

companies so far during the year 1954-55 for the purchase of ships. It is not possible to indicate the amounts sanctioned for additions and for replacements separately.

(b) Rs. 332.03 lakhs.

240. [Postponed to 29th March 1955.]

TEMPORARY POSTAL EMPLOYEES

241. SHRI M. VALIULLA: Will the Minister for COMMUNICATIONS be pleased to state the number of the employees in the Postal Department who are temporary?

THE DEPUTY MINISTER FOR COMMUNICATIONS (SHRI RAJ BAHADUR): The information is being collected and will be laid on the Table of the Sabha as soon as it is received.

LEAVE OF ABSENCE TO SHRI B. M. SHAH.

MR. CHAIRMAN: I have to inform hon. Members that the following letter has been received from Shri Bhogilal Maganlal Shah:—

"As I am suffering from Sinusitis and low blood pressure. ***** I regret to say that I shall not be able to attend the remaining part of the current session and request you to grant me leave of absence***till the end of the current session ***"

Is it the pleasure of the House that permission be granted to Shri Bhogilal Maganlal Shah for remaining absent from the meetings of the House from the 10th March 1955, till the end of the current session?

(No hon. Member dissented.)

MR. CHAIRMAN: Permission to remain absent is granted.

THE HINDU SUCCESSION BILL, 1954—continued.

SHRIMATI PUSHPALATA DAS (Assam): Mr. Chairman, yesterday the main theme of my argument was that the dowry system should go, because some of my friends took shelter under the plea that if they have to give dowry to their daughters as well as equal share in the property, it would be too much to be given to a daughter. And as a representative of women I want to tell them that we do not want dowry. It is derogatory to our self-respect. We want equal share, we want equal treatment. Children are the flowers of their affection, and we can demand that affection from them. One of my friends said that he has got love for his daughter, but when it comes to sharing his property, he has to think twice because it is against the very foundation of Hindu religion. I do not know why the bogey of religion always comes in whenever we have to share something. We always swear by our Constitution, by our Rishis and religion, but when we have to give concrete shape to our promise by which we swear, then only the conflict arises. So, I feel that the dowry system must be removed from our country and equal share in property must be given to sons and daughters.

Yesterday, one of my friends was saying that the moment we give property to our daughters, they will not have the same affection towards the family as they used to have and sons-in-law will come and interfere in the family affairs. But, Sir, we all know that there is a convention and we do not see any son-in-law coming and interfering. In fact, if a son-in-law stays in his father-in-law's house for two days, it is derogatory to his position. We are always conscious of this convention and custom; so one need not be afraid on this account. Some hon. Members said that woman wants to just exploit man, because she wants dowry, a share in the property and so many advantages over man. That is not a fact. Let me quote something

from the poet Rabindranath Tagore. In his drama "Chitrangada" he says:

“पूजा करि राखिबे माथाये सेओ आमि नई
अबहेला करि पुषिया राखिबे पिछे सेओ
आमि नई
जदि अंश दाओ कटिन ब्रतेर तब सहाय हईते
जदि सुखे दुःखे मोरे कर सहचरी तब जीवन
पथेर
तबई पाईबे मोर परिचय” ।

That is the way a woman wants to be treated. She never wants to be worshipped as a goddess. We always say that in our civilization we have got so much respect for women, we call them “Devis”, women are treated as something above men, they are worshipped, etc. Do we really want to be worshipped and not treated as human beings? No, Sir. She wants to march forward hand in hand with men. She does not want to be trifled with, ignored, neglected and humiliated. She never wants to exploit man but wants to be his real comrade by sharing his joys and sorrows. And when my friends were criticising women, they perhaps forgot about their mothers, sisters and daughters. Even when a girl goes out of her father's family—and I have seen so many cases—if she is wealthy she helps her brothers, sisters and parents. She is never selfish that way. No woman will feel in our country that she should enjoy while her brothers and sisters are suffering. That is not our mentality. All we want is that we should have equality of sex and the present disabilities must be removed. We are pleading for their cause only because women should be able to face the same situation with courage and foresight.

The other day Dr. Kane was quoting those *slokas* from Manu, Yajnavalkya, Brihaspati, Narada, and all that. What do we find there? Every time after brief periods, when the situation demanded they changed them and they gave their own interpretation to suit the prevailing conditions. Now, Sir, we were saying so many things

about the joint family. Yesterday also I explained that the joint family was breaking up, and that system was not in force to the same extent as it was 16 or 18 years ago. Today, we have got only a few joint families left with us where you find true love and affection. Sometimes, the younger brother does not even know how his children are educated and looked after by his elder brother. I can quote an instance of a family in my place where all the children of the younger brother are educated by the elder brother who is in Calcutta, and his daughters have been given in marriage. But the father of the children does not know how all the expenses are met. There are certain joint families of that type where no quarrels arise, and where there is real love and affection. But in the twentieth century we cannot have that same picture, as we used to have in the past, because the society is fast changing. The brothers who are outside the house do not even claim the property, because automatically they feel that they are out of the family, and therefore they cannot claim anything.

Yesterday, Sir, one of my friends was telling us that in order to get their sisters married, sometimes the brothers had to remain unmarried. But I say that if our sisters are properly educated and if they are given the same facilities as are given to their brothers, they would never be a burden upon their brothers, and rather they would be self-supporting. And in that case, their brothers need not remain unmarried for the sake of disposing of their sisters. For that reason I say that the daughter and the son should get equal facilities and equal opportunities, and everything same must be given to the daughter and to the son. That is why we want that this Bill must be there, so that if anyone dies of accident, the rights of the children, sons and daughters, must be protected equally.

Sir, about these clauses 20 and 26, the other day, Dr. Kane was saying that these clauses should be avoided.

[Shrimati Pushpalata Das.]

But according to me, they are not harmful at all, because we are not having those real *yogis* or real *sanyasis*. But who knows, anyone may take to *sanyas* in the days of renaissance. Anyway, if these clauses are there, they are not going to harm anyone. They are quite harmless clauses. Therefore, they can be there.

Then, Sir, about this clause 27, somehow or other, I feel that we are partial towards men, when we say that women must be debarred or disqualified if they are not condoned by their husbands. If the husband is able to condone, why then should it go to the court at all? I think that this clause must be revised and put in a decent way. The clause does not seem to me to be quite decent. And I hope that when it emerges from the Joint Select Committee, we will be able to congratulate our Law Minister. And I also hope that the Bill will come out with flying colours with the help of our representatives in the Joint Select Committee. We have got three stalwarts to protect our rights there, and we hope that they would be able to fight the battle of arguments and win the rights for which all these women organisations are fighting. And, Sir, if there is any opposition to the Bill, it is under the shelter of dowry system. That must be removed, and if there are any societies which are suffering from these customs, they must be duly protected. Yesterday, Sir, just after the House adjourned, one of my friends gave me an instance of how a High Court Judge committed suicide, because he had three daughters, and every son-in-law demanded a huge dowry. That is why he had to commit suicide. I really cannot understand what kind of a High Court Judge he was, because he had no control over his nerves. If a High Court Judge had to commit suicide due to the fear of giving dowry, then what about other men? How would they feel about it? Anyhow I do not want to criticise a man, who is no more. There are so many

pictures against this evil, for example, Biraj Bahu. The late Sarat Chatterjee wrote many novels on this evil. In other societies also, we have got many such instances. So, if we are not able to root out this evil, then these arguments of giving dowry and property would always go on. I am sure, Sir, that when the Bill comes out from the Joint Committee giving equal shares to the son and to the daughter—and I am hoping for that—the House will give its full support to it, and will thus show it to the world that India is not only fighting for other causes, but also for the cause of the downtrodden and the oppressed in its own country. We have, Sir, sworn by our Constitution that we want to give equal rights, irrespective of caste, creed or sex. So, we must be true to our Constitution. Perhaps when we were sworn in, we did not think that these matters would crop up. And when we quote our *rishis*, we forget what they meant. There was then, Sir, a *sloka* given by one of my friends which meant that whatever is against one's conscience must be discarded. So, this principle of inequality before the eyes of law is against the tradition of the modern times. Therefore, Sir, we must do away with all sorts of inequalities which are going against our culture and our civilization.

Yesterday, Sir, some of my friends were saying that our ancient civilization and religion were rich enough to guarantee the women equal rights. Even when that Hindu Code Bill came to us, we used to quote Sita, Draupadi and so many other *satis*. We worship them not because they followed their husbands blindly but they were true to them and they had certain intrinsic qualities, for which we appreciate these heroines and heroes. When I go through this golden chapter of our ancient civilization, ancient India, I feel proud at the reply that Sita gave to Rama. When Rama asked her about her chastity and unchastity, Sita, like a dignified lady, and with that tradition of Indian womanhood, replied by saying, "If you want to

know whether I was coerced or dragged or touched by Ravana, I can say that I was dragged by him, but I am not unchaste in my mind, my mind over which I have got full control. My mind never thought of any other person than Rama. But the body which is transitory and which will one day turn into ashes after my life, over which I have no control, if that is dragged by or touched by anyone, I am not guilty. I do not think that my mind is polluted." You will thus realise, Sir, that such kind of dignified answers we used to have from our ancient satis.

Then, Sir, I would give another example of Mahasati Gandhari. When her son came to Gandhari to take blessings from his mother, she said to him "If you follow the path of truthfulness, you will win, and if you follow the path of untruthfulness, ruin will come to you." She uttered these words "सत्यमेव जयते". And even the Government is adoring those words. Our satis had that kind of dignity. Our boys and girls were trained in that atmosphere of ancient culture, and that was why we got those kinds of geniuses among our men and women. But in the modern days, we are unable to produce such men and women, because our civilization has deteriorated. Like an individual's life, we see the rise and the downfall in our nation's life. India was at its height once and she fell down from that height to the lowest. We are again rising and trying to come to that same position which we occupied before. But we must endeavour. Our Constitution is trying to establish the principle of equality, and I hope that the principle of equality will be established with the co-operation of all our friends who are here. I also hope that this Bill will come out with that colour of equality, which will be a beacon light to the whole world, and the whole world will come to know that India has given an equal share, and an equal right, to the brothers and sisters, for which the sisters were fighting for so long.

With these few words, Sir, I conclude my speech, and I hope that the Bill will emerge from the Joint Select Committee with all our intentions and hopes fulfilled. Thank you.

12 Noon.

SHRI KRISHNAMOORTHY RAO (Mysore): Mr. Chairman, by this Bill we seek to codify the Hindu Law. Some have hailed it as a women's charter of rights. We also seek to give a uniform law for the whole of India. I really wish it were so. Sir, I would not have intruded upon your time and also the time of this House if I did not feel a doubt that this Bill took us backward rather than forward. In the Statement of Objects and Reasons of this Bill, it is said:

"The original draft of the provisions relating to intestate succession contained in the Rau Committee's Bill underwent substantial changes in the hands of the Select Committee which considered the Rau Committee's Bill in 1948. This Bill follows to a large extent the scheme adopted by the Select Committee but takes into account the various suggestions made from time to time for the amendment of the Select Committee's version of the Bill."

The 1948 Bill sought to introduce the Dayabhaga law for the entire country. That has been given the go-by in this Bill. The 1948 Bill sought to give an equal share to the daughters. That has also been given the go-by in this Bill. I would like to know from the hon. the Law Minister whether we have grown wiser in these six years and are going backward instead of going a step forward. Sir, I feel that any legislation that we pass in this House must meet the needs of an advancing society. It must bridge the gap that lies between the law and the customs and aims of society. Not only that, I would even go a step further. We should also think years ahead and provide for an advanc-

[Shri Krishnamoorthy Rao.]
ing society. I feel that this Bill entirely lacks that spirit. Sir, Dr. Kane has shown us that Hindu Law was never static. Hindu Law is a growing institution. I do not want to cover the same points and repeat the same authorities and advance the same arguments, but I would like to submit the opinion of a few of our learned thinkers who are experienced in Hindu Law. Maine says about progressive societies:

"With respect to them it may be laid down that social necessities and social opinion are always more or less in advance of law. We may come infinitely near the closing of the gap between them, but it has a perpetual tendency to reopen. Law is stable; the societies we are speaking of are progressive. The greater or less happiness of the people depends on the degree of promptitude with which the gulf is narrowed.

Hindu law has never been stationary. It has grown with Hindu society. Changing social necessities and social opinions have always shaped its course of development as in other lands."

Dr. Kane showed us that the *Srutis*, *Smritis* and *Sadachara* have shaped the Hindu Law. Then comes the local law and the opinion of learned men, and what was good to the society and to the person himself began to shape the law. He has also shown that afterwards Raja Sasanas began to shape the law. I will quote an instance during the time of Krishna-devaraya of Vijayanagaram. At that time the dowry system was very rampant in the country. He got hold of the heads of all religions, called a meeting and asked them to devise a law by which he could put an end to the dowry system. He did succeed in doing that. Raja Sasana thereafter began to shape the course of law. Unfortunately progress was afterwards arrested when the coun-

try became a slave to foreign domination and foreigners sought the help of the pandits in the administration of the law. During the British regime, the courts began to shape the course of the Hindu Law. We had then different High Courts in different provinces and communication between the different parts of the country was difficult. There were also the native States who had their own High Courts. And so necessarily the Hindu Law could not develop in a uniform way. But now, after independence, after the country became free we have one Government throughout the length and breadth of our land. We have 26 High Courts and over them we have got a Supreme Court, and now there is no need for the courts to lay down the law. The Legislature has taken over the function of making laws for the entire country, and so I feel that we, as legislators, have a great responsibility to the society that we are shaping today. After the country became independent, we have done away with the zamindari system. We have done away with the Princes, and we are legislating for the entire country. We have also adopted the policy of building up a Welfare State. We have also said that our goal is going to be a socialistic pattern of society. Our Constitution guarantees equality of status between man and woman. I ask the learned Law Minister: Is the present Bill in consonance with the spirit of our Constitution? Is it in consonance with the economic and political policies of this Government? Is it in consonance with the advancing tide of public opinion in this country? Well, the objection has been raised that there is no unanimous support for such an advancement. I beg to submit with very great respect that at no time in the history of any nation has any unanimous support been procured for any social legislation. It is always the small number of thinking people who shape the policies for the nation. I wish to quote here the opinion of Prof. A. V. Hill, D.Sc., F.R.S. Addressing the British Institute of Philosophy, he said:

"In the main human society alters because of the initial reactivity of quite a small proportion of its members, not because of general bulk initiative. The effect of that reactivity depends, it is true, on the nature of the social medium in which it exists and that is conditioned by the statistical distribution of the human characteristics and experience of its members. But at any given moment the initiative must come not from the many but the few."

