
SECTION III

DISCUSSION ON THE HINDU CODE
AFTER RETURN OF THE BILL
FROM
THE SELECT COMMITTEE

11th FEBRUARY 1949

TO

14th DECEMBER 1950

* HINDU MARRIAGES VALIDITY BILL

Pandit Thakur Das Bhargava (East Punjab : General): I move :

“That the Bill to provide that marriages between Hindus, Sikhs, Jains and their different castes and sub-castes are valid, be referred to a Select Committee consisting of Giani Gurmukh Singh Musafir, Sardar Hukum Singh, Shri M. Ananthasayanam Ayyangar, Shri Deshbandhu Gupta, Shrimati G. Durgabai, Shrimati Renuka Ray, Shri Ramnath Goenka, Dr. Bakshi Tek Chand, Lala Achint Ram, Ch. Ranbir Singh, Shri Mahabir Tyagi, and the Mover and that the number of members whose presence shall be necessary to constitute a meeting of the Committee shall be five.”

Sir, in making this motion, with your permission, I will just state what the present condition of the law is. At present in all matters, Hindus, Sikhs and Jains are bound by the Hindu Law. In regard to marriage today according to the terms of the Hindu Law, a marriage between a man and a woman belonging to different castes is not valid except in Bombay where *anuloma* marriages are allowed but the *pratiloma* marriages are not allowed. In Allahabad, Madras and Calcutta, the High Courts have been pleased to hold that even the *anuloma* marriages are not valid.

As regards persons belonging to different religions, I should say here also the position is very indefinite. According to custom any marriage is allowed which may not be allowed according to the strict principles of the Hindu Law. For instance, in the Punjab even *karvari* and *chandradari* marriages are allowed, and though according to strict Hindu Law marriages between members of different Hindu communities are not allowed, by custom in many places such marriages are allowed. For instance, in Nepal such marriages are held to be valid. In the Punjab, which is not a caste-ridden Province, marriages between the Sikhs and Hindus have been held to be valid not by the courts but by the society in general. Their children have been allowed to inherit and they have been treated just as though the marriages have taken place according to law. As between Jains and Hindus previously no marriages used to take place, but at present the pendulum has swung the other way and marriages take place between Jains and Hindus, especially Jain Aggarwals and Hindu Aggarwals, but it is very doubtful if a Jain Aggarwal could marry validly a Shudra or a Brahman. As regards sub-divisions and sub-castes also, before the Act of 1946 was passed marriages between sub-divisions of the Hindu community were declared legal in some places and in others illegal.

* C.A. (Leg.) D., Vol. I, 11th February 1949, pp. 419-28.

But that is beside the point here. If sub-division and sub-caste is the same, then I am sorry to have used the word “sub-caste” here. The marriage between the members of the sub-divisions of the principal caste have already been legalised. In regard to the rest, for instance, if persons belonging to different religions and different castes want to marry, my humble submission is that according to the present law such marriages are not legal. At present, public opinion clearly demands that this must go and the marriage between persons of different faiths as well as of different castes should be made legal. At present there are many young men and women who want to marry beyond their castes. So far as public opinion goes, I am on sure ground that we are a solid rock of foundation for this measure.

Taking it from a national standpoint, may I humbly submit to the House that to resolve the present friction between Hindus and Sikhs in the Punjab and to make them one solidified people if hundred girls of Sikhs and Hindus were married to hundred boys of Hindus and Sikhs, the whole trouble would have gone. In fact, I believe that if the Hindus and Muslims had married with each other, this Pakistan would not have been brought about. If we adopt this inter-marriage as a system among ourselves, I am perfectly sure that all the bitterness between the castes and the bitterness between persons of different faiths would go away. I do not understand why we should not adopt this measure. It may be said that the true principles of Hindu Dharm stand in our way, we are not well advised in adopting contrary measures. May I humbly submit that the first *sloka* in Mahabharatha begins in this manner that because there are not many Kshatriyas in the land, therefore some Brahmins may be brought and asked to procreate Kshatriyas. All our religion and our Vedic lore do tell us that among Hindus such marriages were not infrequent. As a matter of fact, before the caste system became stereotyped, it can very well be imagined that there was no prohibition among the Hindus for intermarriage so far as caste was concerned. Therefore taking it from the radical point of view, I should understand that there is no special difficulty with regard to this measure.

