

[Mr. Deputy Chairman.] quarters of an hour in reply and the hon. Minister has also replied. He is not prepared to accept it.

SHRI KAILASH BIHARI LALL: With all respect (that I have got for the Chair, I feel that you are forcing the issue.

MR. DEPUTY CHAIRMAN: All my sympathies may be with you but the hon. Minister is not prepared to accept it.

4 P.M.

SHRI KAILASH BIHARI LALL: I appeal to the Law Minister.

MR. DEPUTY CHAIRMAN: All my sympathies may be with you but it will not be of any avail in view of the attitude of the Law Minister.

SHRI KAILASH BIHARI LALL: Just as Shrimati Parmarand was saying

MR. DEPUTY CHAIRMAN: Let us not waste any further time, there is further business. I want to know your attitude.

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SHRI KAILASH BIHARI LALL: If it is kept pending—there are so many Bills pending

MR. DEPUTY CHAIRMAN: He is not prepared to accept that position, he has made that clear.

SHRI KAILASH BIHARI LALL: Is he prepared for circulation?

MR. DEPUTY CHAIRMAN: He has said that he is not prepared. We have reached the stage when the Bill should be either withdrawn or the motion put to vote.

SHRI KAILASH BIHARI LALL: Then I withdraw.

MR. DEPUTY CHAIRMAN: Has he the leave of the House to withdraw?

SHRI P. S. RAJAGOPAL NAIDU: No.

MR. DEPUTY CHAIRMAN: Even if there is a single 'No' I have to put it to the vote. So first the amendment.

SHRI P. S. RAJAGOPAL NAIDU: My 'No' may be treated as 'Yes'.

MR. DEPUTY CHAIRMAN: I take it that the House gives him leave to withdraw.

The motion was, by leave, withdrawn.

THE HINDU SUCCESSION BILL, 1954 — *continued*

MR. DEPUTY CHAIRMAN: Mr. Pataskar.

THE MINISTER IN THE MINISTRY OF LAW (SHRI H. V. PATASKAR): Sir, yesterday I replied to the two important points which had been raised during the discussion on this Bill, firstly, as to why those joint families governed by the Mitakshara law have been excluded so far as this Bill is concerned. I also explained as to why and under what circumstances we mentioned that the daughter should get half of the son's share and added that it was open to the House to decide what they like. Now before I proceed to the other points, the hon. Member, Dr. Radha Kumud Mookerjee, put me a question and the day before yesterday he had also given me a copy of his Bill relating to childless widows' right to property. I have very carefully gone through the Bill of the hon. Member by which he wanted to give childless widows the right of inheriting their property as an absolute estate. I think that was the only clause which is contained in that Bill and that was with the object that wherever a childless widow inherited in Bengal according to the Dayabhaga or I think even according to others then she should get an absolute right in that property, which is not so now. At the time when the Bill was discussed I find also that my colleague the hon. Mr. Biswas said—I think it was in reply to Dr. Seeta Parmanand who was speaking on the motion—"I might assure her that Government still adhere to that view. So, when the promised legislation regarding succession is brought forward,

there will be a provision that the interest, which a widow inherits, will be an absolute interest". To that extent that promise has been carried out. In the present Bill and now I am glad to find that the present Bill gives that right, and whatever rights there may be and wherever women get any rights in property by inheritance they are all absolute right. There is no limited right; that is abolished. Therefore the present Bill goes much further than the Bill which the hon. Member had brought forward only for childless widows, leaving aside even other widows and daughters and other persons concerned. So whatever he had in view is not only carried out, but carried to its logical conclusion. Therefore, I think he will be very glad and happy to find that his suggestion has not only found a very limited favour with the Government and the Law Ministry but it has been carried out at the suggestion of the revered Member, Dr. Mookerji, and to that extent I am glad, and I think that will satisfy him.

Then I will not start with reference to every individual Member because I think thereby I will take unnecessarily longer time, but I have tried to summarise all the main points that have been raised so far as this Bill is concerned.