Again, Sarvadhikari, on the Law of Succession, says:

"As society progresses and circumstances change, the old principles must be viewed in the new light and adapted to meet the present social exigencies. It would be wrong to suppose that the Law of Succession has been totally petrified and admits of no further growth. **Grow it must with the growth of society.** There is a growing disinclination in the courts of the country to treat Hindu Law as an inanimate carcase but to look upon it as a living organism, which is capable of meeting all social requirements. There is great vitality in Hindu Law and if we only know the way in which its vital powers can be preserved, we shall see that it has yet a long career before it."

When we cling to good saying, let us cling to the essence of them and not to the dead carcase. I would also like to quote another passage in the Mahabharata. Dharma says to Yama:

“तर्कोप्रतिष्ठः श्रुत्योविभिन्ना
नेको ऋषिर्यस्य मते प्रमाणं ।
धर्मस्य तत्त्वं निहितं गुहायाम्
महाजनो येन गतः स पन्थाः ॥

Reasoning is uncertain. The *srutis* are conflicting. There is not a single sage whose doctrine is an unimpeachable authority. The essence of

dharma is inaccessible (is placed in a cave). That path is the proper one by which great men have gone."

What do our great men say? I would like to quote some of the opinions of our great men who are authorities in Hindu Law. Mr. V. V. Srinivasa Ayyangar said:

"The strength of the opposition is due to a misconception on the part of the public that what they call Hindu Law has remained the same from remote antiquity up-to-date. Changes have been made in Hindu Law by the authors of Dharma-sastras from time to time in consonance with changing ideas and requirements. But the people have not appreciated this."

Again this is what The Right Hon. V. S. Srinivasa Sastry said:

"I confess having grown up under the old ideas of the joint family, I was a little shocked at first at the right of birth being abrogated. There is some point in the objection that joint family is being disrupted. But the joint family is already crumbling. Many inroads have been made into it. The modern spirit does not favour its continuance any longer. The choice is between maintenance of big estates and the recognition of the independence of the individual members of the joint family."

We have already done away with it.

"The latter, in my opinion is a more important aim as it affords greater scope for individual initiative and prosperity."

Sir Harshadhbhai Divatia, our Attorney General, Shri M. C. Setalvad, Shri Atul Chandra Gupta, Sir Vepa Ramesam have also supported the Dayabhaga system along with Mr. Sastry.

The late Sri S. Srinivasa Iyengar said:

[Shri Krishnamoorthy Rao.]

"Broadly speaking among Hindus those individuals or communities have been most successful and enterprising that have practically controlled their acquisitions and departed from the normal type of joint family."

Sir Srinivasa Varadachariar says:

"The best and the simplest solution is to substitute the Dayabhaga for the Mitakshara system."

These are all great authorities on Hindu Law and I don't see why we should not take courage in both hands and make the Dayabhaga system applicable to the entire country. The Dayabhaga system also recognises joint family and co-parcenary but there the co-parcenary consists of both males and females and it does away with the survivorship and the right of birth. Well, under the existing modern conditions, in an atomic age, when the country is moving so fast towards a socialistic pattern of society, I think our laws should be in tune with the spirit of the times and I wish the Joint Select Committee will consider this aspect of the problem and boldly accept the Dayabhaga system of law as one law for the entire country. This halting measure which excludes the co-parcenary property, the joint family property and some customs also,—I think it is very halting in its approach. It is timid in its approach, halting in the solution of its problems and also it is out of tune with the spirit of our Constitution.....

DR. SHRIMATI SEETA PARMANAND (Madhya Pradesh): And crawling in its progress.

SHRI KRISHNAMOORTHY RAO: One of the hon. Members said that the entire South India is left out. I think it was Dr. Mookerji who said that but I am afraid he missed the point that all the laws enumerated in clause 3 refer only to Malabar Acts, that is the Marumakkattayam Act and the Aliyasantana Act but the entire South

India consists of Madras, Bombay, Hyderabad and Mysore which are governed by Mitakshara law. I am sure even the Mitakshara law as applied to Mysore, Bombay and Madras is far ahead of the Mitakshara law that is prevailing in Northern India. I would respectfully submit to this House that if we cannot adopt for any reason the Dayabhaga system of law, the law that we enact in this House should not in any way be below the standard of the most advanced State in the country, under the Mitakshara law. I have grave doubts that if this Bill as it is, is adopted, we will be putting the clock back for Mysore, Bombay and Madras. The Hindu law as it exists there today is far in advance of the law that exists in Northern India today. I wish our Joint Select Committee and the Law Minister to consider this aspect of the problem and if for any reason they are unable to accept the Dayabhaga system of law, which I hope they will, at least bring it in consonance with the most advanced State in South India.

Sir, objection is taken that the masses don't want it. I have already said that the masses are not vocal. Whether they want it or not, the thinking people in this country, at least the Legislature and the Parliament of the country should think for them and do the right thing at the right moment. It is posterity that will judge us and we are enacting a law that will affect millions and millions of men and women and if we don't do the right thing, I think posterity will curse us. The economic policies and the political aims of this country are far ahead of the law that we are enacting today. The other objection that is taken is the question of fragmentation and the breaking up of the joint family. Have we preserved the joint family as it existed in the days of old? What is the position of the joint family today? The joint family has already been assailed by many enactments. A unilateral statement on the part of any coparcener is sufficient to split up the joint family. The creditor of the individual coparceners can file a suit for partition

and get his share attached after a decree. The father has got the right to alienate for an antecedent debt. The Official Receiver of an insolvent coparcener member can file a suit for partition and sell his share. Again under the 1933 Act of the Madras Hindu Women's Rights Act when a widow is a sharer with a sole surviving coparcener, she can file a suit and obtain her share. That also gives the right to break up the joint family. Again I would request the hon. Law Minister just to get the statistics of how many partition deeds have been registered during the course of last year after we passed the Estate Duty Act. Last time when I went to Mysore I heard that a great many estates which were continuing as joint families have already divided their properties just to escape the Estate Duty Act. The Income-tax Act, the Supertax and the Corporation Tax—all these have already affected the joint family system and it is already crumbling. So there is no force in the argument that the joint family will break up. Some friends—I think Mr. J. S. Bisht—argued yesterday and asked: what of the poor man who has only one or two acres of land? I am sure no daughter will claim such a share in such a property. What does she get by claiming Rs. 20 or Rs. 30? If we give a share to the daughter, your daughters-in-law also will be bringing their share into the family and if you equate the son with the daughter, I am sure there will be only one class of heirs both to men and women. There should be no distinction. I wish we could take such a bold step but if you are not able to take such a bold step, at least my humble submission to this House and to the Select Committee and the Law Minister is that they should at least bring it up to the level of the most advanced State in India and not take it to a step down. I submitted earlier that South India was far in advance of Northern India. In 1933 we passed an Act in Mysore. There the courts held that under section 8(1)(d) a woman with a sole surviving coparcener could claim partition. Similarly

when there is partial partition, they held that the women sharer can claim a partition and this Act worked in Mysore for 15 years and the joint family system has not broken up. The Hindu society has not crumbled and after 15 years, in 1948 another Committee—a Revising Committee—was appointed in Mysore. They made certain recommendations and but for this Bill pending in Parliament, the Mysore Government perhaps would have taken steps and passed an enactment of their own which would have been far far ahead of the present legislation that we seek to enact in this Parliament. That Committee had also recommended that all women entitled for a share should be given the right to claim and partition off their shares, by statute.

The High Court also held that the existence of male issue as a bar to a widow sharing the property should be "existence" on the date of partition and not on the date of the death of the widow's husband.

The 1949 Committee also recommended:

"Where a woman separates her share, the others should be presumed to be joint instead of leaving it to be inferred by act of parties as one of intention."

Regarding Stridhan, they further recommended:

"In keeping with the recognition of almost all classes of property as 'Stridhana' (except in three cases):

(1) Where a widow inherits and as long as a daughter or daughter's son of the husband is in existence;

(2) Where a daughter inherits and as long only as a daughter's son of the father is in existence; and

(3) Where she inherits under an instrument which confers only limited estate,

and in consonance with the recommendation that certain women

[Shri Krishnamoorthy Rao.]

should be given rights of simultaneous succession to heritable property as well as the right to demand a partition of joint family property in which she has a right to share, there should be removal of distinction between children and grandchildren, dependent on sex in the matter of succession to 'Stridhana'. Only one order of succession among children and grandchildren should be provided."

Regarding 'Limited Estate', Sir M. Venkatasubba Rao, retired Judge of the Madras High Court has spoken thus:

"Kinsmen of all sorts swoop down, goodness knows from where, to clutch at the property, and this not only on the death of the woman, as reversioners are permitted by law to harass her even during her life-time. There is no class of suits which shock a judge's sense of justice more than suits by reversioners. To mitigate the evil, rules of evidence have been relaxed to protect transfers by Hindu women, and the doctrine of necessity has been stretched. Nevertheless, how many titles (some even of sixty or seventy years standing) have had to be upset and how many homes have been wrecked. To what unending litigation, chicanery and subterfuge, does this rule not lead!"

The 1949 Committee said:

"Instead of an unidentified, incoherent body of persons called reversioners, the right to succeed when the inheritance opens at the death of a limited owner, has been limited only to a daughter or a daughter's son."

They were the only persons who could claim after the widow's death.

This is the recommendation of the 1949 Mysore Committee. If we take this Bill that is now before us, I doubt if its provision goes even to the standard of the law that is prevalent

in Mysore. I also feel that the Bombay law, the Mayukha Law in Bombay, is still further advanced than even the Mysore Law. Similarly the Madras law is also a little advanced. I submit that whenever this Parliament passes a law, it should not by that law, take any set of persons in any part of the country a step backward. If possible, let us take them a step forward. At least let us bring the backward sections of the country to the level of the most advanced sections of the country. That is my humble submission.

In this Bill, in clause 16, while enumerating the properties that a Hindu female can take as her absolute property, they exclude:

"any ancestral property acquired by a female Hindu by way of inheritance or at a partition, where under any law or custom or usage a male owner acquiring any such property in similar circumstances would have held it subject to restrictions on his right of alienation with respect thereto;"

So here again, custom and usage have been given the sanction or effect. I do not see why. We say in clause 4:

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

In one breath you say these customs and usages will have no effect and in the other, or in several other clauses of this Bill, you see that they have been given sanctity. I do not see why at all custom and usage should be perpetuated.

I also feel with Dr. Kane that the heirs enumerated in classes I and II of the Schedule should be recast and made more rational. I have had no time to compare the lists given here with those that the Mysore Committee

had suggested. But I submit to the Law Minister and to the Select Committee that they may compare the two lists and make the lists in the Schedule more rational.

Further, I would like to point out that in clause 34 we have got provision for the right of testamentary succession to all, whether man or woman:

"Any Hindu may dispose of by will or other testamentary disposition any property, which is capable of being so disposed of by him, in accordance with the provisions of the Indian Succession Act, 1925."

When we have given this over-riding power to the testator, I do not understand why we should have been halting in the provisions of this Bill. So my submission to the House and to the Select Committee is this. Let us be bold and let us take a step for which posterity will bless us. If we cannot go the whole hog, up to that extent, at least when the Bill emerges from the Select Committee, let it not fall short of what obtains in the advanced sections of any portion of society in India. That is the submission that I have to make.

SHRI K. MADHAVA MENON (Madras): Mr. Chairman, it is rather difficult for a person to speak at the fag end of a three days' discussion on a subject when possibly everything that has to be said has already been said in some form or other. Still I have to say that though I agree with the Deputy Chairman—Shri Krishnamoorthy Rao—that this Bill is a highly reactionary measure, still I welcome it, even though it does not go far enough, and though it is halting.

[MR. DEPUTY CHAIRMAN in the Chair.]

Something, after all, is better than nothing and I am glad that at last, after much labour and after various attempts to have a Hindu Code. It has come to this stage and I hope this Bill will emerge from the Select Commit-

tee shown of all its reactionary provisions.

The demand for an alteration in the existing state of Hindu law has been primarily made with a view to bring about an improvement in the status of women. Judged from that point of view, I must say that the Bill before us has miserably failed in achieving this object. It still retains the inferior status of a woman in this respect. Yesterday Dr. Barlingay pointed out how discriminatory the provisions are and how they even offend the Constitution. Apart from that, it is too late in the day now to think of anything other than absolute equality between man and woman in all matters, particularly regarding rights to property and the rights of succession.

Sir, the argument that the functions of women are different, the creation itself is different and such arguments, if I may be allowed to say so, are unadulterated—if the word is not unparliamentary—nonsense. So also is the argument that giving rights to women would lead to disruption of the family, it would be destroying the family, it would be destroying the even tenor of family if the women are given equal rights, as if the women have no consideration for the well-being of the family. In fact, they have greater consideration for the well-being of the family than men. It is all our conception of double standards and different standards, one for men and one for women. That makes us men find out ingenious arguments to deny fair play and justice to our women. If we will have an honest introspection of our own minds, there may be people who honestly object to the Bill but in most of the cases it is the fear of the loss of absolute power and control that we have over women that makes us afraid of giving them equal rights. What tyrants we men are in our demands on our women we do not think or care to realise and is it not that lurking fear that we may lose that power that makes us oppose giving equal rights to women, I often think. Sir, Manu's dictum

[Shri K. Madhava Menon.]

“पिता रक्षति कौमारे भर्ता रक्षति यौवने ।

पुत्रो रक्षति वार्ष्णे न स्त्री स्वातन्त्र्यमर्हति ॥

cannot hold good in these days as swatantryam does not mean rights to property. Let us be fair and be liberal. Discretion is the better part of valour; the women are demanding equal rights and no demand of women can be resisted for long. There is a proverb in my language.

“Pennorumpattal Bhrammanum
Thatuthukuda”

which means that when a woman is bent upon achieving something, even Brahma will not be able to resist it.