But all the same, the point that I wish to make is that it is an enabling measure. It does not force any person to marry outside his caste. If a person so wishes, if a young man and a woman are so minded, if their parents are so minded, all I want is that the couple should be enabled to marry and their offsprings should be legitimate.

At present, if a Hindu wants to marry outside his caste, it is not as if he cannot effect his purpose by resort to falsehood. According to the Arya Marriage Validation Act he can very well marry any Hindu outside his caste. Supposing a person does not belong to Arya Samaj, why should he have recourse to falsehood to effect his purpose ? Therefore, the thing which the law should care about is that persons be enabled to do things in a legal manner. I also know that according to the provisions of the Special Marriage Act (Act III of 1872) it was possible for a Hindu to contract a marriage under its unamended provisions provided he declared that he was a non-Hindu while continuing to be a Hindu. A very nice paradox is given in the Hindu Code by H. S. Gour in para 457. This is what it says:

“It will thus be seen that the Special Marriage (Amendment) Act has created a paradox. If the Hindu declares himself to be a non-Hindu and marries, he remains subject to Hindu Law. If he does not so declare, he ceases to be subject to Hindu Law, giving rise to a conundrum : When is a Hindu a non-Hindu ? The answer is : When he marries as a Hindu under the Special Marriage (Amendment) Act.”

When the Act of 1923 was passed—I have read the proceedings of that time—it appears that Dr. Gour was driven to a corner and he had to accept a situation which would never have been accepted had he been free. According to the Special Marriage (Amendment) Act, the situation is very strange. If a person wants to marry outside his religion, say, a Hindu wants to marry a non-Hindu, then under the Amendment Act, “their previous rights are un-affected to the extent provided in the Caste Disabilities Removal Act.” But yet what happens if they marry ? The disability which they will suffer from, I am going to describe from Gour’s Hindu Law. “Their previous rights are unaffected to the extent provided in the Caste Disabilities Removal Act. They no longer possess the right of adoption. And if the person so marrying is an adopted son, his adoptive father may, if so chooses, make another adoption.” So that the poor man who wants to marry, his rights as an adopted son go away and his father is competent to have another adoption. Then, “such marriage has the effect of dissolving the joint family.” This is another very great disability. If a person wants to marry a non-Hindu, he must cease to be a Hindu so far as the joint family is concerned. Then, “succession to their property and to the property of their issue is regulated by the Indian Succession Act.” My humble submission is that there is no reason why we should undergo these disabilities. Why should a man wants to marry a non-Hindu suffer from these things, which go to show

that as a matter of fact he must renounce all the laws which are dear to him and which he has inherited from generations. This is a wrong provision and leads to fraud and many other evils. There is no doubt that from the old position the present position is a bit better. I know of cases in which Arya Samajists married before the Arya Marriage Validation Act was passed and for years together they did not declare themselves as husband and wife. They were afraid of declaring, and what would happen to their off-spring ? It may be said that at present the Hindu Code Bill is on the anvil, so where is the necessity for this measure at this stage ? I would beg of you to allow me to meet this point.

In the first place, my submission is, I do not know when the Hindu Code Bill will be passed. It is doubtful if it will be passed in this session, next session or some other session. We do not know. Secondly, if this Bill is accepted, it would pave the way for such of the provisions of the Hindu Law as are given there and so it will be a help to passing that law. What would happen to many people who would not marry on account of this law not being there ? Or if a person dies will his rights to property not be affected ? At the same time, if this Bill is not allowed to be passed into law, many cases which could be governed by this law will be governed by the present law and people will suffer. The whole nation shall suffer in so far as we will not be able to make for conditions which would go to solidify the nation and make it homogeneous.