Now one common feature of the argument was that this is more or less a communal legislation, as my friend the hon. Shri Kailash Bihari Lall said, and they asked: Why are you not bringing a uniform code? Why are you legislating only for the Hindus? And there was a vehement attack on this aspect of the Bill. I think, as I said in the very beginning, this matter was also discussed at the time when two earlier Bills were being debated upon in this House and I have not much to add to what was said then in reply. I would only say that this is a first step in the direction of having a common uniform law. Even at the present moment we are realising the difficulties which we

may have to face by roping in this Bill all the communities except probably the Christians, the Muslims, the Parsis and the Jews. I think the rest are practically tried to be included so far as the provisions of this Bill are concerned and when we are making an attempt like that, I don't think it is reasonable to charge that we are having • communal legislation. My hon. friend Dr. Mookerji very rightly said that probably 'Hindu' is a term which is of recent growth. However it may be and whatever the historical causes, the fact remains that during the last two hundred years this term 'Hindu' came to be applied, so far as the administration of the law of inheritance and succession is concerned, to different groups of people.

As I said in the beginning of my speech in the 17th century when the East India Company started legislation first probably in their own factories and later on in parts of Bengal, Bihar and Orissa which they had got by Diwani rights from the Moghul Emperors, and even before that probably in a small area of Bombay, they were called gentoos. As a matter of fact the first name given to this was Gentoo Code because at that time they did not want to interfere with the laws applicable to Muslims and others. Therefore unfortunately if we have to use the word 'Hindu' it is not with a view to perpetuating any communal denomination as such. But the fact is that we are going to legislate for a very large group of people. It covers more than 80 to 90 per cent, of the population and it is from that point of view and not from any communal angle that the term 'Hindu' is used here. My hon. friend, Shri Kailash Bihari Lall, yesterday took the view that it is because of such terms as Hindus, Muslims etc. that we have suffered, that there was this* partition and so on. I can assure him that except for this historical reason and as there is no other suitable name, this word 'Hindu' has been used in this Bill. In the absence of a better term and in order to make it

[Shri H. V. Pataskar.] clear to whom this Bill is applicable, this word has been used. There is no other motive than that nor is there any recognition of communalism or any religious difference. Historical facts have to be taken into account and they cannot be eliminated except by passage of time when they might disappear.

Then another point that was raised was as to why it is called intestate succession. It is so because we recognise that a Hindu can make a will as good as anyone else. As I said yesterday if we logically follow the line of reasoning and if individual property is to be recognised, naturally it will follow that in his lifetime a Hindu can deal with his property in any way he likes. He can spend it; he can preserve it; he can do so many things and what is left, that alone will come to his heirs. Another point was also raised in this connection that by giving this testamentary power, probably the people might will away their property in such a way as to defeat inheritance. Yes, but when will it happen? When you make the inheritance laws in such a way that they do not conform to the natural instincts of love and affection, it might happen. Otherwise, if you have a normal law of inheritance based on the principles of natural love and affection, ninety or ninety-nine per cent, of the population will not think of using these powers. According to our conception of private property, just as a man has got the right to dispose of and deal with his property during his lifetime in any way he likes, in the same way he can decide as to who shall succeed to his property after his death. I know there are some exceptions like the Muslim Law but for the present it is much better to conform to the idea that when a person owns property whether got by acquisition or inheritance or in whatever way, normally he should also have the right to decide as to who shall succeed to his property after his death. But if there is a good law of inheritance which takes into account the natural ins-

tincts of love and affection, then there will be no trouble. It is very difficult for people to make wills. Normally they do not do it. This Bill applies only to intestate succession because testamentary succession is a different thing altogether. Beyond that there is no other object in view in saying that. If, however, it is thought that the nomenclature should be changed, that can be considered because we are not very so particular about the name as about the principle.