Sir, coming to the provisions of this Bill in detail, sub-clause (1) of clause 5 is a very obnoxious clause, in my view. Why should the joint family property be exempt from the provisions of this Bill? Why leave room for further quarrels and demands which we will have to agree to ultimately? One has only to read the Rau Committee Report to be satisfied that this exemption is wrong. I will only read an extract from an article written by that most eminent lawyer and jurist, Shri S. Srinivasa Iyengar, as early as 1941 which applies to every portion of reform of Hindu law and not only regarding the joint family property. It says: The present attenuated rules governing Mitakshara coparcenary do not protect the joint family in the enjoyment of the property but operate only as hindrances to its economic efficiency. The right by birth and by survivorship and the restrictions imposed by them on the power of alienation and the deprivation of rights of succession to those who are nearer and dearer to a deceased male member than a coparcener are all outmoded in this era when the ancient type of family has become almost extinct. The large urban life of these days, the consequent separation of the members of the family and their employment or avocations in distant parts of the country, the absence of the ancient

ideas of individuality and the consequent conflict in the aims and aspirations of the various members of the family has resulted in the emergence of the modern Hindu family life which is, both in actuality and in sentiment, far removed from the spirit and the purpose, the wish and the ideals of the ancient joint family system. Now, the spirit has penetrated even to remote villages and there is no need any longer for the revision of that ancient legal formulae which break our hearts and entangle our feet and slacken economic plans and improvement as well as affect adversely the smooth co-operation and sweetness between coparceners which would characterise family life.

I feel that the exception in sub-clause (iv) of clause 5 is wrong. Why should we have these anachronisms? I feel that the law of primogeniture is an anachronism. Why should we have these anachronisms? The sooner they are eliminated the better. Much as I would like to have a common civil code for the whole of India, exception (iii) appears to be necessary. Not because I am governed by the Marumakkattayam Act. Dr. Barlingay and some other Members asked why those Acts should be exempted. I wish they knew the contents of those Acts. That Act gives absolute equality to man and woman in all respects, not only about property but about marriage, divorce and even guardianship. We not only give an equal share to the daughter but an equal share to the mother. We want to go forward and be liberal. Do not drag us down, as you yourself had said, to this halting Bill but come along with us and, if I may say so without being considered to be presumptuous, rise up to our standard and then ask us to join the common code. While the Hindu Marriage Bill was in this House, I said that according to the Marumakkattayam Act, divorce is a very easy thing: all the conditions of divorce mentioned in that Bill are not there. A husband or a wife has only to say, “I do not want this

woman/man to be my wife/husband". No reasons have to be stated, no reason shall be stated, there is no washing of any dirty linen, The Court keeps the petition pending for six months as a sort of *locus paenitentiae*. At the end of six months, if the parties do not come together the divorce is declared. It is so easy but still, Sir, the Act was passed in 1932 and we are in 1955 and there have not been even a dozen cases of divorce in our place. Why? Because the women have equal property rights and they cannot be cowed down by men.

DR SHRIMATI SEETA PARNAND: She is not oppressed there.

SHRI K MADHAVA MENON: She cannot be oppressed. That is the position there and she need not be afraid of being thrown into the streets. That is why, when there was discussion about this with Dr Ambedkar in Trivandrum, he realised the position and said that these Acts should be exempted from the provisions of the Code. That is the reason why it has been done. In spite of this, if you can have a Bill like this passed only by including us, I say that I am prepared to undertake that sacrifice that sacrifice of foregoing to rights that we have got under our Acts. They may be much better than what they are now but you will be doing a very great injustice to the women of Kerala who possess those rights by taking them away.

Sir, I do not understand the rationale of Rule 1 in clause 10. "The intestate's widow, or, if there are more widows than one, all the widows together, shall take one share". We have passed the Hindu Marriage Bill in this House and I wish it is passed by the other House very soon, wherein it is said that a man cannot marry another wife when he has the first wife living except under very exceptional circumstances.

THE MINISTER IN THE MINISTRY OF LAW (SHRI H. V. PATASKAR): This is only to cover the case of those who

are already married to more than one wife.

SHRI K MADHAVA MENON: But this does not say that.

MR DEPUTY CHAIRMAN: This applies to past marriages.

SHRI K MADHAVA MENON: My point is about the case where under exceptional circumstances a man marries, with the permission of the existing wife, a second time. Why should that widow also be excluded from this?

SHRI H. V. PATASKAR: It is not excluded.

MR DEPUTY CHAIRMAN: There are no such exceptional circumstances.

SHRI K MADHAVA MENON: All the widows together get one share. I feel that is not right. After all it is not a very serious matter.

Rule 5 should certainly be altered and the daughter should get a full share.

Then, Sir, clause 16 is a magnificent one, is perhaps the redeeming feature of the whole Bill that the woman shall have absolute right to property that she gets. But why do you spoil it by sub clause (2), as you yourself pointed out.

As regards clause 19, let the law applying to a man must apply to the woman also. The Indian Wills Act will govern the testamentary bequests. In the case of clause 19, Sir, I have not been able to understand the rationale. It is absolutely inconsistent with clause 16 unless the idea is deprivation of certain rights that have been already vested or derived and acquired which then will equally apply to clause 16 also.

Regarding clause 27 I entirely agree with Dr Barlingay when he asked why unchastity should be a punishment for a woman alone without a like punishment for a man who is

[Shri K. Madhava Menon.]

allowed to get off with impunity when he is philandering and is promiscuous I don't object to clause 27, Sir, but make it applicable to man also.

I have not much more to say. Let us not be halting; let us not be half-hearted. When we want to give let us give it liberally and be fair and just

SHRI S. PANIGRAHI (Orissa).
Mr. Deputy Chairman, the Hindu Succession Bill seeks to amend and codify the law relating to intestate succession and I welcome it. I am in agreement with the objectives and principles underlying the Bill but with some objections.

Sir, it is surprising for me to go through some of the clauses. Sub-clause (2) of clause 2 says: "Notwithstanding anything contained in sub-section (1), nothing contained in this Act shall apply to the members of any Scheduled Tribe within the meaning of clause (25) of article 366 of the Constitution unless the Central Government, by notification in the Official Gazette, otherwise directs".

So this clause gives rise to a proposition which is extremely dangerous in my opinion. It deals with the applicability of the Bill to the members of the Scheduled Tribes. It states that this Bill shall not apply to the Scheduled Tribes. Our country is a land of perpetual problems. The problem of minorities has been a chronic headache. It has disturbed the political balance and the unity of different communities in the country. Sir, in an ideal democracy, circumstances are required to be created to facilitate the merger of smaller groups into the larger community in the larger interests of the country. The problem of the minorities is a problem of adjustment and not one of securing for them a special status and a special interest for ever. If the minorities exist as such and differential treatment is meted out to them, the result will be only the perpetuation of the lies not in identification but in

gradually harmonising the process of integration. Having been pledged to establish a democratic society in which equality of man and social justice are ensured, we should create such circumstances as would further the cause of unity and amity. The different castes and communities including the Scheduled Tribes in the long run should be integrated into a compact whole. As you all know, Sir, the Hindu Dharma was too liberal too tolerant to accommodate any member in its fold. History shows that Dravidians, the Sakas and Huns and all others had been assimilated and absorbed in this great society. Can we not create the same circumstances so that the Scheduled Tribe people are gradually integrated in the Hindu community? Then and then only can we have a united strong nation emerged out of this integration. To my mind, Sir, we can do that. But instead of doing that, we have provided such clauses in the Bill which would ensure not integration but separation of some of the communities from the larger community. If we study the circumstances in which the tribal people behave towards the Hindu people and the Hindus behave towards the tribal people, we can see that they are in complete harmony with their neighbours in almost all respects. They are living side by side with the caste Hindus in villages and their manners, customs, culture and traditional outlook have been greatly influenced by those of the caste Hindus. According to the existing Hindu law no such distinction has been made between a caste Hindu and a member of the Scheduled Tribe as to make the latter a distinct and separate religious entity. The Scheduled Caste people have not yet been considered to be members of an altogether different religion although they are considered to be members of different castes. They are of the same castes as others inside the fold of Hinduism and so far as their religion is concerned, they are Hindu to my mind. They have some separate and distinct man-

ners and caste customs but they have been taken as Hindus. They have been accepted as Hindus and Hindu law has been applicable to them up till now. Sir, in a Patna case of the year 1945 the Santhals of Chota Nagpur have been declared to be Hindus by the High Court. If there are some exceptions to this general rule, it was only due to circumstances created by the foreign administrators. They wanted to create differences between the different caste groups of Hindu society for the achievement of their own ends. Otherwise there is nothing in the existing law to distinguish a member of the Scheduled Tribe from a Hindu.

In view of all the circumstances, Sir, I do not understand the purpose of the Government in creating barrier even now between a Hindu and a Scheduled Tribe man. The Scheduled Tribe is not a unit by itself. They are again divided into so many different castes and sub-castes. All these castes have been integrated into the Hindu society and they are treated as members of the same religion, that is, Hinduism. So far as the fundamentals of the Hindu religion are concerned, they are treated as Hindu. The members of the Scheduled Tribes in most cases observe the Hindu rules and observe their social conventions. They worship Hindu deities. Equally the caste Hindus also have a great respect towards some of the tribal deities. There are so many instances in so many places throughout India and Shri Jagannath of Puri may be cited as the paramount institution to prove this fact. It is an institution where there is equality despite the diversities that exist between different groups, different castes and different communities of India. So, this speaks of the co-operation, harmony and co-ordination which existed even in the past between different groups in the country particularly between the Scheduled Tribe people and the Hindus. So although they have been treated as members of the Hindu community up till now

I wonder how for the first time they are now going to be treated in a different manner. I think it will split the Hindu society and instead of bringing about some change for the unification and integration of different castes, groups and communities of India, it will disintegrate the society and as a result the political balance will also be upset.

There is another clause which I want to bring to your notice. Sub-clause (2) of clause 1 says: "It extends to the whole of India except the State of Jammu and Kashmir, and applies also to Hindus domiciled in the territories to which this Act extends who are outside the said territories". So this Bill does not extend to the territory of Kashmir. I do not understand the purpose of this clause. Whatever may be the reason, this gives a psychological reaction in the minds of the people who try to take advantage out of such enactments. There are Hindus also in Kashmir and if the Bill seeks to give some benefit to the Hindu community, then in my opinion it should be extended to Kashmir also. Kashmir is no longer a separate entity. The jurisdiction of the Supreme Court has been extended to the territory of Kashmir. So I do not think there will be any difficulty or objection from any quarter if it is extended to Kashmir. I wanted to draw the attention of the House to these matters and I hope that these two points will be considered by the Joint Committee.

SHRI KAILASH BIHARI LALL (Bihar): Sir, it is now six minutes to one before we adjourn for lunch. However, I will utilise the time and I promise to be as brief as possible.

First of all I wish to thank and congratulate the hon. Minister who has brought forward this Bill for his marvellous speech which was surely flattering to the women, no less soothing to the enthusiastic male persons also.

SHRI H. V. PATASKAR: How did you receive it?

SHRI KAILASH BIHARI LALL: I am going to give my reactions also. I am prepared to support the Bill not because it is inevitable but because I have to resign to the inevitable and in that spirit I would like to offer some suggestions. Day before yesterday when Shrimati Chandravati Lakhanpal was speaking, she referred to me saying that a man like myself would always think against the ladies. I want to clear up that misunderstanding. I have never thought against womenfolk. It is never in my nature to think against them. I have always been of the view that they occupy an honoured place in our society and they must have that honoured place. From the very beginning I have felt that they should have a congenial place and not a warring place or a battlefield where men and women always are fighting against each other. This is a misconception that has come about in our minds—this question of men versus women. So I want to disabuse my friends of their impression that I am always against the ladies. That is the point I wanted to make clear in the beginning itself.

Now, I am not going to give any detailed suggestions about the provisions of the Bill, because I would prefer to leave it to the wisdom of the Joint Committee and the trend of the times. A thing which has become inevitable has to be there. Nobody can change it. I cannot change the mind of so many people but at the same time I cannot swallow everything that is happening today as quite for our good. We are going at a break-neck speed and whatever happens we have to abide by it. I would only make one suggestion with regard to clause 2. For the rest, as I have already said, whatever may be the decision of the Joint Committee in the light of the trend of the times and thoughts of the people, I will abide by it. After all, I cannot live outside this world, outside this country or outside the times. So we have to bow down to the pace of events. There was nothing bad in things of the past nor is there anything bad

in what we are doing today. It is all a twist of the mind, a trend of the mind. If we want to adopt that men should take the place of women and women should take the place of men, because women have been in charge of the home for a long time now and so men should take charge of the homes, wear purdah and remain indoors while women should take to the office and the fields, if that is what is wanted, there is no harm in it. Let us have it. It is only a question of adapting oneself to the new order. Whatever the order you want to bring about, of course by common consent, let us have it. But you cannot say that things are very bad and that is why you want to change the order. Women had their honoured place in the home. As a mother, she was always respected. She had a deciding voice in everything. As a wife, she ruled the home and as a daughter she kept up the honour and discipline of the family. It is not as if the women were in the frying pan and that they must be saved. I cannot understand this mentality. Of course, there may be some disability here or there. That will always be there. Nobody can claim that after the passing of this Bill there will be no difficulty at all for the womenfolk. There are so many laws operating today. Can anybody say that there is no difficulty? You may have the most perfect law and the law may take its course but still there may be people who are bound to shed tears. Those who are born to suffer, their sufferings cannot be mitigated while people who are born to enjoy, they will never suffer. Do you think that we are all equal? Today we talk of socialism, communism and so many other 'ism's and we try to equalise as far as possible but can anybody say that those who are born to enjoy will cease to enjoy? I have seen socialist leaders flying in aeroplanes and rushing past in motor cars. There are people, rich persons, inheritors of big estates but they miserably live only on diet throughout their life, on diet prescribed by doctors. But there are some who are not born with a silver spoon in their

mouth, but still they enjoy life like anything. After all we have to think dispassionately and see how society was developing, how the home was a homogeneous unit and how people were happy. Of course, there 1. P.M. are certain difficulties here and there. But for that we cannot say that every contentment in our old society was to the disadvantage of womenfolk and they were tyrannised. They were not tyrannised at all. By changing the law, if you want to change the whole picture of society, I may bow down to that. But I believe that whatever is to happen must happen and we must accept that. I am not opposing it. I am giving my support to the Bill.

MR. DEPUTY CHAIRMAN: You will please continue your speech at 2-30. The House stands adjourned till 2-30 P.M.

The House then adjourned for lunch at one minute past one of the clock.

The House reassembled after lunch at half past two of the Clock, Mr. Deputy Chairman in the Chair.