It may be said, it is a case of piecemeal legislation. We all know many instances of such piecemeal legislation. We know that we passed in 1946 the Act relating to validity of marriages between subsection of castes and then we passed in Bombay, the prevention of Bigamous Marriages Act; and many other laws have been passed. I do not know of any other objections that may be raised to this Bill. It is a very small measure and this is a one-class Bill. All that it says is that previous marriages will be regarded as valid and in future such marriages will be valid. It does not propose to do anything else. I did not, as a matter of fact, venture to come before the House with a straight motion that it be passed into law because I am afraid it is a convention of this House that all these measures should be taken to the Select Committee.

I am anxious that in this session, we should be able to pass this measure into law, so that so far as the public is concerned, they will

feel convinced that we mean business and we want to evolve a classless society. I know what I am saying may not be liked. I was taken to task for expressing such an opinion in the papers an opinion which I read today to the House but in this vital matter, we are not to fear anybody. Mahatma Gandhi has told us we must have a class-less society. This is the right way to have a class-less society. All differences between those people who are opposed to each other from the point of view of social rights, economic rights and political rights, will disappear and we will have one class-less society, if we adopt a measure like this. I would beseech the House to kindly pass this measure in this session after referring it to the Select Committee today.

Mr. Deputy Speaker : Motion moved:

“That the Bill to provide that marriages between Hindus, Sikhs, Jains and their different castes and sub-castes are valid, be referred to a Select Committee consisting of Giani Gurmukh Singh Musafir, Sardar Hukum Singh, Shri M. Anathasayanam Ayyangar, Shri Deshbandhu Gupta, Shrimati G. Durgabai, Shrimati Renuka Ray, Shri Ramnath Goenka, Dr. Bakshi Tek Chand, Lala Achint Ram, Ch. Ranbir Singh, Shri Mahavir Tyagi and the Mover and that the number of members whose presence shall be necessary to constitute a meeting of the Committee shall be five.”

The usual practice is to fix a date by which the report may be submitted to the House. With instructions to report by what date ?

Pandit Thakur Das Bhargava : By the end of this month, say the 28th of February.

Mr. Deputy Speaker : With instructions to report by the 28th of February, 1949.

Shri K. Hanumanthaiya (Mysore State): Sir, I have great pleasure in welcoming this Bill, Pandit Thakur Das Bhargava has advanced very good reasons in support of it. They hardly need any support or addition. Before August 1947, our watch-word was ‘freedom’ and Mahatma Gandhi gave us the phrase ‘quit India’ and after the attainment of freedom, Sardar Patel has given us the word consolidation. He is doing it on the political front and that is the greatest achievement that this country can boast of. (*Interruption*). And we have to do it also—may I say humbly with all sincerity and not with any levity—on the social front also. The great danger to India is ‘disruptive tendencies’, which are called communal tendencies and the marriage instruction is the bastion which keeps these various differences intact and in perpetuity. This measure in a very humble fashion makes a beginning to abolish those distinctions in times to come and consolidate the Hindu society to begin with. I heartily welcome

this measure and I suggest to the mover of this motion that he can take another Member into the Select Committee and I suggest Shrimati Annie Mascarene, M.A.B.L. being taken into the Select Committee.

Pandit Thakur Das Bhargava : I have no objection to add the name.

Shri K. M. Munshi (Bombay : General): I beg to support this motion. My honourable friend, Pandit Thakur Das Bhargava was pleased to describe this measure as a small measure. I beg to differ from him. It is a very big measure and a very important one. It should have been passed not now, but forty years ago. When the question was first raised before the courts and when the courts held in different provinces that marriage between the Hindus of different castes were invalid for one reason or the other. But in those days the Government benches were not prepared to allow the Hindu community to be dynamic and wanted to perpetuate the old customs which were enshrined in text books composed 700 or 800 years ago. I remember a case, Sir, I think it was some 40 years ago, when the validity of the marriage of a widow, whose husband had died several years ago was raised before the Bombay High Court and the High Court held that after long years of married life and leading case where I tried for four years to establish that the marriage bet-after having grand children, her marriage was invalid because she happened to belong to a higher caste than her husband. I was concerned in another leading case where I tried for four years to establish that the marriage between a Hindu of higher caste with a wife of a lower caste was invalid. But for the fact that Sir Lallubhai Shaw was a judge of catholicity, perhaps I would have won the case, but even then the validity of *anuloma* marriage as we call them,—between the husband of a superior Hindu caste and the wife of an inferior Hindu caste—is not accepted as valid in some of the provinces. The question has also risen with regard to Hindus and Jains in part of the country. Hindus and Jains marry freely, but the point has always come before the lawyers for opinion whether a marriage between a Hindu and a Jain was valid. Now these are questions which ought to have been solved, as I said, years and years ago. But we have reached a stage when this must be solved immediately.