Another point was made that this does not apply to Kashmir. That is an objection raised whenever a law is sought to be made which is not applicable to the State of Jammu and Kashmir. And this aspect has been discussed so many times. I will only again remind hon. Members—who probably may not be aware of it—that there is an agreement—and there is a President's Order in that connection—between the Jammu and Kashmir State and the Government of India and on the basis of that order legislation on these matters falls within the jurisdiction and competence of the Government of Jammu and Kashmir. Therefore, at any rate for the present, you cannot force this on them. Merely by wishing that certain things should happen, we cannot straightway make this applicable to that territory and thus break up whatever agreement is there. It is the safest way of not keeping them with us but of driving them away from us. It is most dangerous for responsible people even to raise this matter in connection with a Bill like this. The problem unfortunately is still pending and we all know and realise what it is. Therefore it is on account of these difficulties that we do not want to do that. A time may come when it is possible to extend this to that State but at the present moment it is not possible to do so. Even so, we have gone to the farthest extent possible in this regard. 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 domiciles in the territories

to which this Act extends who are outside the said territories". If there are any persons who have gone there who are really domiciles of our State, this law will be applicable to them.

Another argument which was advanced was about the question of fragmentation. The evil of fragmentation is there; nobody doubts it. But what is the way of solving it? Can it be solved by denying the daughter the right of inheritance? Suppose there are four brothers. What happens in that case? The fragmentation goes on. Therefore on that ground let us not deny inheritance to daughters. The prevention of fragmentation is a matter which has to be dealt with purely on an economic basis. That has nothing to do with the question of inheritance because there are so many systems of inheritance. There is a different law for Muslims, a different law for Christians. So fragmentation is an economic problem arising out of several circumstances which have no bearing on this question of inheritance. Even, if you can solve the problem of fragmentation by denying the right of inheritance to a daughter you can do so only among certain classes of Hindu families. It does not solve the problem in its entirety. So that argument is not valid for the simple reason that the problem of fragmentation has to be solved in a different way. Different States are solving that problem. They are trying to prevent fragmentation. At least in Bombay I know there is a law. So this question of inheritance has nothing to do with the problem of fragmentation. Some people are apparently obsessed with this idea. Somehow or other they cannot reconcile themselves to the idea of a daughter inheriting property and therefore they put forward all these things but that is not the right way to look at this question.

Another point raised was: Why not make this law applicable with retrospective effect? I do not think I need go into that point at all. A law of this nature cannot be made applicable with

retrospective effect without disastrous consequences, extensive litigation and without up-rooting the rights of different people.. It is not desirable from any point of view, even if we can make it with retrospective effect, to do so and I think we should be content, even those of us who have got the most progressive ideas, if we succeed in having this law, that we have been able to achieve that.

Then, there is clause 17, and I think both Dr. Kane and Mr. Barlingay and even some other hon. Members who spoke, said that if the wife inherits to the husband, why should not the husband be allowed to inherit to the wife? So far as the present Bill is concerned, it is true that the wife inherits the property of the husband, but the husband does not. I think probably the idea is that so far as the present is concerned most of the properties to which the husband will succeed will be her '*Stridhan*' properties—which has been recognised even in the past. It is probably from that point of view alone that in the list of heirs to the wife, the husband does not find an immediate place, but some sort of a secondary place. Beyond that there is no reason. However, if it is the general wish now that we are going to have legislation which will not only be applicable for the present but will also be there for a long time in the future, I shall have no objection if the Select Committee decides one way or the other as they like. It is more or less a small point so far as the present things are concerned and I think there will be very few husbands—at any rate for a good deal of time to come—who will be very anxious to inherit from their wives if they have nothing else to fall back upon.

SHRI H. C. DASAPPA (Mysore): I was suggesting, Sir, that nowadays the tendency is to have properties in the name of the wife.

SHRI H. V. PATASKAR: That is only done to avoid income-tax perhaps. That is no reason. And there-

[Shri H. V. Pataskar.] tore, I think, we should not take them as normal things for which provision should be made in law.

Then, much was said with respect to this question about the unchastity of the wife and several Members went to the length of condemning this clause 27. Of course, I am not happy about the way in which it is worded and I will accept any change which may be suggested. But there is nothing which should excite people to go to any length, because after all the present Hindu Law is that an unchaste wife has no right of inheritance to the husband and I do not think anybody can challenge that proposition.

