the last two lines.

SHRI H. N. KUNZRU: I am speaking with reference to amendment that has been accepted *viz.*, to part (b) of the explanation. The amendment of Mrs. Munshi only asks for the deletion of lines 1 to 4 on page 5 and lines 5 and 6 will remain and they will make no sense.

MR. DEPUTY CHAIRMAN: If (a) remains, lines 5 and 6 on page 5 will also remain. I hope it is clear Dr. Kunzru?

SHRI H. N. KUNZRU: They are not needed because a share will be demanded in accordance with clause 8. They are totally unnecessary.

(*Interruptions.*)

MR. DEPUTY CHAIRMAN: I will now put Amendment No. 94.

The question is:

94. "That lines 33, 34, 35 and 36 on page 4 be deleted."

PANDIT S. S. N. TANKHA: Please read the amendment.

DR. RAGHUBIR SINH (Madhya Bharat): What about lines 5 and 6 on page 5?

MR. DEPUTY CHAIRMAN: I will read the amendment.

"*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 the female relative shall be entitled to have her share in the coparcenary property computed and allotted to her accordingly."

The House divided:

AYES-32

Bisht, Shri J. S.
Chauhan, Shri Nawab Singh
Dangre, Shri R. V.
Deshmukh, Shri R. M.
Doogar, Shri R. S.
Dube, Shri Bodh Ram
Dube, Dr. R. P.
Gupte, Shri B. M.
Jain, Shri Shriyans Prasad

Kane, Dr. P. V.
Khan, Shri Pir Mohammed
Kishen Chand, Shri
Leuva, Shri P. T.
Mahtha, Shri S. N.
Maya Devi Chettry, Shrimati.
Mookerjee, Dr. Radha Kumud
Mujumdar, Shri M. R.
Mukerjee, Shri B. K.
Parikh, Shri C. P.
Pawar, Shri D. Y.
Raghavendrarao, Shri
Raghubir Sinh, Dr.
Reddy, Shri M. Govinda
Sarwate, Shri V. S.
Shah, Shri B. M.
Sharma, Shri B. B.
Shetty, Shri Basappa
Singh, Shri Nagangom Tompok
Sinha, Shri R. B.
Sinha, Shri R. P. N.
Tankha, Pandit S. S. N.
Varma, Shri C. L.

NOES 40

Ahmed, Shri Gulsher
Barlingay, Dr. W. S.
Bedavati Buragohain, Shrimati
Bhargava, Shrimati Sharda
Chandravati Lakhanpal, Shrimati
Dhage, Shri V. K.
Diwan Chaman Lall
Dutta, Shri Trilochan
Dwivedy, Shri S. N.
Ghose, Shri B. C.
Gour, Dr. R. B.
Kalelkar, Kakasaheb
Kapoor, Shri Jaspat Roy
Karayalar, Shri S. C.
Karumbaya, Shri K. C.
Kaushal, Shri J. N.
Kunzru, Shri H. N.
Lakshmi Menon, Shrimati
Malviya, Shri Ratan'al Kishorilal
Mathur, Shri H. C.
Mazumdar, Shri S. N.
Menon, Shri K. Madhava
Naidu, Shri P. S. Rajagopal
Narasimham, Shri K. L.
Narayan, Shri D.
Parmanand, Dr. Shrimati Seeta
Parvathi Krishnan, Shrimati
Prasadarao, Shri N. D. M.
Pushpalata Das, Shrimati
Rajagopalan, Shri G.
Saksena, Shri H. P.
Savitry Devi Nigam, Shrimati
Singh, Sardar Budh
Singh, Babu Gopinath
Singh, Shri Nihal
Sinha, Shri Rajendra Pratap
Sumat Prasad, Shri
Thanhlira, Shri R.
Vaidya, Shri Kanhaiyalal D.
Vijaivargiya, Shri Gopikrishna

The motion was negatived.

MR. DEPUTY CHAIRMAN: Explanation (a) with lines 5 and 6 on page 5, with the omission of one 'and' remains.

Do you press your amendment Mr. Tankha—No. 14?

PANDIT S. S. N. TANKHA: I beg to withdraw amendment No. 14.

*Amendment No. 14, was by leave withdrawn.

†Amendments Nos. 15. 16. 17, 20 and 21 were, by leave, withdrawn.

4 P.M.

MR. DEPUTY CHAIRMAN: The question is:

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

*For text of amendment *vide* cols. 659-661 of Debate dated the 25th November, 1955.

†For text of amendments, *vide* cols. 661-662 and 666-669 of Debate dated the 25th November, 1955.

[Mr. Deputy Chairman.]