My honourable friend, Pandit Thakur Das Bhargava referred to the special case of the Punjab. It is not a special case of any particular province; it affects the whole of the country. On account of education,

on account of freedom marriages between members of different castes take place. But they find themselves in great difficulty on account of this doctrine of Hindu Law. I know, not one or two, but dozens of cases where the parties merely profess to marry under the Civil Marriage Act, though they do not want to do it; they hated doing it; they do not want to disturb the joint family; they do not want that the succession Act should apply to them; they do not want to separate themselves from their parents; but because of the unfortunate state of the law, they have to marry under the Civil Marriage Act. Therefore, I submit, Sir, this a crying grievance which requires to be remedied as early as possible. I am glad that the mover has accepted your suggestion about the 28th of February and this Bill should be passed as early as possible.

There is one little point which I should like to mention and I am sure this defect will be duly rectified in the Select Committee. The words as they stand are:

Notwithstanding any text, rule, interpretation of Hindu Law, or any custom or usage to the contrary, no marriage among Hindus is or will be deemed to be invalid by reason of the fact that the parties thereto belong to different religions, castes or sub-castes.

This might lead possibly to a construction that this provision only applies to marriages between parties who are alive. I think it should be made perfectly clear that even marriages of this character which have taken place in the past and in respect of which the question of succession arises should be deemed valid hereafter. I am sure proper rectification will be made in the Select Committee. I therefore, Sir, heartily support this motion.

Shri Deshbandhu Gupta (Delhi): I rise to support the motion which is before the House just as my honourable friend, Shri Munshi has pointed out, I also feel that it is a really very important measure. For many years one thing which has been standing in the way of Hindu solidarity and also in the way of our national solidarity is this division of the Hindu society in castes. I feel the time has come when we should pass a measure like this which seeks to abolish these artificial barriers without any further delay. I know of instances where some of my close friends who did not believe in civil marriages had to resort to civil marriages, simply because they happened to choose a mate which belonged to a different caste. You are aware, Sir, that the Arya Samaj has always been a believer in caste system by '*Guna* and '*Karma*'. In spite of the fact that the founder of the Arya Samaj

preached that cult and from the very beginning they advocated that there was no caste by birth, Arya Samajists also had to suffer from the same disability from which other people are suffering today.

It was after many years of struggle that the Arya Marriage Validation Act was passed. But, I find public opinion amongst Hindu has also advanced sufficiently and not only Arya Samajists but today many more Hindus do not recognise the artificial barriers placed by the caste system based on birth. Therefore, there is no reason why they should be forced to have recourse to the Arya Marriage Validation Act or to the Civil Marriage Act. Today, when public opinion has advanced, and when the caste barriers that have stood in the way of the solidarity of the Hindus and in the way of creating a national feeling, have gone, I feel the passage of a measure like this should not be delayed.

There may of course be some point in saying that the Hindu Code is coming and therefore we should not have any piecemeal legislation. But along with many of my friends I too believe that a measure of this nature, which is in no way opposed to the reformist ideas contained in the Hindu Code, should not be delayed. Although, my honourable friend Dr. Ambedkar would like the Hindu Code to be passed into law this very session, many of us do not share that view. It may take time. After all, that is a very important measure and has got many controversial clauses. Therefore, I would urge that this measure should be welcomed by us and its passage should not be delayed.

I wholeheartedly support the motion moved by my honourable friend Pandit Thakur Das Bhargava and I hope Dr. Ambedkar will also accept it and that the house will pass this small measure which is of great importance to Hindu Society, in this very session.