SHRIMATI SHARDA BHARGAVA (Rajasthan): There is no mention of unchaste husband.

SHRI H. V. PATASKAR: I will come to that. So far as this provision is concerned, it was thought that she should not be penalised. Then, again, those who framed this clause also thought that it should not be a handle in the hands of other people whose inheritance is affected by the inheritance of the wife—for them at any time to come round and say 'this lady was unchaste'. We know in our society as it stands that this temptation for the sake of personal gain is there on the part of the different heirs, to come forward and make an allegation lightly. We find such allegations going to the courts. It was, therefore, thought that it must not be anybody who can raise it, but it must be something which should be decided during the lifetime of the husband. After all I conceive that such cases will be very rare. But supposing it happens that a man finds that the wife was unchaste, he had discarded her, he was not living with her, and ultimately, when he dies, she comes on the scene. The court should have found her to have been unchaste in a proceeding to which she and her husband were parties. This would be an extreme case. Otherwise, it would practically prevent all

litigation. It would prevent people from making wild allegations against the wife after the husband's death. It is more or less for the protection of that that this has been done. However, I do not attach so much sanctity that it should come in this very form. So far as I can find the genesis, it should not be directly condemned as something which arose out of somebody's imagination. At the present moment there is such a provision and it was realised that this provision is not being rigidly used, but in future it might be used also more and more for the purpose of depriving her of property. Because of this, the provision was made. It may be a very rare case but all the same it is there and I think this need not be regarded as something which is very dangerous or bad.

SHRI P. S. RAJAGOPAL NAIDU (Madras): May I know where is the provision in the existing law that an unchaste wife or unchaste widow shall not inherit the husband's property? I might tell the hon. Minister that the Hindu Women's Rights to Property Act, 1937, does not debar an unchaste wife or unchaste widow from inheriting to her husband's property.

SHRI H. V. PATASKAR: Apart from that, I think there are certain decisions as to what she is entitled to and what she is not entitled to. However, I will not enter into a general discussion. We will examine that point.

SHRI P. S. RAJAGOPAL NAIDU: That Act is very clear. Notwithstanding any custom to the contrary the wife can inherit under section 3 of the Hindu Women's Rights to Property Act.

SHRI H. V. PATASKAR: I will examine that question a little more thoroughly, but I do not think that even now an unchaste widow can inherit. Further, we might consider the 4th point in the Select Committee as to what is the harm if the clause is there as it is, I will leave those things open.

Then, as I said, there was some objection raised with reference to property, to make a will. I have already replied to it. I think it is a normal concept which is attached to properly and, therefore, I think we need not run away with the idea that people will always go on making wills and disinherit those people. At the same time, there was a standpoint 'hat just as in (he Muslim Law—a Muslim cannot make a will of all his pro-oerty—there should be some restriction on this power-. I think that would be going too far at present. Let us leave the owner of the property with the normal right of making a will which he or she at present possesses.

Then, I have noted with satisfae tion that every one of the Members who have spoken has agreed on two very important things. One is that the limited estate should go. At least I have not heard any specific mention by anyone against it. I really compliment hon. Members who have very readily accepted this fact, because that is also one important aspect. Because this limited estate was responsible for much of the litigation and I have also heard a good many Members saying: why not make the law a little simple? For the reason that they have been thinking that all this Hindu Law as it now stood was more or less what is known in public parlance as the lawyer's paradise. It was due to the fact that there was no reason in the law, because in the beginning the British decided to administer this law as a personal law of inheritance. They used to do that for about a hundred years: they took the advice of Pandits, etc. After lhat they discussed and then they came to decisions. These varied from place to place. And naturally therefore to leave the law uncoded would mean a paradise for all sorts of people. And so we have to codify it. I think in spite of the objections of certain Members that probably this is not as simple as it should be. I think an attempt has been made to make it as simple as possible and I think that

many of the causes that led to enormous litigation will hereafter disappear. I have already stated yesterday how there was the idea of joint family.