SHRI KAILASH BIHARI LALL: Sir, I was perhaps saying that if you want to change the society, you can do so very gladly, and in the course of only a few years the people will adapt themselves to the changed society. But the question is whether we can bring about happiness to the people by any amount of change. What we imagine to be happiness in our mind today will also continue and will have the same meaning in the changed society. I am of the view, Sir, that happiness, real happiness, cannot be brought about by ushering in any legislation. That thing should be taken into consideration. We cannot bring about real happiness by changing the system of law only. Everybody knows the history of the Sarda Act, the Child Marriage Restraint Act. You could not bring about any real change in the society, and you cannot in fact bring about any change in the society.

if the society is not prepared to change. Even today you cannot change the society or the mental outlook of the society, if you enact a law like that. We should not make a mess of everything all at once in our eagerness to usher in a new era of women's rights. I do feel that there is hardship in the society. The law of inheritance, as it is operating today, entails some hardship upon the womenfolk, and there should be some change. But I am not going to deal in detail with the clauses here. That is for the Select Committee to do that. But I would like to give out what I feel about the Bill generally.

Sir, it is proposed to make some drastic changes for which the society itself is not prepared, and which may later on be discovered to be something which was not fitting with the society, and even those very enthusiastic people who are so much in glee about getting some rights for the womenfolk, may also realise in course of time that it would be operating adversely, so far as the happiness of the society is concerned. But whatever that be, I am not going to make any prediction about that. I am prepared to support whatever comes out or emerges from the Select Committee with the combined wisdom of the Members of the Select Committee. But here I am going to give my opinion to them that if, instead of the woman inheriting the father, she inherits the husband, that would be smooth-sailing in our society. Of course, this opinion may not suit the other enthusiastic friends, who may not like it. But I think that that would bring about smooth-sailing in the society, as it is going on, and the people may not perceive the change, and the women who are suffering may get a great relief, if they have got equal share in the property of their husbands.

SHRI KISHEN CHAND (Hyderabad): What about unmarried daughters?

SHRI KAILASH BIHARI LALL: I was going to suggest that unmarried daughters should inherit from their

[Shri Kailash Bihari Lall.]

father, and the daughters that choose to remain unmarried should inherit from their father. But the daughters that choose to marry should inherit from their husbands and should have an equal share in the husband's property. But there is again one point. If the husband is a pauper, then it creates some complications. I am going to make a suggestion with regard to that also. That is this. Sir, in case the father chooses to marry a pauper to her daughter, the father should be made to give in dowry the amount which she is likely to inherit in the family property along with the unmarried daughter. Today, Sir, there is a cry from all quarters that the dowry system should be abolished. People are attempting even by legislation to abolish the dowry system. But in my view, Sir, it is not a thing perhaps for legislation. We know of a great many social reformers who cry hoarse on this subject in the Legislatures. But when such a social reformer comes outside the Legislature, he is a different man. When the occasion for settling the marriage of his son arises he throws the responsibility on others' heads to extort dowry and says "I am not the guardian, my father is the guardian, my uncle is the guardian of the boy." So he throws the burden on their heads in order to extort dowry. So, Sir, this is the position of a daughter today, not because there is no law, but because the society is such. I would urge lady Members here to pay more attention to the social reform work in the society itself. They should have taken it upon themselves to move in the society and ask the womenfolk and ask the menfolk not to give or take dowry at all. But that they are not doing. Otherwise, that would have solved this social problem. But that is still existing. Unfortunately, Sir, they want everything to emanate from the Legislatures. So, the dowry system, as it is prevailing today, has some good aspect in it, because if there is such a person who can marry in order to save his money and keep the money intact in his own family.....

DR. SHRIMATI SEETA PARMANAND: When you give a share in the property, the dowry system will automatically disappear.

SHRI KAILASH BIHARI LALL: That is far from practicability. Perhaps she does not know how our society is operating. I know how it is operating in our Bihar. Suppose, the property in a family is not sufficient. And the prospective son-in-law, who is an M.A., makes a demand for Rs. 10,000. And, Sir, if there are five daughters, then Rs. 50,000 are required for dowry. But the poor man has not got that much amount. At the same time, Sir, if the father has got a loving heart for his daughter, he has to see that he secures a good son-in-law, and in that case, he has to sell away his own property, and he cannot even provide for his own son. Sir, I want to point out that all the persons here are not rolling in lakhs and crores. There are people who have not even got thousands, but who have got a loving heart for their daughters, and who want that their daughters should be married to good persons. I was in fact going to tell the House that the Law Minister has come too late with this Bill, because after all what is left there now that can be inherited? There is very little property that is left with the people. And I am sure by the time this measure is passed—it will take one or two years to pass this measure—that socialistic pattern of society will have come into being. And perhaps whatever little property is left then, the girls will not be able to get it. Therefore, I think it is only beating in the air. Of course, it is something to keep our mind occupied with such a good reform. That is, of course, a thing to be happy about, so far as our activity is concerned. But if at all we are sincere in ushering in a socialistic pattern of society and in abolishing zamindari system and in fixing a ceiling over land and over our bank balance and other things, so that that kind of a socialistic pattern of society may come into being in full swing, then what remains to be inherited by the girls, is a thing to be

taken into consideration. In that case, whatever is there in the husband's house, let the girl share it and be happy with her husband. Whatever the husband has got, in that the wife must have half. This will ensure a good, peaceful family. It is asked whether the husband would like to share his property with his wife, if he is not happy with her. If the wife is not going to feel happy with her husband and *vice versa*, then what sort of society are we going to usher in? We should always assume that the wife will be happy with her husband and both are living peacefully in the house. Of course, there may be instances far and few between in which the wife thinks of separation. But let her have an absolute right in the husband's property. Let her be entitled to demand even partition if she is ill-treated. There is also the condition that this will be only so long as she remains chaste and truthful to her husband. Of course, if this condition is not palatable to some people here, it is not my fault I think that she should share her husband's property only so long as she deserves it. If she chooses to leave him, then she should be considered as dead, so far as her husband's property is concerned. Similarly, a daughter who marries should be considered as dead for all purposes. Let her inherit only in her husband's family. Whenever there is a divorce, the wife should be taken as dead, and she should have no right to a share in her husband's property. Wherever she chooses to go there, her position is secure. This is only when our aim is happiness of the society. If warfare is to be the aim, of anarchy in our society and there will be no peace either for the individual or for the society. That is my view.

I am not going to take any time on the different clauses of the Bill except on clause 2. Whenever similar measures came up before the House, I suggested this and today also I am making this suggestion that this clause is going to perpetuate communalism. It helps communalism. I am

of the same opinion as Mr. Raja that making any legislation just for one community is bad. Of course, I do not say that we should wait until we can have a national code, but if you are making any law for a section of the people alone, then change the connotation of the word 'Hindu'. Instead of having a Hindu Code of Inheritance, a Muslim Code of Inheritance and a Christian Code of Inheritance and so many other codes, let us have one National Code called the Hindu Code.

SHRI J. S. BISHT (Uttar Pradesh): There is already an Indian Succession Act.

SHRI KAILASH BIHARI LALL: If at all you think you are going to make an experiment only with the so called Hindus, then it will be better if you widen the scope of the word 'Hindu' and include under that term all people inhabiting this country. It may operate permissively for all but it may be mostly taken advantage of by Sanatani Hindus only. So long as others belonging to other religions do not choose to take advantage of it.

DR. RADHA KUMUD MOOKERJI (Nominated): Historically speaking the term 'Hindu' means an Indian.

SHRI KAILASH BIHARI LALL: It was Dr. Mookerji's definition that I have quoted that a Hindu is a geographical term meaning one who lives in India. That is not a religion-denoting term. I am sorry that our Government always comes out with the definition of the term 'Hindu' as a religion. It takes pleasure in saying that the word 'Hindu' means a religion. All the time we hear that they are against communalism in any shape or form, but here they are promoting that very thing. In the word 'Hindu' you are including Buddhists, Jains, Sikhs, and also the different sub-sections like the Virashaivas, Lingayats, Brahmos, Prarthanas, Arya Samajists, etc. Anyway, you have widened the scope of the word 'Hindu' so far as these people are concerned. Why not include the Christians and Muslims

[Shri Kailash Bihari Lall.]

also? There is no sense in calling the Buddhists and Jains as Hindus, because by Hindus we mean only the Sanatanists. The Buddhists, Jains and the Sikhs have got their own religions. There is no doubt about that. Often their religions are diametrically opposed to each other. Surely when all these people are being included under the term 'Hindus', why do you say that the term 'Hindu' means a religion? There is no such thing as a Hindu religion. You are only confusing the issue instead of clarifying it. You are really making confusion worse confounded. In this connection I am reminded about the meeting of the crows. The crows held a conference and resolved that they should not take the leavings of any people.

DR. SHRIMATI SEETA PARMANAND: How do you know?

SHRI KAILASH BIHARI LALL: Some crow got up and said, "Let us take the leavings of only the Brahmins." The others said, "All right." Then another crow got up and said, "If we are taking the leavings of the Brahmins, why not take also the leavings of the Kshatriyas?" This was also agreed to. A third crow got up and said, "If we are taking the leavings of the Brahmins and Kshatriyas, why not take the leavings of the Vaishyas also? After all, they are all *dwij*." This was also agreed to. A fourth crow got up and said, "If we are taking the leavings of the Brahmins, the Kshatriyas and the Vaishyas, let us also take the leavings of the Sudras." Finally they decided to take the leavings of all. In this way, you have come to include everybody amongst the Hindus. Where is the sense in saying that a Buddhist is a Hindu? What have we got in common with the Buddhists so far as religion is concerned?

SHRI H. V. PATASKAR: Just now the hon. Member said that the term 'Hindus' should include all Indians. Then how does he exclude the Buddhists?

SHRI KAILASH BIHARI LALL:

When you are including everybody, why do you say that the term 'Hindu' means a religion. There is no such thing as the Hindu religion. Why say that the term 'Hindu' means a religion? Hindu religion is a non-existent thing. I am making this challenge: Let any body prove that the term 'Hindu' means a religion.

A friend of mine told me that one who does not take beef is a Hindu. You go to any village of Chamars and you will find people with *sikhās* (tufts) taking beef. My friend said that the chamars take only dead cows. I told him, "Meat is made when the animal is dead." It is only a question of making the animal dead by different methods. A goat is not brought on your dining table and you do not begin to devour it from one side and your wife takes from the other side. After all it is a question of making it dead by so many methods. The Muslim says when it is made dead by some method, then it is worth eating. Shaktas say if it is killed before the Bhagawati it is eatable. The Sikhs kill by one stroke and say that *Jhatka meat* is eatable. In Burma they strangle an animal. Perhaps Lord Buddha has said 'Don't kill'. So they think that killing is only by knife and so they don't kill by knife but they strangle by bamboo. So it is a question of making an animal eatable by making it dead in one way or the other. So you cannot say that cow is not being eaten by the Hindus. There is not one thing by which you can say that this is the tenet of Hinduism. There is no such thing as Hindu religion.

DR. RADHA KUMUD MOOKERJI: Hindu is from Sindhu.

SHRI KAILASH BIHARI LALL: It has nothing to do with religion. Saivism, Vedantism, Vaishnavism or any 'ism' has not got such a tenet.....

MR. DEPUTY CHAIRMAN: I did not want to disturb you but at the same time I have to remind you that

you have accepted the connotation of the word 'Hindu' by passing previously the Hindu Marriage Bill and also the Hindu Minority and Guardianship Bill which has been reported on by the Select Committee and you have argued at length on that while speaking on those Bills. So any argument on that question will be redundant and it will be a waste of the time of the House. So I would request you to please drop that point and give any other suggestion if you have.

SHRI KAILASH BIHARI LALL: I will abide by your advice, but so far as relevance of the question is concerned with regard to this Bill. I am.....

MR. DEPUTY CHAIRMAN: This is a part of an entire series.

SHRI KAILASH BIHARI LALL: I am saying this to the Law Minister so that even from today if he finds the mistakes and corrects them in the future laws, it will be better.

MR. DEPUTY CHAIRMAN: You cannot have one connotation in one Act and another connotation in another Act. Since the House has already accepted the connotation of the word Hindu as applied to Hindu law, I think your arguments in that connection are redundant. You may please proceed to some other point.

SHRI KAILASH BIHARI LALL: I abide by your advice but we are accustomed to.....

MR. DEPUTY CHAIRMAN: Don't labour that point.

SHRI KAILASH BIHARI LALL: Now with a plethora of Bills that are enacted into law daily we are becoming habituated to the amendments of so many laws and who knows that my advice may bear fruit and my friend the Law Minister may bring amendments even for those passed Bills

MR. DEPUTY CHAIRMAN: You may bring an amending Bill but just now it is not relevant.

SHRI KAILASH BIHARI LALL: Why should I? I hope the Law Minister will see his way. So I am not precluded from.....

MR. DEPUTY CHAIRMAN: You have said enough about that.

SHRI KAILASH BIHARI LALL: Perhaps you will be again telling me that I am repeating because I spoke on the last Bill also. But that repetition is not irrelevant so far as this Bill is concerned. I am only making submission that so far as this definition of the word 'Hindu' is concerned, we may go by the right path from today. It is not as if we have gone on the wrong path till now and there have been several Bills enacted into law to our credit so far as Hindu Law is concerned, that we should not take to the right path from now on and that we should not bring an amending Bill to correct even those Bills. So I was trying to press this before the Law Minister but if you wish, I may stop. I have made my suggestions to him regarding this and if it is persisted in by all our friends, I always resign myself in that spirit to what is going to happen because I know, for want of such clarification, such a confusion has brought about even Pakistan today. I know that even Mr. Jinnah said that the Hindus will have no sense. Then Mr. Jinnah was being governed by Mitakshara Hindu law. and so many Muslims were being governed by Mitakshara law and Mr. Jinnah did not want to be governed by the Arabic law of inheritance when Mr. Mohammad Kazmi brought in the old Assembly a Bill for the application of the Shariat Law to all Muslims irrespective of any customary law. Then Mr. Jinnah was the man who said that the Hindus will have no sense. I pointed out even then and I was told by our Party Leaders 'How does it concern us? It concerns the Muslims'. So we allowed it to go. Even today it may be the case. Of course I bow to such inevitable things but I don't see that I am precluded from pressing my point even today, for whatever it may be worth. I would

[Shri Kailash Bihari Lall.]

request the law Minister not to bring in so many communal laws in the form of Hindu Code. Tomorrow he may be prepared to bring a Muslim Law of Succession and a Christian Law of Succession. In the days when we are professing to have a common nation and to mould the whole society into one nation, and we are advancing on the path of nationhood, how does it lie in our mouth to advocate such communal pieces of legislation? That is the only point with regard to this Bill. Other things have already been said by me. Whatever in our combined wisdom we think of ushering in a society for the menfolk and womenfolk, I always bow down to that. I think I have taken much time and perhaps I would not like to go on still further and I leave these points for the consideration of the Select Committee.