Dr. Bakhshi Tek Chand (East Punjab : General): I wholeheartedly support the motion which Pandit Thakur Das Bhargava has made for referring this Bill to the Select Committee. The Bill has so far received support from various quarters of the House and I do hope that not a single discordant note will be raised against it.

The Bill, if I may say so, is no new measure. A Bill almost on identical terms was introduced in the old Imperial Legislative Council as it was then called, in 1919 by the late Mr. Vitthalbhai Patel. That Bill was circulated for opinion. Of course, different opinions were expressed, the orthodox element opposing it, officials opposing it and a number of persons and societies supporting it. But, before the Bill could come up for consideration before the Council, the Montagu

Chelmsford Reforms came into operation the council was dissolved and the Bill lapsed. After that, Dr. Gour attempted in 1923 to modify the old Bill of 1872 but then also, there was opposition and the Bill had to be modified in several particulars. It was only in the form of a civil marriage that persons of different castes or different sub-castes of Hindus could marry, sacramental marriages are not permitted. With regard to sacramental marriages under the Hindu Law, the position is different in the different provinces. Some provinces, as has been pointed out, permit what are called *Anuloma* Marriages ; other provinces do not allow that. In the latter provinces, the courts have held that though in some of the *Smritis*, *Anuloma* marriages were permitted, they have become obsolete and they are not now recognised. In almost all Provinces, it is held that *Pratiloma* marriages are invalid. In the Punjab and in some other provinces, where custom is the rule of decision, marriages between certain castes are allowed, but between certain other castes are not allowed. I think the time has now come when a bold step should be taken and this measure should be placed on the Statute book. No doubt, under the Hindu Code which is now before us, provisions to this effect have been made. The Hindu Code Bill is however a very comprehensive measure dealing with different subjects and covers a very much wider field. There is much opposition to some portions of it. We do not know how long it will take for the Bill to pass, in what form it will be passed, or whether it will be passed at all. (*Shri L Krishnaswami Bharathi*: "It will be passed.") It will certainly take time. There is no reason therefore, so far as this matter is concerned, to delay the passage of this simple measure, with which I think most people are agreed. I therefore support the motion.

Shri Mahavir Tyagi (U.P.: General): I do also want to have the honour of recording my support to this Bill of great reform as my honourable friend Mr. Munshi has said .

It is long since India has suffered on account of communal differences. Marriages are the root cause and elections the 'fruit-cause' for all these differences; because, it is primarily at the time of the marriage that one enquires into the caste of the other. Every time when marriages are held, castes are enquired into. The next occasion, when the caste of a person is enquired into, is when one stands for election. Now that we have decided to have, joint electorates, we have to a great extent done away with the 'fruit-cause' of the communal

evil. Thus politically we have put ourselves on the right track. And as my friend Mr. Hanumanthaiya has just now said, the credit goes to the Honourable Sardar Patel for giving us political consolidation in the country. After this political consolidation, our next immediate need is to have social consolidation. This Bill will provide this need I am sure, if this Bill is passed into law, marriages will be free. I am a believer in free marriages. Now that India is free marriages must also be free and there should be no restrictions. I am sorry that the Bill has come at a very late stage in our lives: but let us pass this bill for our future generations to practice it. I hope that the country will enjoy the freedom given by this Act. I wholeheartedly support the motion.

Shri Upendranath Barman (West Bengal: General): I also beg to accord my whole hearted support to the Bill and its reference to the Select Committee. In my mind, I am convinced of one thing. The circumstance that stands in the way of our national sense is the caste barrier. So long as it lasts, the different sections of the Hindu community and other non-Muslim communities cannot unite together and imbibe a sense of nationality in its true sense. So long as one knows that he cannot marry his son or daughter with the son or daughter of his neighbour, the true sense that they are one cannot come. I think that by passing this measure that barrier will be won. It is the sense of kinship that is the real basis of national sense and I wholeheartedly support this Bill and I hope that it will be passed into law as soon as possible.