Then, Sir, in clause 5. sub-clause (iii), it has been said that "This Act shall not apply to any property succession to which is regulated by the Madras Marumakkattayam Act, 1932. etc etc." During the short time at my disposal I found out that there were about ten such laws in force in that part of the country. And naturally, it should be our attempt, as far as possible, to bring them to share the common law with us, and I hope that if the hon. Members keep that thing in view, they will probably liberalise the rights of women in such a way that those who are now governed by that, peculiar system of matriarchal law will have no objection to being included in this law. Otherwise, it will not be raising their status but bringing them down, which nobody would like. Equalisation means .that there should be a process by which we raise up the people, not bring them down to the level of certain other people. So we shall have to consider seriously all the implications of those Acts, and if we can really form a sort of a common pool, which can be made applicable even to those people, I think, we may have to make some suitable changes. But the whole matter, so far as I am concerned, deserves to be very closely examined. In this connection, I might point out that on the last occasion when this matter was under consideration, Dr. Ambedkar had gone to Trivan-drum, on the South-West Coast, and he had a conference with various people. And even he then began to waver—he is not here now—as to whether we should or should not make this applicable to them. And from that Doint of view, probably we hav. at the present stage tried to exclude them. However, it will all depend upon the ultimate shape and the form which Bus Bill ig going to take in the Select Committee, where this

[Shri H. V. Pataskar.] matter is going to be examined in detail.

Then, Sir, there is this clause 20 which deals with hermits etc. I think this clause also came »D for a gooo deal of criticism, and even my learned friend, Dr. Kane, could not understand why there should have been a provision like this in this Bill. The whole idea underlying this provision in clause 20 is this. As we know, there are certain classes of people—throughout the length and breadth of India—who do sometimes become, what they call, *sanyasis* or hermits, and who renounce their rights in such cases. It was thought that there may be a few cases like that. Then what should happen to that property? If we are going to codify the law, naturally we cannot keep a void in that way. Otherwise, a question may arise later on as to what should happen to the property of those who renounce the world. It is from that point of view that this provision has been made in clause 20. It may not be of any frequent use, but still, we do not know what is going to happen in future, or what is going to happen after a century or so, or whether this *sanyasi* cult is going to prosper after some time. We have no idea of any such thing at the present moment. Therefore, it was thought better that some provision should be made in clause 20 with regard to this matter, and I think it is a very innocent clause, and nobody need very much worry about it.

Then, Sir, as I said, about 25 Members of this House have taken part in the debate on this motion, and a very large percentage of them have wholeheartedly supported the principle underlying this Bill, though probably none of them entirely agreed with the whole. I am here reminded of some story. There was a painter who painted a very good picture according to his own lights, with everything in its order—nose, hands, limbs, and all that. And somehow or other, he

thought that he might consult also the other people and And out what they thought about it. So, he put it outside his house underneath the bolt, so that people may make their suggestions. The result was that somebody disagreed with the nose, and some other man with the length of the hand, still some others with the fingers, and all that. The result was thait everybody suggested some change some way or the other. So I say that this is not unnatural. It is a natural process. Everybody has found fault with some or the other part of the Bill. But that ii not a new thing. And all that has happened here. But In the Select Committee our task will be to consider everything in detail, not from the point of view of what an individual requires—some things here and some things there—but from the point of view of preserving the whole character of the picture, and also from the point of view of making the measure a healthy one and a good one, so that it may be appreciated by everybody. That is, I think, the task which we shall have to undertake in the Select Committee. Therefore, I do not regard all these criticisms as against the principle of the Bill, but in some details, everybody has his own way to put it. Therefore, on the whole., I am glad that the Bill has received a very good support, so far as this House is concerned, and I think there is a very favourable and good atmosphere both here in this House and in the country outside, and I am sure that this piece of legislation will be carried through.