"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 entitled 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 property-holder, shall be excluded."

The motion was negatived.

MR. DEPUTY CHAIRMAN: Amendment No. 24 of Pandit Tankha is barred. Also his amendment No. 26.

*Amendment No. 65 was, by leave, withdrawn.

MR. DEPUTY CHAIRMAN: The question is:

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 purposes 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 motion was negatived.

*Amendment No. 67 was, by leave, withdrawn.

*Amendment No. 93 was, by leave, withdrawn.

MR. DEPUTY CHAIRMAN: Amendments Nos. 94 and 95, have already been disposed of.

*Amendment No. 126 was, by leave, withdrawn.

MR. DEPUTY CHAIRMAN: Now, I put clause 6 as amended, to vote. The question is:

SHRI N. D. M. PRASADARAO: But Sir, the Law Minister said that he would see how clause (a) stands and bring in a proviso.

MR. DEPUTY CHAIRMAN: Yes, he will see if it is necessary, and.....

SHRI H. V. PATASKAR: But I will take a little time to see the new form in which it will be and if it is necessary, I will make a proviso.

SHRI H. N. KUNZRU: Then there should be no further discussion on it. I do not think the clause should be passed now. When the hon. Minister brings in the amendment, the House can pass the clause.

*For text of amendment *vide* col. 663 of Debate dated the 25th November, 1955.

*For text of amendments *vide* cols. 664-665 of Debate dated the 25th November 1955.

MR. DEPUTY CHAIRMAN: If it is consequential, it could be brought later; we have done it on previous occasions. So we shall pass the clause for the present. The change may only be consequential.

So, I put the question. The question is:

"That clause 6, as amended, stand part of the Bill."

The motion was adopted.

Clause 6, as amended, was added to the Bill.

MR. DEPUTY CHAIRMAN: And so all the amendments suggesting new clauses 6A, 6B, 6C and 6D are now barred.

Clause 7.—Devolution of interest in the property of a tarwad, tavazhi etc.

MR. DEPUTY CHAIRMAN: Mr. Hegde is not present and so his amendment No. 28 is not moved

SHRI K. MADHAVA MENON (Madras): Sir, I would like to move only amendment No. 97 and not Nos. 98 and 99. I move:

97. "That at page 5, after line 14, the following be inserted, namely:—

*(1A) For the purposes of sub-section (1), the interest of a Hindu in the property of a *tarwad, tavazhi, kutumba. kavaru* or *illom* shall be deemed to be the share in the property that would have fallen to him or her if a partition of the property *per capita* had taken place immediately before his or her death among all the members of the *tarwad, tavazhi, kutumba, kavaru* or *illom*, as the case may be, then living whether he or she was entitled to claim such partition or not under the *marumakkattayam aliyasantana* or *nambudri* law, as the case may be, applicable to him or her;' '

And with your permission I add the following also:

"and such share shall be deemed to have been allotted to him or her absolutely."

Sir, this is a matter which probably would be comparatively new to most hon. Members. Originally *marumakkattayam aliyasantana, nambudri* law and various other laws were exempted from this clause of the original Bill that was introduced in this House. In the Select Committee, however, the hon. Members from Malabar agreed that they may also be brought into line in this Hindu law and so the exemption was taken away and clause 7 in its present form has been put in the Bill.

When we originally framed clause 7, certain contingencies were not thought of by us. In the *aliyasantana* law, a male has got only a life estate and partition is *per stirpes* and not *per capita*. Under the *marumakkattayam* law, if a mother is living the children cannot claim any partition; they have no share. So if a son dies when the mother is alive, the son's son will not get any share, as the provision stands. So to avoid that anomaly I have moved this amendment.

I have had discussions with the hon. Minister in charge of the Bill and I think he is prepared to accept this amendment, so that whatever may be the law, whether they are entitled to get a share or not it will be presumed that the partition is *per capita* and the succession will be according to the provisions of this measure. That, Sir, is the idea behind this amendment.

SHRI H. V. PATASKAR: I accept amendment No. 97 with the addition of that sentence, "and such share shall be deemed to have been allotted to him or her absolutely".

DEPUTY CHAIRMAN: The question is:

97. "That at page 5, after line 14, the following be inserted, namely:—

"(1A) For the purposes of sub-section (1), the interest of a Hindu in the property of a *tarwad, tavazhi, kutumba, kavaru* or *illom* shall be deemed to be the share in the property that would have fallen to him or her if a partition of the property *per capita* had taken place immediately before his or her death among all the members of the *tarwad, tavazhi, kutumba, kavaru* or *illom,* as the case may be, then living, whether he or she was entitled to claim such partition or not, under the *marumakkattayam, aliyasantana* or *nambudri* law, as the case may be, applicable to him or her and such share shall be deemed to have been allotted to him or to her absolutely".