The Honourable Dr. B. R. Ambedkar (Minister for Law): With regard to this Bill, there cannot be any difference of opinion between myself and my honourable friend the mover for the simple reason that the Bill is merely a part of the Hindu Code which I am sponsoring. My only objection to the Bill is that the Legislature having accepted the principle that the Hindu Law ought to be codified, it is wrong now to proceed piece-meal with the legislation. I have no objection, as I said, to the principles underlying the Bill. In fact those are the very principles which are embodied in the Hindu Code and therefore what I will suggest to my honourable friend is that either he should withdraw this Bill or postpone the consideration of the Bill so that we may know exactly what happens to the Hindu Code.

I am afraid having regard to the fact that, I am sponsoring the Hindu Code and having regard to the fact that there being the motion

before the house for consideration of the Bill as reported by the Select Committee, I am afraid I cannot take any other attitude than the one I have taken.

Ch. Ranbir Singh *rose—*

Shri L. Krishnaswami Bharathi (Madras: General) : How can he be allowed to speak ?

The closure motion has been put.

Mr. Deputy Speaker: I allowed Dr. Ambedkar to speak and he is not the sponsor. The question was not put.

Ch. Ranbir Singh (East Punjab : General): (*English translation of the Hindi Speech*) Mr. Deputy Speaker, Sir, I have great pleasure in supporting this measure because I belong to that community amongst the Hindus who have always believed in the principle of this Bill from the very outset. If there was any community amongst the Hindus which ever established relations outside its own sphere and that there existed no differences, it was the Jat community. It is true that there did exist some such element of difference and social ostracism but that was negligible. The very fact that this Bill will go a long way to establish throughout our country a principle in which we have believed since centuries past, affords me great pleasure to support this.

Secondly, just as my honourable friend Mr. Tyagi has stated, this will banish our mutual differences which were responsible for our slavery. By the integration of small states our leader the Honourable Sardar Vallabhbhai Patel has consolidated our country into one and that problem has been well solved. This Bill is a very good measure for solving our social problems.

So far as the Hindu Code Bill is concerned that is a big thing, It is not yet known whether or not the country or this House accepts it. It contains some provisions over which our leaders have expressed some sort of difference. I, therefore, fail to understand how far it is correct to shelve or reject this Bill simply for the reason that it forms part and parcel of that Bill, because if the Hindu Code Bill is passed, this measure will naturally be incorporated in it. If that is not passed, this Bill will at least have chances of being passed.

With these words I whole-heartedly support this.

Shri K. M. Munshi : Is it permissible for me to answer a point made by Dr. Ambedkar ?

An Honourable Member: Pandit Bhargava can deal with it.

Pandit Thakur Das Bhargava : Sir, I am very glad that all sections of the House have supported this measure. It is a measure of such a kind that I could not foresee with the highest flight of imagination that any sort of objection could be raised and I am very glad that this measure is liked by everybody. One objection has been raised and that is that since the Hindu Code Bill is on the anvil therefore, we should not proceed with this Bill. If the principles of this Bill and the principles which are the subject matter of the Hindu Code were antagonistic to each other, I could understand the objection, but where this measure proceeds on the same basis as the Hindu Code Bill, if we pass it in advance, it will really pave the way for the passing of the Hindu Code. I cannot understand how the passing of this will obstruct the passing of the Hindu Code—really it will accelerate its passage. May I enquire where is the law or rule or convention that if a Bill like the comprehensive Hindu code Bill is on the anvil therefore another Bill cannot be passed. There is no such convention. I cannot understand that if a measure is there which covers one of the points covered by another measure, therefore the second measure should not be passed.

Bakshi Tek Chand has pointed out that this measure was a subject matter of a Bill in 1919 and this measure is associated with the name of our revered President V. J. Patel. Now in point of time I think so far as Hindu Code is concerned, this kind of measure is much anterior. In a matter of this kind, these technicalities even if they be valid, should not be allowed to stand. What would happen to those thousands of men and women if this Hindu Code Bill is not passed and I think it is not going to be taken clause by clause this session and it may go on to September or October and not passed in this Session because it is a controversial measure and it may take a year; what would happen to those young men and women who desire to marry according to the provisions of this Bill and our activities which certainly conduce to the formation and consolidation of one nation ?