SHRI S. M. HEMROM (Orissa): Mr. Deputy Chairman, I should have been the last person to be dragged into the controversy of this Hindu Succession Bill.

MR. DEPUTY CHAIRMAN: I want to call the hon. Law Minister at four and there are still about 3 more speakers. So please be brief, Mr. Hemrom.

SHRI S. M. HEMROM: This Hindu Code Bill is a long awaited measure but from the way in which these measures of the Hindu Law are enacted it seems that it will take many more years for complete codification. We don't know yet what Bills and how many of them are to come to complete it. I therefore would suggest the drafting and circulating all of them and for that the Government should constitute a Hindu Code Bill Committee. I also request the Law Minister to submit this report of the Joint Select Committee not by August but at an earlier date and if possible, by the end of this Session because if this Bill is passed through the Select Committee earlier, there will be more time for the Members to discuss this Bill by the next Session. This is a welcome measure because it places on

the Statute Book this piece of unwritten law of Hindus but the controversies that are arising are due to the fact that the society comprises of so many sects with so much of orthodoxy and conservatism. Sir, I have heard for the last two days quotations from Manu etc. I think they should have been taken not only seriously but also with much respect because from the discussion that takes place sometimes it becomes very serious and sometimes very light. I take part in this discussion because of this fact that I have great respect for the Hindu religion but I find that there are so many abnormalities in the very functioning of the Hindu society. In this connection, a few hours ago one of the hon. Members—Mr. Panigrahi—raised a point as to whether the Scheduled Castes should come within the purview of this Bill or not. Sir, some time back, I put a question regarding the definition of 'Scheduled Tribes' to the Home

Minister. So far, it appears 3 P.M. to me that it has not yet been properly defined as to who are the people to be known as Scheduled Tribes, because among Scheduled Tribes there are many who are practising what is called "animism". There are also many who follow the principles and practices of Hindu society. Also, according to the directives of the Home Ministry, there are Christians also listed as Scheduled Tribes. Therefore, I submit it would be rather premature to bring the Scheduled Tribes within the purview of this Bill.

I may also point out in this connection that among the Scheduled Tribes there are many who are more advanced than the other Hindus in the matter of allowing the womenfolk a share in the property of the parents. Even the unmarried daughter gets a share of the parent's property. Anyway, the right of women to inherit property has been conceded in this Bill and I support it. I also submit that only when the extent of the application of the term "Scheduled Tribes" has been made clear will there be justification for bringing the Scheduled Tribes within the purview of this Bill.

In a general way, we may view this measure in another light. If we go back to the early history of our civilisation, we find that there was a time when only the matriarchal system was in existence and women were all in all. Everything belonged to them. Of course, I do not know what was the position of the male members in those times. Anyway, at the present time so far as Hindu society is concerned, the great majority of the population follows the patriarchal system. But with the impact of still more advanced or modern ideas we find that there is a growing recognition that woman also should have the same right as man. That is also given in our Constitution. In this Bill we are going to give the same rights to our womenfolk. So it looks as if this Bill is a kind of a compromise between the matriarchal and the patriarchal systems. I hope that whatever is good in other societies, among other people or religions should be incorporated into this measure.

Sir, just a few words about a few things that I find lacking in this Bill. When dealing with the disqualifications, I do not find the "exiled son" being dealt with. Sometimes we find in Hindu society, the parents divorce the son and you have the "Thyajya Putra". After the death of the father, will the son be disqualified from succession? I hope this point will be included when the Bill is considered by the Select Committee.

Another thing that seems to have been left out is this. There is provision to say that an heir becomes disqualified when he accepts another religion. But in Hindu society, we know there are many castes—Brahmins, Kshatriyas, Vaishyas, Sudras and so on. And there are several cases of members of one caste marrying from another caste. When such an inter caste marriage takes place the couple are out-casted or excommunicated. So in such a case whether they will be disqualified from inheritance? That is not made clear in this Bill.

I hope these few points that I have brought to their notice will be considered by the Select Committee. These are the few remarks that I wanted to make, and Sir, I have pleasure in supporting this Bill wholeheartedly.

SHRIMATI BEDAVATI BURAGOHAIN (Assam) Mr Deputy Chairman, I must, first of all, congratulate the hon. Law Minister on his bringing forward this measure which has long been overdue and which seeks to remove the anomalies that prevail among Hindu families in the matter of the daughter inheriting her father's property.

Sir, I know nothing about law and I have nothing to contribute from my side to the discussion on this Bill and whatever I say will be merely a repetition of what has already been said. But all the same, I would like to speak a few words which may be like adding more fuel to the fire to strengthen the cause of our sisters.

Whatever may be said by men, women in our country have for a long time been agitating to bring forward this sort of a measure, dealing especially with the subject of inheritance to property.

This Bill is fulfilling this object. I have been hearing various arguments of the hon. Members on the floor of this House for the past two days. It is a very healthy sign that most of our friends have supported this measure and there are only a few who have supported this measure half-heartedly. After all men are mortals and everything on this earth is transitory and why should we be miserly about property? Girls, born of the same parents, also must have the same right to property. Why should you want to deprive them of the right of inheritance to property? Is it because they are illiterate? Is it because they are incapable of managing property? Is it because they are denied the right to offer pindas to the deceased? Or, is it because if a girl is given a share

[Shrimati Bedavati Buragohain]
the family will be disrupted? I think these are all superfluous arguments. The existence of different forms of Hindu law in different parts of the country made the succession law more complicated and efforts should be made to establish a uniform law throughout the country. If a Mitakshara father dies leaving behind a son and a daughter, the entire property would pass on to the son by survivorship and if that son were to die leaving only a daughter, then the property would pass on to the daughter, that is to the granddaughter and the daughter would not get any property at all. Why should there be this differentiation? The other day Dr. Kane said that Hindu law was never static; he said it was always progressing. It was preserving the continuity but also was making necessary changes. Should not the daughters be given an equal share with the sons in democratic rule? Sir, friends have argued that the daughter is given a big dowry at the time of her marriage, and why should she be given an equal share with the son? On the other hand, the girl gets property in her husband's house also. There is a very bad custom in our Hindu society. Unless and until this system is removed our society cannot progress economically. Economic independence of women is economic independence of the nation. I appeal to the Members of the Joint Select Committee to give serious thought to this piece of social legislation and I hope the Succession Bill will emerge out of the Joint Committee with full justice done to women.

With these few words I conclude my speech and thank you, Sir.

SHRI P. T. LEUVA (Bombay): Mr. Deputy Chairman, I rise to offer my remarks on this Bill but I am sorry, Sir, that I am not in a position to offer my congratulations to the hon. mover of this Bill on several grounds. I will come later on to the reason why I am not in a position to offer my congratulations to him.

Fortunately for us now, the controversy that was raging regarding the question of codification of Hindu law has been settled. Formerly, when the question was raised regarding the codification of Hindu law, there were many arguments advanced against it but as that controversy is now over, I will not make any reference to it.

The second question that we have to consider is whether this Parliament should embark upon the reformation of Hindu law, making improvements in Hindu law, if we find that the provisions contained in the Hindu law are not suited to the conditions of the present times. I do not wish to dilate on that question that Hindu law has always remained dynamic, that time and again the ancient law givers, the commentators, the Smriti writers and all of them, whenever they found it necessary, have made improvements on the Smriti texts whenever necessary. That was done; those interpretations were accepted by the general masses of the country for the simple reason that the persons who gave those interpretations, those who wrote the commentaries, were persons of such high calibre that they used to be universally respected and whatever they said was accepted as good law even though, in actual fact, it may prove to be contradictory to our Smriti texts. You will find the classic example of the improvement of Hindu law by the commentators. You will find that in India, so far as the Hindu law is concerned, there were two commentators who have been always accepted as authoritative: one was Vijayanesvara and the other was Jimutavahana. Vijayanesvara was the person who gave rise to the Mitakshara school of Hindu law and Jimutavahana was the person who gave rise to the Dayabhaga school of Hindu law. I do not wish to dilate at great length on that question but you will find that the texts on which both of them have relied for the foundation of their schools more or less resemble each other. If you interpret strictly

the mere grammatical meaning, you will find that the text is similar and there cannot be any difference in it so far as interpretation is concerned but both of them had given two different systems, the Dayabhaga system in Bengal and Mitakshara in the rest of the country. They had Dayabhaga in Bengal to suit the local conditions there. I will refer to the texts which are referred to by Yajnavalkya and Devala:

विभजेरनुसुताः पितृरुर्ध्वं रिक्तमृणं समम्)
(याज्ञवल्क्य)
विभजेयुः पितृश्च मातृश्च ऊर्ध्वं सुता धनम्।
(देवल)

This means that after the death of the father, the son, which includes according to our interpretation the grandson and the great grandson, will divide the property, if there are more, in equal shares. It really means that after the death of the father, the sons and the grandsons etc., will divide the property in equal shares. This was the Smriti fixed by Yajnavalkya. On this text, Vijyanesvara gave the interpretation of right of survivorship. Then we get the Dayabhaga school, "urdhvam, pithrischa, mathrischa....." which means that the sons divide the property after the death of the parent. Same words but both the commentators gave different interpretations and we have got two different systems. That goes to show that whenever we find it necessary, when the rules of law did not satisfy the conditions in the country, it is necessary and it becomes obligatory on the persons who attempt to give law to devise such rules which might be in consonance with the social needs. Therefore, Sir, in the absence of these text writers and commentators, this work has to be done by somebody, otherwise the progress of law, the progress of society, might be retarded and that is the reason why, in the absence of these commentators for a number of years, our law has remained static. There was a vacuum because there was no commentator who could

improve upon the Smriti texts or on the previous commentators. We can now say that the Legislature or Parliament would be perfectly justified in abrogating, if necessary, the rules of law which are not suitable to the present conditions in our country. The position which was occupied by the commentators, the Smriti writers or the persons who gave those laws, is the position to be taken up by Parliament today and I would, therefore, submit, Sir, that at present if we find that certain rules of law have become out of tune with the modern conditions, we should not fight shy of removing them or abrogating them if we feel ourselves that unless and until those rules are removed, we will not be able to do justice to all the sections of the community. I would therefore submit, Sir, that at the present moment, in order to preserve the elasticity and the flexibility of our law it has become essential that we must remove the rules of law which are not suited to our present conditions. Therefore, Sir, if the Bill proposes any departure from the accepted notions of Hindu law, we should not be shocked at it, but on the contrary we must welcome those measures which will go to show that our system has still retained its vitality.

Now, Sir, I will come to the main question regarding the question of property. According to me, Sir, that is the central point in the whole Bill. The fate of this Bill will depend upon clause 5. Clause 5 relates to the application of the rules of succession laid down in this Bill to property. Now, the property which a family can possess might be self-acquired property of a person or it might be joint Hindu family property. Now, Sir, this system of joint Hindu family property is available in both the systems. In the Dayabhaga system there is the joint Hindu property; in the Mitakshara system also there is the property which is known as joint Hindu property, in other words, coparcenary property. But the main distinction between coparcenary property in the Mitakshara system

[Shri P. T. Leuva.]

and joint family property in the Dayabhaga system is this that devolution of right of Hindu family property under the Mitakshara system takes place under the system which is known as right of survivorship, while under the Dayabhaga system of law, succession or inheritance takes place on the right of succession. That means that when the last male holder dies, the person inheriting the property does by inheritance and not by way of survivorship. So that is the simple distinction between the systems of Dayabhaga and Mitakshara.

Now, Sir, the Bill says that the provisions of this Act shall not apply to "any joint family property or any interest therein which devolves by survivorship on the surviving members of a coparcenary in accordance with the law for the time being in force relating to devolution of property by survivorship among Hindus" and the rest of these things are not very material for my present discussion. Now what is the position? The law would be only applicable to the self-acquired property or the separate property of a Hindu person which belongs to a joint Hindu family property governed by the Mitakshara system of law.

Now, Sir, it is common ground that the majority of Hindus in India are governed by the Mitakshara system of Hindu law. There is a very small population which is governed by the Dayabhaga system of Hindu law. It is only confined to Bengal, but the rest of India including South India, with certain exceptions in Travancore-Cochin and Madras, is governed by the Mitakshara system of Hindu law. Now if you want to make this law applicable only to the separate property of a Hindu, what would be the benefit that we can give to persons who are intended to be raised to the level of sharing with the sons. Now according to the Mitakshara law as well as the Dayabhaga system of law, if there is a male inheritor then all other heirs

have no right of succession whatever to the property of a Hindu whether it is governed by the Mitakshara system of law or governed by the Dayabhaga system. In Mitakshara also if the father dies, then the son, grandson and great grandson, get the property by right of survivorship. In case of the separate property of the father, if the three categories of sons are available, son, grandson or great grandson, then only the sons, the male issues only share the property to the exclusion of all other relations. In Dayabhaga also the same thing and so far as the succession to the property of a Hindu male is concerned, the sons only are entitled to inherit to the exclusion of all other heirs. Now in this present Bill there is an attempt to add certain categories of persons to the list of heirs who are entitled to get property. In Class I of the Schedule you will find now "son; widow; daughter; son or daughter of a pre-deceased son" etc. Formerly only the son was entitled to take property by inheritance, but now it is proposed to add daughter, widow; son or daughter of a pre-deceased son and so many others. It is no doubt true that there is a certain type of advance on the present law in as much as the daughter who had no share in the property of the father in case the son was alive will now have. That position has now been improved and widow and daughter have been now added as first class heirs. The position as per this Bill now is that the son, widow and the daughter will all share together in the property of the father. But the main question still remains as to what would be the ultimate effect of the benefits that you are now conferring upon women. Now, Sir, the self-acquired property of a Mitakshara Hindu father will only be governed by this Act. Now there is the self-acquired property or separate property of a Hindu male and even though it might be a self-acquired or separate property of a father, those persons who do not wish to give any share or any benefit to the widow or daughter what they do

is this. In case of litigation attempts will be made to show that the father never left any self-acquired property, that he had no separate property and whatever property was left was joint Hindu family property. On the other side there might be attempts to show that all the property of the father was self-acquired property. Now if you maintain this distinction between separate property and joint Hindu family property, there would be a lot of litigation and in most cases the women will be defrauded of their rights. Therefore I would submit, Sir, that in order to make the law simpler, it is necessary that there should be only one type of property in our country; there should not be distinction between self-acquired property and joint Hindu family property. Otherwise under the guise of giving some right to women you are only giving them mere husk; the grain is taken away by the other relations of the last male holder and the woman only gets a small portion of the property and after that also you are now proposing that only one half share of the son will be given to the daughter. The ultimate effect would be that the daughter will not get anything which is substantial.