The motion was adopted.

MR. DEPUTY CHAIRMAN: The question is:

"That clause 7, as amended, stand part of the Bill."

The motion was adopted.

Clause 7, as amended, was added to the Bill.

Clause 8—General rules of succession in the case of males

SHRI H. V. PATASKAR: Sir, may I make a submission? Clause 8 refers to the Schedule. I think it would be better if we took up the Schedule now and then clause 8. Clause 8 refers to the order in the Schedule.

MR. DEPUTY CHAIRMAN: You want to take it now or do you want to postpone it?

SHRI H. V. PATASKAR: Clause 8 should be taken up after the Schedule has been disposed of.

MR. DEPUTY CHAIRMAN: Then we shall hold over clause 8.

SHRI KISHEN CHAND: There is clause 10 which is dependent on clause 8. That also will have to be held over.

MR. DEPUTY CHAIRMAN: How does it affect? Even if we pass clause 8 now, the Schedule will stand as accepted by the House.

SHRI H. V. PATASKAR: I think that as clause 8 refers extensively to the Schedule, it would be better if we were to take up the Schedule first.

MR. DEPUTY CHAIRMAN: It would mean, the Schedule as accepted by the House.

SHRI J. S. BISHT: The Schedule is proposed to be amended. Many of the simultaneous heirs are proposed to be dropped and brought down

MR. DEPUTY CHAIRMAN: The word "Schedule" is only descriptive. What the actual Schedule will be will come at the end.

SHRI J. S. BISHT: There is reference to class I. We will have to see who comes under Class I and who comes in Class II.

SHRI KISHEN CHAND: The best thing is to take up the Schedule first and then clause 8.

SHRI P. T. LEUVA: Then all the others will have to be held over. Clause 10 will have to be held over.

DR. P. V. KANE: The Schedule refers to clauses 8, 9 and also 10. We must decide now as to who will be in Class I and who will be in Class II.

MR. DEPUTY CHAIRMAN: We shall take up the Schedule at once.

Before we do so, Mr. Kapoor will presen' the report of the Committee on Petitions.

REPORT OF THE COMMITTEE ON PETITIONS RELATING TO THE HINDU SUCCESSION BILL, 1954

SHRI JASPAT ROY KAPOOR (Uttar Pradesh): Sir, I beg to present the Report of the Committee on Petitions, dated the 28th November 1955, in respect of such petitions as were remitted to it, relating to the Hindu Succession Bill. These petitions are in Telugu and we have, therefore, directed that their English translation be circulated *in extenso*.

THE HINDU SUCCESSION BILL, 1954—*continued.*

The Schedule

MR. DEPUTY CHAIRMAN: There are several amendments.

DR. P. V. KANE: Sir, I beg to move:—

49. "That at page 12, line 5, the word "mother" be deleted."

(*Amendment No.* 49 *also stood in the names of Shri J. S. Bisht and Pandit S. S. N. Tankha.*)

51. "That at page 12,—

(i) in lines 6-7, the words 'son of a predeceased daughter; daughter of a predeceased daughter'; and

(ii) in lines 8-9, the words 'daughter of a predeceased son of a predeceased son' be deleted."

54. "That at page 12, for lines 12 to 14, the following be substituted, namely:—

'I. Son of a predeceased daughter; daughter of a predeceased son; daughter of a predeceased daughter.

II. Mother and father.

III. Brother and sister.

IV. Son's daughter's son; son's daughter's daughter.' "

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

50. "That at page 12, line 5, after the word 'widow;', the word 'father', be inserted."

56. "That at page 12, line 14, the words and figures '(3) brother, (4) sister' be deleted."

58. "That at page 12, after line 16, the following be inserted, namely:—

'IIIA. Brother; sister'."

SHRI KISHEN CHAND: I beg to move:

52. "That at page 12, lines 5 to 10, the following be substituted, namely:—

'Son; unmarried daughter; widow of a predeceased son; son or unmarried daughter of a predeceased son; widow; son or unmarried daughter of a predeceased son of a predeceased son'."

55. "That at page 12, for lines 13-14, the following be substituted, namely:—

'II. Brother'."

57. "That at page 12, lines 15 and 16 be deleted."

59. "That at page 12,—

(i) in line 17, the brackets, figure and words '(2) sister's son' be deleted; and

(ii) in line 18, the brackets, figure and words '(4) sister's daughter' be deleted."

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