Sir, it is not a matter of joke. I am only helping Dr. Ambedkar whose marriage also will be legalised by this Bill. Why should he laugh at this ? This may or may not be applicable to him yet the disabilities if any will be removed. I know hundreds of people want to marry under this and is it wrong to marry under this rule ? I for one deprecate that anyone should place any obstacle to this Bill being

passed in this session. If this measure is not passed in this Session all our efforts and Gandhiji's efforts will be futile. So my submission is this and I beg Dr. Ambedkar to kindly withdraw his objection and agree to the passage of this Bill as soon as possible because this would also help him in getting this relevant portion of the Hindu code passed.

Shri K. Hanumanthiya: Has the honourable member accepted the name of Shrimati Annie Mascarene which I have suggested ?

Mr. Deputy Speaker: Yes, I suppose the honourable the Law minister wants to know the number of men on the waiting list.

The question is :

“That the Bill to provide that marriages between Hindus, Sikhs, Jains and their different castes and sub-castes are valid, be referred to a Select Committee consisting of Giani Gurmukh Singh Musafir, Sardur Hukum Singh, Shri M. Ananthasayanam Ayyangar, Shri Deshbandhu Gupta, Shrimati G. Durgabai, Shrimati Renuka Ray, Shri Ramnath Goenka, Dr. Bakhshi Tek Chand, Lala Achint Ram, Ch. Ranbir Singh, Shri Mahavir Tyagi, Shrimati Annie Mascarene, and the Mover, with instructions to report by the 28th February 1949, and that the number of members whose presence shall be necessary to constitute a meeting of the Committee shall be five.”

The motion was adopted.

*HINDU CODE—contd.

Mr. Speaker : The honourable Dr. B. R. Ambedkar.

Pandit Thakur Das Bhargava—rose.

Shri Jaspat Rai Kapoor (U. P. : General): Mr. Speaker, Sir, I have to raise a point of order which, if accepted, will bar any further discussion on the point of order raised in the previous session by my honourable friend Mr. Naziruddin Ahmad. I therefore, submit that I be permitted to place my point of order for your consideration.

Mr. Speaker : As Pandit Thakur Das Bhargava was on his legs, I think I ought to hear him first. I do not anticipate what he is going to say; I have my own views on the point of order raised but I will consider what Pandit Thakur Das has to say,

Pandit Thakur Das Bhargava (East Punjab : General): Sir, on the last occasion when the motion was made by the Honourable Dr. Ambedkar, Mr. Naziruddin Ahmad took a point of order on the point that the Bill considered by the Select Committee was not the

* C.A. (Leg.) D., Vol. I, Part II, 17th February 1949, pp. 614-21.

Bill referred to it by the House. While that point was being considered. I was submitting for your consideration some grounds why the point of order was of great substance. While that was being done, you were pleased to stop the discussion and shorten the matter, as would appear on page 778 of me Proceedings, dated 31st August 1948. At that time, Sir, you were pleased to tell us what was passing in your mind and you told us that you will consider at the proper time two or three questions which are given on page 779 of this report. The two questions which seemed to agitate your mind were, firstly, whether the Select Committee went out of its way and went beyond the scope, and secondly, whether the Select Committee has gone beyond the scope of the reference. These were the two questions. The debate was taking place when ultimately you decided as given on page 780, that you would study all the facts and then give a ruling. With regard to that, I beg to lay some points for your consideration in regard to the point of order raised by Mr. Naziruddin Ahmad.

Mr. Speaker: As I see from the report, what I stated there was this—I have not got the printed report but I have got the proof-sheets here. After the Honourable member Shri Biswanath Das had raised a point, I stated as follows :—

“As I said, I am not deciding this matter at all. I am keeping open the whole thing including the point of order, because it will be seen that it involves large questions of fact and I must study all these things myself, which I have not yet done. Shall I leave the matter as it is ?