Now what is the argument against this right of property to be given to the daughter or the widow? So far, Sir, the widow has been given only an estate which is known as limited estate of a woman. Now according to that principle, a widow can only enjoy the property during her lifetime. After her death the property reverts to the next heir of the male holder. Now that is known as the right of reversion. Now that limited estate of the widow will now become an absolute estate under this Act; there is no doubt about that. But that would be only confined to the small portion of the self-acquired property of the father. The main argument against this is that if you give a share to the daughter, that will disrupt the Hindu joint family as it stands today. Now, Sir, you must recognise one thing that there is a distinction between joint Hindu

family property and joint Hindu family system as such. Under the Dayabhaga system of Hindu law there is the joint Hindu family; under the Mitakshara system also there is joint Hindu family but it is not necessary that the family should have joint property at all. The jointness or the disintegration of the joint Hindu family does not depend upon the devolution of property. Devolution of property takes place in Dayabhaga system of law also; it takes place under the system of Mitakshara also. But the jointness of the Hindu family will never be governed by this consideration that the daughter, because she has got a share, she may ask for partition. I will say, Sir, this argument will have no value whatsoever. If you refer to the Hindu Women's Right to Property Act of 1937 you will find that the widow on the death of the husband has been given the right to take possession of the share of her husband although that property right is only a limited right which is known as widow's estate. But the widow has been given the right to demand partition of the property and she is entitled to take the share of the husband and enjoy the fruits of the property during her lifetime. Therefore the question of the disintegration of the Hindu family on the ground that if the daughter is given a share she will ask for partition and that the Hindu family would be disintegrated has no basis whatsoever. Because that right was already given to the widow. If she chose she could ask for partition at any time. But since 1937 till today you do not find any evidence to show that the widows have asked for partition of the property of the husband which has led to the disintegration of the Hindu joint family. So any argument based on the ground that it will lead to the disintegration of the joint Hindu family is of no value whatsoever. It might be said that the joint Hindu family has served a very useful purpose in our society. It may be true but that does not mean that that

[Shri P. T. Leuva.]

system will ever continue to have that influence in times to come. It may have no utility whatsoever so far as present-day conditions are concerned. The joint Hindu family system was more or less the outcome of pastoral conditions which were existing at the time when these rules were framed. The rules of Hindu Law which were framed 2,000 years ago cannot have any application in modern times when the social values have changed. So many ideologies are coming into existence which might strike at the very root of property. Therefore this argument that if the daughter is given a share in the property she might act in such a way that the joint Hindu family property might be dissipated is based on wrong notions and inadequate appreciation of the real effect of the provisions of this Bill.

Now, the second question is regarding the share that is to be given to the daughter. The argument has been advanced that daughters should not be given a share at all. While the other argument is that daughters should be given one half share and that is what is incorporated in the Bill. Now, I do not understand why there should be a distinction between the son and the daughter. If the property is to be given to the children, it must devolve on all the children in equal shares. There is no justification for giving half share to the daughter. And what is the basis on which this argument is advanced? The argument is that the daughter will get the share in the property of her husband after her marriage. The same argument can apply to the other side that when the son marries he will also get a share in the property of his wife. So there is no basis whatsoever to show that there should be any unequal treatment so far as the granting of a share to the daughter is concerned.

Now, another thing to which I would like to make reference is that

in the list of heirs which has been given to us in the Schedule there are two classes of heirs. In one class there is given the son, widow, daughter etc., and in the other class there is given father, mother, son's daughter's son and so on. These are the two classes of heirs who will inherit the property of a person. Now, unfortunately, the father and mother have been kept in Class II. The result is that on the death of the son, his property would devolve on his son, widow, daughter and all those relations which have been mentioned in Class I but the father and mother will not get any interest or share in the property of the son if any of the heirs mentioned in Class I are in existence at the death of the person because only the heirs mentioned in Class I will share the property of the deceased in equal or unequal shares as might be laid down in law. But the people belonging to Class II can inherit the property only if all the heirs in Class I are not in existence. Secondly, in Class II the persons who have been mentioned there will inherit property only in the absence of the prior category of persons in that particular Class. If the father and mother are in existence then the son's daughter's son is not entitled because the father and mother are living. But the father and mother being in the second Class, they will not get any share in the property of the son if there is the son of the latter in existence or if the widow is in existence, if all those relations mentioned in Class I are in existence. And you will see that some of those relations are very remote to the deceased—son or daughter of a predeceased son, son or daughter of a predeceased daughter and so on. If you apply the rule of propinquity you will find that they are far away in degree than father and mother. So I would submit that so far as father and mother are concerned, we must upgrade them to Class I. It may be that you may not give them equal share with the son, widow or daughter but they must be given some share at least in view of the fact that if the

son dies the parents might not be having any means of subsistence. They might be in an advanced age and they may not be in a position to earn anything at that time of their life. If you do not make any provision for them and just leave them to the sweet will of the other heirs, it is just possible that they will have to face starvation. I would therefore submit that the father and mother should be upgraded and put in Class I

Another thing to which I would like to make a reference is this that if we accept that the daughter is to be given a share in the property of the father, then I do not see any reason why there should be any difference in the order of succession. If the son is to inherit equally with the daughter, the devolution of their property must be made on one and the same order of succession. So far as the property of the females is concerned we have laid down a different order of succession in clause 17 according to which on the death of the female the first preferential class of heirs of the female the first preferential class of heirs are the children including the children of any pre-deceased child. When the woman dies, whatever property she might have possessed would devolve only on her children and the children of any pre-deceased child; if they are in existence, then the other heirs are not entitled to inherit. When we give the same right to the woman as the man, I cannot see any reason why there should be a different order of succession. We must lay down one uniform order of succession for males as well as females. There should not be any distinction whatsoever. I submit that the order of succession which was laid down for *stridhan* was based on the ideas which were in existence in those days because in those days women had very little property of their own. She might have received some gifts from her parents or husband or she might have worked and she might

have got some property of her own but that property being of very insignificant quantity, it was not found necessary that the rule of succession which governed the devolution of the property of the males should be the same for them. Therefore so far as *stridhan* was concerned the woman was given preference in succession, just as in the case of property of males, the males were given preference. I would therefore submit that when we are removing all these distinctions between males and females regarding the right of property and the right of inheritance, it would be rather unfair to maintain them here. I would therefore submit that these clauses, 16, 17 and 18 must be recast and put on the same lines as the provisions contained in clauses 8 to 14. Because when we are giving uniform rights, equal rights to others, it would be much simpler and easier to administer and implement the law if the rules of succession are uniform for both the categories of people.

Now, there is one thing to which, again, I would like to make a reference and that is regarding clause 30. The convert's descendants are disqualified. Now, under this clause if a person is converted to any other religion, except the Hindu faith, then he does not lose his right of inheriting the property of his Hindu relatives. I have no quarrel with that proposition whatsoever. If a person becomes a Muslim, I have no objection if he is given a right of inheritance to his Hindu relatives' property. But what I would like to point out is this that under this clause a person who gets himself converted is put on a better footing than his own children. Now, I will read out the clause as it stands:—

"Where, before or after the commencement of this Act, a Hindu has ceased or ceases to be one by conversion to another religion, children born to him or her after such conversion and their descendants shall be disqualified from in-

[Shri P T Leuva]

heriting the property of any of their Hindu relatives, unless such children or descendants are Hindus at the time when the succession opens"

Now the effect is this If the children of a convert were brought up as Hindus, they would be entitled to succession to the estate of their Hindu relatives, but if they were not brought up as Hindus, then they would be debarred from inheriting the property of their Hindu relatives Now, this sounds very strange

A person who becomes a convert by choice, by deliberate intent he becomes a convert to another faith, you preserve his right of inheritance to his Hindu relatives' property, but his children who are not converts of their choice—they are converts because their father had converted himself to another faith—have been deprived of the right of inheriting the property of the Hindu relatives

SHRI J S BISHI For how many generations would you like to extend this?

SHRI P T LEUVA What I say is this Either you give rights to both—the convert as well as his children—to inherit the property of Hindu relatives or take away the rights of both The moment a person becomes a convert to any other faith except Hindu, you take away his right of inheritance to his Hindu relatives or if you want to give that right, extend the right to both the children as well as the convert

Now, Sir, as a matter of fact the Hindu Law Committee itself has referred to this question in its report and has expressed the opinion that this question must be reconsidered because you will see that this clause has been inserted on the ground that under the Caste Disabilities Removal Act, 1850 conversion to any faith did not disentitle a person from inheriting the property of his relatives

This Act is still in existence Now, Sir, I do not wish to enter into the genesis of that Act That Act was passed nearly a hundred years ago and after hundred years you want to maintain that Act Now, under that Act, mere conversion did not disentitle a man from inheriting the property of any of his Hindu relatives You want to continue the same Act today What is the justification for it now? If a person by choice is to take to any other religion, then why should he claim any right to the property of the Hindu relatives? I cannot understand any logic in it I would submit that if you want to give this right, give it equally to the children as well as the convert himself, but do not make any distinction between the convert and his children

Now, there was one argument advanced regarding disqualification of unchaste wife An unchaste wife being disqualified from inheriting her husband's property is not a new concept in Hindu Law That has been in existence since time immemorial And we have accepted the principle of this disqualification of unchaste wife in our Hindu Marriage Bill If you will look into the provisions of the Hindu Marriage Bill, you will find that unchastity is a ground for judicial separation and an unchaste wife is not entitled to claim alimony When you have taken away those rights from an unchaste wife of claiming alimony, how can you extend the right of inheritance to such a woman? If a woman was unchaste during the lifetime of her husband, surely she should not get higher rights after the death of her husband During the lifetime of her husband she could not have claimed alimony from the husband because she was disentitled under the Hindu Marriage Bill After his death why should she get this right? Another thing is this There is a safeguard provided for the benefit of the woman, that is, this unchastity must be proved during the lifetime of her husband Mere allegation after the death of her husband

would not disentitle her from inheriting the property because the proviso says "that the right of a woman to inherit to her husband shall not be questioned on the above ground, unless a court of law has found her to have been unchaste as aforesaid in a proceeding to which she and her husband were parties and in which the matter was specifically in issue, the finding of the court not having been subsequently reversed." Therefore, the fact of unchastity has to be judicially decided upon during the lifetime of the husband. That is one thing. Secondly, if the husband has condoned the unchastity during his own lifetime, then subsequently the widow cannot be disinherited on the ground of unchastity. Therefore, law must always be of assistance to those persons who are virtuous, who do not desire to take advantage of their own wrong. On that very basis clause 27 cannot be assailed at all. I would, therefore, submit that on two grounds only I have not offered my congratulations to the Law Minister. I hope that the Joint Select Committee will consider this question of Mitakshara system of Hindu Law. The Rau Committee went into this question, travelled all over the country, gathered evidence and they came to a decision that the Mitakshara system of Hindu Law was not necessary in the present conditions of our country. That judgment was based on considerations of evidence which was available to them in those days. Three eminent persons were members of that Committee. Of course, one of the members did not agree with the recommendations of that Committee. But you must remember that that Committee was presided over by the late Shri. B. N. Rau. Sir, he was an eminent jurist very learned in law and the judgments which he had incorporated in his Report cannot be lightly dealt with. Whatever recommendations were given by the Hindu Law Committee should be accepted by us and acted upon. From 1948 till today there has not been any change in the circumstances in the country which

can allow us to think that the recommendations of the Rau Committee should be brushed aside. What we want is that it is not a question of giving any privilege or preference to anybody. In our country according to our Constitution everybody is entitled to the equal protection of the law. Males as well as females must be given equal treatment, whether it be property or any other right. But if you accept the Bill in its present shape, it means that we are not willing to extend the same rights to women as we want to claim for ourselves. It is not a question of giving charity or distributing alms to any woman. The women of our country are not coming to us begging for any favours from us. The only justification for their fight is this that it is a question of social justice. Sir, the question whether you want to be just to your women folk is the main question that is to be decided when considering this Bill. Sir, I would submit that before we attempt to become charitable, we must be just. I would, therefore, submit, Sir, that the Select Committee should consider this whole question and make this law applicable to the Mitakshara system of law as well.

SHRI S. C. KARAYALAR (Travancore-Cochin) Mr. Deputy Chairman, this Bill relating to succession among Hindus is designed both to amend and to codify the law relating to succession among Hindus. I fear, Sir, that there is an attempt at codification, but this codification has been much whittled down by the scope of the Bill being very much narrowed.

Sir, the object of codification is to enact the law on the subject exhaustively, to make the law simple and clear. But judged by the standards of simplicity, clarity and exhaustiveness, I fear that this Bill falls very much short of those standards. I shall explain why I consider that this attempt at codification has not been complete.

[Shri S. C. Karayalar.]

We have only to refer to clause 5 which has been referred to by several other hon. Members. Sir, clause 5 says that "This Act shall not apply to any joint family property or any interest therein which devolves by survivorship on the surviving members of a coparcenary....." If we exclude the property covered by sub-clause (i), the area of legislation is very much narrowed down, so that the object of codification is not served. Sir, the justification that has been made by the hon Minister in charge for leaving out the joint family property out of the scope of this Bill is that the doctrine of survivorship that is applicable to a Hindu Mitakshara coparcenary has got to be honoured. As a matter of fact, there is no justification for keeping this theory or doctrine of survivorship alive, because he will find that this doctrine of survivorship in the Mitakshara Hindu Law has been almost completely exploded both by judicial decisions and by legislative enactment. The theory of unity of Mitakshara Hindu law has been broken up by the Privy Council decision under which an undivided coparcener of a Mitakshara Hindu family can by a mere unilateral expression of his intention separate from the family, so that the unity can be broken by a single member by a unilateral expression of his intention. This is good law even today. Again, it is open to the creditor of an undivided coparcener of a Hindu family to attach his interest in the coparcenary property and to bring it to sale. I also said, Sir, that by legislative enactment also this theory of unity of the Mitakshara Hindu family has been further broken by the Hindu Women's Rights to Property Act of 1937. Under this Act, Sir, the widow of a deceased coparcener of an undivided Hindu family can step into the shoes of her late husband and even ask for a partition of the property; and enforce her right by a suit for partition. So, Sir, the forces of judicial decisions and also the later

legislative enactment have combined to completely destroy the unity of the Mitakshara Hindu family. The unity now remains only by fiction, and there is actually nothing to support the theory of unity

Sir, on this subject, several jurists and authorities on Hindu law have expressed themselves very strongly with regard to the need for reforming the Hindu law. You, Sir, during the course of your speech, referred to several opinions of several jurists and authorities on Hindu law. I might refer to the opinion of the late Mr. S. Srinivasa Ayyangar, Editor of Maine's Hindu Law, who wrote on this subject in 1941 in the Madras Law Journal. He said as follows:

"Serious inroads have been made into the coparcenary by the rules regarding the son's liability for his father's debts, by the doctrine of severance in status by unilateral declaration of intention and by a recent enactment that a widow of an undivided member takes her husband's interest in the coparcenary property."