It is not as if some Members have to take credit for it. After all, this is a historical development that is taking place. We are only the persons who, for the time being, have to play our part, but our task lies in seeing that what we do is in conformity with the times in which we are placed, and in conformity with the conditions about us. In this connection, I would like to read out to you, if you like. the opinion of a very eminent lecturer in the Tagore lecture series. He say»-

"Yajnavalkya made a workable code of criminal law by returning to the older and milder law which had been in force before the ferocious Puritanism and blood-thirsty religious zeal of the Manavan code and thus promoted the peace, progress and culture of the Gupta period. The legal genius of the race then reached its pinnacle of glory."

So, it has its own social effects, and the students of history have to realise that what Yajnavalkya did, led to the glory of the then Gupta Empire period. So, all these changes, social and political, are connected together. And you have to look at them from the whole point of view. Therefore, it has become necessary for us to take the picture as a whole and do the right thing so that we all attain our common objective of seeing that this whole of India is one, socially, politically and economically, very progressive nation.

DR. W. S. BARLINGAY (Madhya Pradesh): May I, Sir, with your permission, put one question? It is the question about agricultural land. As the hon. Minister knows very well, in several States agricultural lands are excluded from the purview of a measure like this. I was wondering whether you would also exclude agricultural land from the purview of this Bill.

SHRI H. V. PATASKAR: At one stage that difficulty was felt but now there is no difficulty on that point.

However, if the hon. Member wishes so, I will discuss it with!

I examine that question. But *so* as I can see, there is now no difficulty. At one point there was that difficulty at the beginning, but now there is no difficulty.

DR. RADHA KUMUD MOOKERJI (Nominated): Sir, am I right in assuming that after all this Bill would apply only to BeDgal and not to other States?

SHRI K. V. PATASKAR: To the whole of India. 12 RSD

MR. DEPUTY CHAIRMAN: The question is:

"That the Bill to amend and codify the law relating to intestate succession among Hindus be referred to a Joint Committee of the Houses consisting of 45 Members; 15 Members from this House, namely:

1. Dr. Shrimati Seeta Parmanand.
2. Shri K. P. Madhavan Nair.
3. Shrimati Savitry Devi Nigam.
4. Shri Rajeshvar Prasad Narain Sinha.
5. Shri Awaanesh Pratap Singh.
6. Shri Onkar Nath.
7. Shri Deokinandan Narayan.
8. Pandit Sham Sunder Narain Tankha.
9. Shri V. M. Surendra Ram.
10. Shri Adityendra.
11. Shrimati Parvathi Krishnan.
12. Shri Rajendra Pratap Sinha,
13. Shri T. V. Kamalaswamy.
14. Shri P. S. Rajagopal Naidu.
15. Shri Amolakh Chand.

and 30 Members from the Lok Sabha;

that in order to constitute a sitting of the Joint Committee the quorum shall be one-third of the total number of members of the Joint Committee;

that in other respects, the Rules of Procedure of this House relating to Select Committees will apply with such variations and modifications as the Chairman may make;

that this House recommends to the Lok Sabha that the Lok Sabha do join in the said Joint Committee and communicate to this House the names of members to be appointed by the Lok Sabha to the Joint Committee; and

that the Committee shall make a report to this House by the first day of August, 1955."

The motion was adopted.

PANDIT S. S. N. TANKHA (attar Pradesh): May i enquire as to who will be the Chairman of the Committee? Mo name has been mentioned here.

MR. DEPUTY CHAIRMAN: The Chairman will appoint him.

MESSAGE FROM THE LOK SABHA
THE SALARIES AND ALLOWANCES OF MEM-
BERS OF PARLIAMENT (AMENDMENT) BILL,
1955

SECRETARY: Sir, I have to report to the House the following message

received from the Lok Sabha signed by the Secretary of the Lok Sabha;

"In accordance with the provisions of rule 133 of the Rules of Procedure and Conduct of Business in Lok Sabha, I am directed to enclose herewith a copy of the Salaries and Allowances of Members of Parliament (Amendment) Bill, 1955 as passed by Lok Sabha at its sitting held on the 25th March 1955."

I lay the Bill on the Table.

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

The House then adjourned at forty-three minutes past 10 of the clock till eleven of the clock on Monday, the 28th March 1955.