Again he goes on to say:

"The legislature should lay down only one mode of succession and the rules of inheritance should be the same, whether the family is divided or undivided and whether the property is joint or separate."

And he goes on in the same strain and expresses himself in very strong language that there is no case for treatment of the family property on a different footing from the separate property of an undivided coparcenary.

And again, Sir, you will find that both the Rau Committee and also the Select Committee of the Provisional Parliament went into the whole question, and they have recorded their considered opinion that there is no case for treating the joint family property on a different footing from the separate property. The entire property should be treated as one

single property and should come in for succession and it should be approximated to under the Dayabhaga Joint Family system, so that all members of a joint Hindu family, even under the Mitakshara law should be deemed to hold their property as tenants in common. Sir, that is an essential reform for which necessary provision should be made in the law, so that the whole field of succession to property may be covered by this Bill. In so far as this Bill does not bring within its ambit the joint family property, there is a lacuna. In fact, Sir, it is a very serious lacuna which has got to be properly cured. Sir, that is one aspect.

And then I said that the law should be very clear, simple, and all that. I will refer to this aspect of the matter concerning the estate of a woman. Sir, it is laid down in clause 16 of this Bill that the property of a female Hindu will be her absolute property. But this relates only to the property which she gets absolutely, and does not relate to the property which she gets from her husband. That property will still continue to be held by the widow as a limited estate. Sir, there is a lot of misunderstanding as to the scope of the limited estate which the widow of an undivided Hindu coparcenary holds. She is entitled under the Act of 1937 to claim partition of the share of her husband, but the estate she will get will be a limited estate. It is neither a life estate, nor an absolute estate, although under certain circumstances the estate which she holds will be absolute in the sense that it can be sold by her under certain conditions. But it is neither a life estate nor an absolute estate. This is a sort of an anomaly in the Hindu law which has got to be rectified. Sir, this 4 P.M. state of uncertainty with regard to the limited estate of the widow of an undivided coparcener has given rise to a lot of litigation in the past and it is likely to lead to litigation in the future as well. This state of uncertainty should be put an end to, and it is high time

that this is done by enlarging the estate of the Hindu widow and making it absolute.

Coming now to the heirs specified in this Bill, the line of succession is on the lines recommended by the Rau Committee and the Select Committee of the Provisional Parliament. Now, instead of the principles of consanguinity and propinquity, they have adopted the rule whereby the heirs will be those who are near and dear. Succession will be regulated by principles of natural affection and love for the deceased. So, in the new concept the daughters are placed in the same category as the sons. The daughter has been advanced to the same status as the son. That is a very welcome feature of this Bill, but at the same time, coming to the quantum of the share for the daughter, only half a share is given to the daughter. While it is conceded that the line of succession will be based upon nearness to the father or the mother, at the same time it is provided that the daughter will get only half a share. When the son and the daughter are put in the same category, there seems to be no reason why the share of the daughter should be reduced to one-half. As a matter of fact, the Select Committee of the Provisional Parliament recommended that the daughter should be given as much share as the son. I do not see any valid reason for discarding this recommendation of the Select Committee of the Provisional Parliament.

Sir, several Members asked why certain local laws—enactments like the Marumakkattayam Act and the other Acts listed in sub-clause (iii) of clause 5—have been left out of the scope of this Bill. The reason is that under the Marumakkattayam and other Acts which have been mentioned there the position of the woman is much higher than that of the man. The Marumakkattayam Law for instance has accorded a very favoured position for women for a very long time. It is not the result of the enactment alone. As a matter of fact,

[Shri S. C. Karayalar.]

the position of the son has been advanced by the Marumakkattayam Act. Women have always had a favoured position. Since the Marumakkattayam and other Acts accord a high place to women, naturally they should not be brought under the purview of this Bill. There is no earthly reason why their position should be lowered by this Bill. As you have said, Mr. Deputy Chairman, similar enactments have been made in your State, Mysore, also. Incidentally I might say that the Acts which you referred to will not be saved and this matter will have to be looked into by the Select Committee.

DR. SHRIMATI SEETA PARMANAND: Instead of lowering their status, the position of women should be stepped up in this Bill.

SHRI S. C. KARAYALAR: I have already said that the position of women should be stepped up, that the share of the daughter should be equal to that of the son, that the estate of the widow should be made absolute and that all property should be brought under the scope of this Bill including separate property as well as undivided property of the coparcenaries, so that we may advance along the lines chalked out in our Constitution. All these things? I hope, will be considered by the Select Committee. Sir, I support the Motion.

SHRI J. S. BISHT: With your permission, I wish to put only two or three questions to the hon. Minister. In view of the more or less unanimous views which have been expressed here, it is likely that the Mitakshara joint family system will go. In that contingency, will the hon. Minister consider the desirability of limiting the power of will, as it is done in America, so that the next of kin are not completely cut out? That will to some extent assuage the fears of those who at present have a vested

right in Mitakshara joint family property.

Will he also consider the desirability of making the form of the will simpler, instead of its being very complicated and legalistic, as in the Indian Succession Act? The vast majority of the people in the rural areas are not lawyers; are not educated, and are not in a position to obtain legal opinion. Often thousands of wills are thrown out merely because of certain technicalities of law. The form should be simpler as for privileged wills in the Indian Succession Act.

SHRI H. V. PATASKAR: Sir, in the course of my reply, I will try to reply to the points raised by the hon. Member just now. I am really happy to note that the Bill which I have introduced, at any rate the principle underlying the Bill, has been generally accepted and even in respect of those who did not whole-heartedly support it, I find that there is a change in the atmosphere inasmuch as nobody went to the length of directly opposing the measure or the principle underlying it. I know because this is a measure which no doubt, when considered, as I said it should be considered, in the Select Committee, will revolutionise some of the conceptions of our society. For instance, the main fear on the ground of which people opposed this measure is that they somehow or other cannot reconcile themselves to the idea that a daughter should get her inheritance in the family of her father and it is worth while to note as to why it has so happened. As a matter of fact there is some historical background for this development and this general feeling. As I said even last time when I was a Member of the Constituent Assembly and when some time this Bill was being discussed and was brought forward by Dr. Ambedkar, the whole idea was that there was what used to be formerly known as the Hindu Code and its conception was that the family was the unit of the society. If you want to understand all the different

provisions which have been made in the Hindu Law in all their aspects the proper conception you can have if you take into account that those who were responsible for laying down all these matters were guided by one fact, viz., that they regarded that the family was the unit of the society and not the individual. It may have been very useful in those days, under Indian conditions as they existed some 2,000 or 3,000 years back, probably it served a very useful purpose. Because many of the things which were developed could not have been developed by the individuals in those days and therefore they regarded the family as the unit. Therefore the father had superior rights over his sons and daughters and once you start with this conception that it is not the individual but it is the family which is the unit of the society, then you can easily understand why the daughters were excluded. It cannot be anything else. The idea then was that they wanted to perpetuate the family and strengthen the family and they regarded so in fact the Law of Adoption with all its complications so much in this society. I would have liked to avoid the word 'Hindu' because I have already said that it is a term of recent growth. In the absence of any other word, I have to use it but the whole conception of society then was that the family was a unit and so naturally all the laws are based not on the rights of the individuals—the individual had no right—it was the level of the family which was then the unit of the society for which provision was made. You can find it so and I will not go into details though I find there are very eminent people who have gone into this question and so I need not repeat it but the main thing to understand is that as the family was the unit of the society, all those rules followed as to whatever could strengthen that and not the individual. It was therefore that the daughter had no right and the wife was made to serve only the interests of propagat-

ing the family. Look at some of refer but all these abnormal things those old things to which I need not which now look abnormal were introduced into the structure of what we know as a law governing the society. It was due to the fact that they regarded the family as a unit. Therefore perpetuating the family was the object and they wanted to support it. But now the problems are entirely different. It is from that point of view that the daughter had no right and the wife had no right. There were so many other customs to which I would not make a reference because I want, as I said and I appealed to hon. Members, to avoid all references which might lead to any bitterness. Therefore I will also avoid it but without that, I ask all serious men to consider that the whole trouble had been not because they wanted to be against daughters, against wives, against widows but having started with that idea under which the family was to be the unit of the society, then all those developments followed. But you must remember that even in former times it did not remain static. They had to make changes in conformity with the times. It was on those occasions therefore that all these things happened. What is the position today? We know that the family as a unit is no longer existing. Why talk of the villagers only? Probably very rich people who, on the ground of family ties can amass much bigger wealth—we know there are big houses—I will not refer to individuals—it is they who will be really affected. The house of so and so, for the last 200 years they have benefited and therefore such people are bound to oppose this but I cannot understand the plea raised on behalf of poor people or the middle-class people. Where are those families? For the last three generations or so when people began to migrate and learnt to do all these things, naturally this conception disappeared. As soon as people began to go out for occupations or for other things outside, these things changed

[Shri H. V. Pataskar.]

Economic considerations have affected it and this conception, this idea is still no doubt there with some people. But I would suggest that trying to defend it under the name of the vast 80 per cent. or 90 per cent. or whatever it is, of those people who are poor has hardly any justification for it. I found very ingenious arguments being adduced. "What do you want to do with this measure? You are hitting the joint family." No doubt as soon as the daughter is given a share, that family bond is weakened. There is no use mincing matters. That is the position. But the reasons which led to her exclusion no longer hold good. Take for instance the Mitakshara system. What is the law among Hindus at present? It is the Mitakshara law among the great majority of them and the decisions of the courts. What are the basic principles of the Mitakshara law? That property passes by survivorship; that a person gets a right in it by birth. Both these two things are there. What more can you introduce now? The daughter is certainly going to marry and go outside. Why give her a share? It is from that angle or from that conception of society that people argue. I can understand that ideologically they cannot reconcile themselves to this new idea. I have heard an hon. Member actually say, "As soon as the daughter goes to another family on marriage, she is as good as dead to the former family". But why should she be as good as dead? Why should we consider it like that in the year 1955? Why should that conception continue?

With all this impact of ideas of Western countries, with the rapid development of means of communication and due to so many historical causes it is impossible to maintain in these days the old conceptions of family, with limited estates and all the implications that come from it. Of course two members of a family can remain joint even now, there are partnerships and there are all sorts of associations now which did not

exist in olden days. But let me make the position quite clear, that whether you give the daughter full or half share, the fact remains that the old conception of joint family is bound to dwindle and disappear with the introduction of the daughter as an heir. But I would appeal to those who probably instinctively feel that that should continue as far as possible, and I would ask them whether that conception has remained the same in all the other aspects also. During the last three generations or so, say during the last one hundred years, people have been taking to various kinds of education, they have gone in for various occupations and they have gone to different places, some to practise as doctors or lawyers, others in service and so on. Among them, do you think the same old conception of family still continues? Suppose in Bombay there are three or four brothers and one of them goes to Calcutta in search of a living, starts earning there, takes a wife and he has a daughter born to him. He belongs to a joint family; but will he have more regard for his wife and daughter or will he continue to have the same regard for his other relations at Bombay, for people living far away? Should he be governed by that old conception and not by his natural affection and love? Should he be governed by something which existed in the past, which served its purpose then but which at present is absolutely of no use?

What happens when a man takes up some science and earns a property? Because he was educated at the cost of the family, if he goes out and makes some money, can somebody from his joint family say, "No, you are not the master of this money, it is not yours or your daughter's or your son's. They will get nothing from it, it has to come to the family, because the family property was used to defray the cost of your education." Can that be maintained?

Take the case of the poor people also. Suppose a man has a piece of land in a village and a number of

brothers. They cannot maintain themselves and some of them come to the cities. Wherefrom do all the poor people come to Bombay? They come from Upper India, they come from the mofussil to Bombay, to Madras. These poor labourers from the rural places, cannot live on their small piece of land as they used to do a hundred years ago. So men go to Bombay and other places to earn a livelihood. They marry there and continue to live there. How can you expect such a man to continue to love or have the same regard for the others and should he be governed by the law which some centuries or thousands of years back existed? That is an impossible position even for these poor people. Because of the march of science, and because of so many causes, thousands and thousands of people migrate to different places to earn a living. So the economic factor is there. So it is no use trying to stick to the same old system which regarded the family as the unit of society. You cannot do it in the present century, because it leads to litigation and so many troubles. Hon. Members know how many cases arose on the ground that the man got his early education from a nucleus of a family property and so what he earned by his own ability should not go to his own sons but to somebody else. I know of several such cases. I have seen some years ago families from rural places—I myself come from a rural place—who had been living on a hundred acres of land, a number of brothers and their children, some working and earning, others not, but all were happy, because the land was enough for them. But now naturally things have changed and so it is not possible for them to continue like that. So the lower and middle classes or the educated classes and the poorer sections will not be affected by this measure. The only class which probably will be affected is the class of the so-called big houses of capitalists. But how many are they? What will happen? Probably with this measure on, they may feel that the daughter does not belong to the family, that there is no longer that tie by which

they could form corporations of the old type. So why in the name of the poor masses, object to a measure of this nature?

DR. SHRIMATI SEETA PARMANAND: So it will reduce corruption—a healthy effect.

SHRI H. V. PATASKAR: Well, I would not like to enter into other matters in this connection. I was really surprised to hear some hon. Members oppose this measure. Whom do you want to affect by this law? 85 per cent. of the people are poor and they have no property and they will not be affected. So, for whom are you bringing this Bill? Well, this sounds very fallacious, for the reason that the masses unfortunately are not in a position to understand all these things. The old sentiments of family still remain in spite of the fact that conditions have changed. I do not understand why they should object. Suppose a man has no property or has only 5 acres of land, and a thatched hut. Some hon. Member described here the calamity that would happen to him if the daughter were given a share. If the poor man has a hut and only four or five acres of land and he has three sons, then what happens? The same thing will happen if he has two sons and a daughter. She too will be given a share. I do not understand if it is not going to affect him if he gives the shares to the sons, how it is going to affect him if the daughter is also given a share.

DR. W. S. BARLINGAY (Madhya Pradesh): Then in that case why give her only a half-share?

SHRI H. V. PATASKAR: I will come to that later, when I deal with the detailed provisions of the Bill.

As a matter of fact it is all based on sentiment. In this House, probably, we have been discussing these matters so many times that hon. Members are able to view it in a different light. But I know if you

[Shri H. V. Pataskar.]

tell an ordinary man outside, that his daughter is going to be given a share, he will be shocked. Not that he has no love for his daughter, not that he loves her less, but because of the old traditions. I do not think that an orthodox man loves his daughter less than the so-called reformer does his. Everybody loves his daughter. Whether it is a daughter or a son, it is a matter of parental love.

Yesterday, some hon. Members said that if you provide a share for the daughter, then the father will will away all his property. Why the father should do that, I cannot understand. I do not think that is the sort of idea to which fathers in India are accustomed. I do not think that they are so devoid of parental love for their daughters that they will try to give away their property by will to others. I cannot follow or understand that kind of an argument, which I heard people put forth seriously. They asked, "What is the good? You provide for testamentary disposition. So the father will give the property to the others." I can't think of any reason why he should do so. On the contrary, he will not do so. There was a lot of discussion on the floor of this House on the question of dowry. This system arose, as a matter of fact, from the man not being able to give a share to his daughter. He wants to do something for her, but she is not entitled to get anything on partition. So he is anxious even by incurring debts to do something for her, and he gives her a dowry after finding out a suitable bridegroom. It is for this reason that this system of dowry exists in that society where the father is not able to give the daughter anything by partition, where he is not able to follow the trends of his natural affection. I am sure when the daughter gets a share by inheritance, the son-in-law too, if he is a wise and shrewd man, will welcome it. The father too will not feel at the time of marriage that that is the last time that he can do something for his daughter, for along with the sons, she

too will, on partition, be getting something. In fact, to my mind there is no other solution to this problem of dowry. As far back as the year 1913 in my college days in Fergusson College there was, I remember, one girl student by name Sneh Lata—also from the same province from which Dr. Mookerji comes—and she committed suicide.

She committed suicide because her father was not able to give dowry and she could not be married. She thought that the whole family was suffering misery on her account and, therefore, to rid her father of the anxiety, she committed suicide, and I know, as a student in those days, huge demonstrations were arranged and the people took a vow that they would not take dowry. Ultimately it was not carried out. After all, it was only a sentiment; nothing more to it. Merely crying aloud against the dowry system will not do any good. I know that some of the lady Members, especially from Bengal, are very anxious that there should be an anti-dowry Bill but my own trouble is, whatever Bill we pass, we will not be effectively solving the question because every father, on account of his parental love, and so long as there is no such provision for his daughter, wants and is very anxious that his daughter should be in such a place, to be married in such a place and to such a man, where she may not require anything from him. We have to look to the social forces that operate in the rest of the society. It is clear enough that if we provide the daughter with a right of inheritance, the question of dowry will, in course of time, disappear. The idea of giving dowry is only to secure a good man. There is no one who likes to give a dowry and there is no one who advocates this system of dowry but the point is, we are putting the argument the other way about. The dowry system is the result of the present unsuitable law of inheritance. I heard very pathetic tales about the father having had to incur debts, the brothers suffering, the homes breaking up and all

that. To my mind, Sir, if we take a long-range view of the case, the only solution to that problem is the giving of a share to the daughter in inheritance and making her entitled to a share in the property of the father. If the father is poor, she will get along with her brothers something, not much, and so long as the law of property stands, so long as we recognise private property, the only solution to that question is, as I said, the giving of a share to the daughter. Therefore, let us not try to misconstrue both these issues.

Before I turn to the various matters that have been raised so far as this point is concerned, let us be clear on this point that the inheritance to be given to a daughter is based on the natural love and affection which is prevalent in other societies except the one where it is not being carried for the reasons which I have already explained. The only remedy to solve the social problem of dowry will be to provide the daughter with a heritage and not to oppose it and I think those who, by talking in the name of the masses, will try to create an unnecessary misunderstanding will be doing a disservice to the country rather than helping that cause. After all, as I said, it does not matter much. We have made provision that if there are three brothers and one daughter and supposing a large portion of the property will remain with the family, the brothers, if they so choose, can live together. I do not know how many brothers are going to remain joint. I also can speak with some knowledge of the rural conditions and I find in my own district, which is fairly good, that as soon as the father dies, some brother goes out or something else happens and the joint family is not there. It may be due to wives quarrelling or whatever it may be. The whole concept of social life and the impact of economic circumstances is such that it is impossible for anybody hereafter to try to perpetuate this system. It is entirely unsuited and, therefore, the sooner we do away with it, the better

will it be in the interests of our society.

There was another question that was asked; I think every Member who supported this measure has asked me as to why, in clause 5 of the Bill there is a sub-clause which reads as follows: "(i) any joint family property or any interest therein which devolves by survivorship on the surviving members....." I have already explained as to why this has been put in. As you know, Sir, when this Bill was first tried to be pushed through, there were various points raised, many of which are not now raised. In fact, one Member said that he is now prepared to accept the inevitable, to submit to the inevitable. That was not the attitude at that time. A Hindu Code was drafted, a committee was appointed and I have given all that history. Naturally, what we desired was to enact reform measures and the question was whether we should enact them by bits or in one code which would have been very good. There is no doubt about it that we want to have a code of law, at least for the Hindus which should be one, not several, one dealing with marriage, one dealing with guardianship and another dealing with succession and so on. But then the net result of bringing forward that code was that it took such a long time, so many objections were raised and so many enquiries were made, and all that, that it was thought better not to bring the whole code at one time on account of certain difficulties and that an attempt should be made to push through different parts. The first part dealing with marriage was taken up, reported on by the Joint Select Committee and has been passed by this House. It is pending before the other House. The most important, namely the Succession Bill, has now been introduced. What is the title of this Bill? It is "The Hindu Succession Bill". Well, in the Mitakshara joint family, it is not succession but it is only survivorship. What they get is not by succession but by survivorship. Therefore, as the whole

[Shri H. V. Pataskar.]

thing was out of the scope, that family was not included in this Bill. There were provisions in the old Bill which took cognizance of what was going to happen after the code was enacted. I was convinced when I first saw the Bill that if a daughter was to be given a share, we must, at the same time, decide this question about the joint family because you cannot proceed otherwise. We should know what happens if a daughter is given a share in the joint Mitakshara family. It is, therefore, inevitable that along with this Bill we should take into account the question of what should be the basis on which, if at all, the joint family is to continue. I find that there is general agreement so far as the question of giving of a share to the daughter is concerned. If that general agreement is there, naturally I hope and trust that the Members of the Select Committee and the House will see what is to be inevitably decided and done and which will logically follow from the fact that a daughter is going to be given an inheritance in the father's property. It is only from that point of view that this was done this way, not that Government had made up its mind that it should apply only to such and such people and to none others. I made it clear in the beginning that nobody need have any fear or anxiety; all that will be considered by the Select Committee. If, unfortunately, they come to the conclusion that the joint Mitakshara family must continue, which I do not think is very likely, then naturally we must accept it but, if they come to the other conclusion, then naturally I think it will be rectified. As I said, the whole thing depends upon the wishes of the House and of the Select Committee. What we should decide or not is for you to decide and I think it will be decided by the Select Committee and, later on, by the House in course of time.

The next objection that was raised was, why should the daughter be given only a half-share in the property. So far as the Mitakshara family property

is concerned, it is not the exclusion of that property. I have already said enough and I do not think it needs further elucidation.

Then we come to the question as to what should be the share of the daughter which again is a very important question to be considered. If we have to proceed without taking into account some other considerations to which I would make a reference and to which reference had already been made by some of the hon. Members, then there is no reason why there should be difference in the share of the son and the daughter. But as was pointed out by many people, in respect of a daughter the father has to spend out of the family assets for her marriage and for her dowry which is the position as it exists now; it may disappear after some time. And therefore there was a large body of opinion when that Bill was brought who thought that a daughter may be given something less than the son.

SHRI R. C. GUPTA (Uttar Pradesh): Does not the father spend on the marriage of his son also?

SHRI H. V. PATASKAR: I don't dispute that; on the other hand the father has to spend, I mean in middle class families, as much for the son as for the daughter in their education, in their marriage and all that.

DR. SHRIMATI SEETA PARMANAND: The question was, after the Select Committee had decided on a full share for the daughter, why was it reduced to one half of the son?

SHRI H. V. PATASKAR: This is what the Rau Committee recommended after full enquiries and it was put forth like that in that Bill. The Bill was brought twice, first by Sir Sultan Ahmed when, I think, it did not make any progress. Later on it was brought by Shri J. N. Mandal and pursued by Dr. Ambedkar when it did make some progress and a Select Committee was appointed and that Select Committee

no doubt said that the daughter should be given a full share along with the son. Subsequently, that Bill also, after the report of the Select Committee, could not reach its ultimate destination. Now it is not necessary to go into that history. That is what happened. When this Bill was brought forward probably it was thought that it would be better to leave this matter as recommended by the Rau Committee, also because the last Select Committee did not finish its work and the whole Bill collapsed. I do not know the exact reason and Dr. Ambedkar was a greater enthusiast than myself and still, I find, nothing much could be done in carrying it out. But the mere fact that now the share is mentioned as one half will not debar the Select Committee from deciding as to what the share should be. The first thing as I said and the most important part is a recognition of the share of a daughter in that Mitakshara joint family property, which is now excluded. In other respects, so far as other property is concerned, that is a different matter. Therefore I think this matter also will be suitably dealt with. I cannot say how it will be decided, but, as I said, in this matter also we shall be guided by the wishes of the Committee and the House here.

DR. P. C. MITRA (Bihar): Daughter must get full share because in the old days the daughter served the mother and father more than the son. Son is a son so long as he is not married and daughter is a daughter all her life.

SHRI H. V. PATASKAR: Let us more or less try to avoid in our reference to sons and daughters as to whether the daughter is better or the son is better. As I said, parental love is common to both and let us regard both equally because I know there are sons who have been doing well by their father and I know there have been like daughters also.

DR. P. C. MITRA: There is the proverb that son is a son so long as he

does not get a wife, daughter is daughter for all her life.

SHRI H. V. PATASKAR: They are of various types.

DR. W. S. BARLINGAY: He is referring to filial love, not parental love now.

SHRI H. V. PATASKAR: Whether the son is always better.....

DR. W. S. BARLINGAY: He says there is the distinction.

SHRI H. V. PATASKAR: It is for individual persons to hold independent opinions, but I would like to appeal to hon. Members to proceed on this normal natural basis that there are good sons and bad daughters and good daughters and bad sons. I know there have been instances in which I can tell the hon. Member that a daughter remained unmarried because there was no one else to support her old parents and the family. I also know that there are sons who are equally good and who also did not marry because there were aged parents, sisters to be married, to be educated and so on. It all depends upon individuals.

DR. SHRIMATI SEETA PARMA-NAND: May I ask, Sir, why in some respects, in drafting the Bill, conveniently the Rau Committee's opinion is taken, for instance, in the matter of not giving a full share to the daughter, but in other respects their opinion that Dayabhaga should be applied to the whole of India has been left on the top shelf. We want to know why a consistent policy has not been followed in drafting this Bill.

SHRI H. C. DASAPPA (Mysore): She is a member of the Select Committee and she can place her views there.

DR. SHRIMATI SEETA PARMANAND: For the information of the House I wanted that explanation here.

SHRI H. V. PATASKAR: I can only say that I have tried to make it as clear as I possibly could as to why half share is mentioned in this Bill. As regards why there is change with respect to joint family property, as to why this right by birth and survivorship were tried to be taken away in one of the clauses which was there in the Hindu Code, probably if that part and this part had been before us we might have considered them together. But the same result will follow. The hon. Member need not be anxious as in any case this Bill is going to a Select Committee. I have already made it clear that she can discuss that question and whatever is decided will follow as a matter of consequence in this Bill. So let us not try and go into those things, as to why this is not there when that is there. For all practical purposes I have made it perfectly clear that that matter will be decided by the Select Committee first and then by Parliament, and, as I said on the day on which I introduced the Bill for consideration in this House, all those questions will have to be considered. I think there should be no unnecessary apprehension that something is being done in order to favour one side. As a matter of fact I don't look at this Bill as a Bill for daughters or sons, women or men, but I look upon this Bill as a Bill which has been brought forward for effecting a change in the social order or rather conforming to the social order and in the interest of both, in the interest of all concerned. So let us forget that point of view.

Then I would like to tell you that I shall take about half an hour or three quarters of an hour more and I would ask you, Sir, whether I can stop here.

DR. RADHA KUMUD MOOKERJI: May I put a question? Some time

back I had the honour of moving in this House a Bill called Childless Widows' Right to Property Bill. At that time when the Bill was being voted upon the Law Minister gave me an assurance that the provisions thereof would be included in a comprehensive Bill. I wish to know whether that will be done.

SHRI H. V. PATASKAR: Well, at the present moment I have no information on that point, but I will try to make enquiries and look into the matter as to what assurance was given and what happened to the Bill. Just now I am not in a position to reply to this question raised by the hon. Member.

DR. RADHA KUMUD MOOKERJI: I have already submitted to the hon. Minister a copy of that Bill.

SHRI H. V. PATASKAR: I have got the Bill, but I had no time to look into what had happened last. Therefore I am not in a position to give a firm reply to that question.

MR. DEPUTY CHAIRMAN: Will you go on till five or do you want to conclude now?

SHRI H. V. PATASKAR: I want more time. It will be convenient for me if I can stop at this stage and go to the details tomorrow.

MR. DEPUTY CHAIRMAN: We will take up this Bill after the non-official business tomorrow and you can conclude your reply tomorrow.

The House stands adjourned till 11 A.M. tomorrow.

The House then adjourned at fifty minutes past four of the clock till eleven of the clock on Friday, the 25th March 1955.