Therefore, I left it for me to study it and I can now say that I have studied it. Whatever may have been said by honourable members with reference to the point of order, I have studied the report of the Select Committee, I have studied the first Bill and I have studied, of course, the other draft which was alleged to have come before the Select Committee. If the honourable member has to say anything with reference to that he may.

Pandit Thakur Das Bhargava : It is only with reference to that that I propose to speak just now. As a matter of fact, I also raised this very point of order, but Mr. Naziruddin was more fortunate in catching your eye. Therefore, I have something to say on this point.

Shri Mohan Lal Gautam (U. P. : General): On a point of order to this point of order, Sir, according to the Rules of Procedure, I do not find any provision for any point of order after a report has been presented to this House. I would request the honourable member to

quote that rule so that I may consult it and see for myself whether the point of order raised by the honourable member is not out of order.

Mr. Speaker : These are obvious matters which need not be argued. If we differ on the substance of the matter, let us devote time to that substance rather than take up the time in the technicalities of the matter. If people are against the Code then it is a matter of substance. If they are in favour of it, even then it is a matter of substance. But let us not take the time of the House in technicalities.

Subsequently, the point of order mentioned was that the Bill which was referred to the Select Committee was, on facts, not the Bill which the Select Committee considered and that therefore the report is based on something else. That is the point of order, put in short, and on that point of order arguments were addressed. If the honourable member Pandit Bhargava has to address or speak on facts, matters would stand differently; the matter is, I believe, covered amply by what Mr. Naziruddin Ahmad has stated. Has he to invite my attention to any other facts ?

Shri Jaspat Roy Kapoor : May I respectfully request you, Sir to permit me to place my point of order before, you ? It relates to the competency of this House, in the present session, to deal with this question at all; also, whether the point of order raised by my friend Mr. Naziruddin should be discussed in this session at all ? For, if my point of order is accepted it will shut out all discussion on the subject in the present session.

Mr. Speaker: I think I will go step by step. Let the first point of order be disposed of. Assuming that the first point of order goes in favour of the Bill, then the second point of order which the honourable member has raised is competent and therefore he may raise the point later on.

Shri Jaspat Roy Kapoor : My submission is that even the discussion of the point of order raised by Mr. Naziruddin Ahmad is a point which should be considered by this house and the question is whether it is competent to discuss the subject at all.

Mr. Speaker: I do not agree that I should take that point first. It will be for the Chair to decide whether the Select Committee considered the Bill that was referred to it or something else, and whether, therefore, its report should or should not be taken into

consideration. After that is decided, it is perfectly competent for the honourable member to point out to me any points or any law or any practice by which this House is not competent to take into consideration the present Bill. That is the better way. Let us save time.

Shri Jaspat Roy Kapoor: May I say one word, Sir ?

Mr. Speaker: No, no Pandit Bhargava.

Pandit Thakur Das Bhargava : Sir, I only propose to lay before you some facts and some law as it would apply to those facts. For instance, I beg to point out that the proceedings before the Select Committee was an abuse of the rules of this House. The privilege of this House has been violated by the Select Committee and by the procedure of the Law Department. Secondly, if my facts are correct, another Bill was considered and not the Bill which was referred to it by the House. The question which arises then would be a question of law, whether such a procedure was justified and whether this House should consider this report as a report on this Bill which was referred to the Select Committee or whether it is a document which is not valid in law and is not a legal document. I will therefore confine myself to the two types of questions which I submit are quite related. In regard to the substance also, with your permission, I will subsequently have something to say provided your ruling is that this question is also relevant. In my humble opinion, the question divide itself into two parts. Number one, whether the report which has been presented to the House is a good report from the procedural point of view. Number two, whether the report has gone beyond the scope of the Bill. I propose to address the House on the second question subsequently.

First of all, with your permission, I will address the House on the first question before laying certain facts before the House. My humble submission is that according to what we have got in the Select Committee's report and from the papers which have been circulated to us and which are found in the Library, I have come to the conclusion that after the Bill was referred to the Select Committee, the Law department just substituted another Bill for this Bill, and this Bill was considered by the Select Committee. I do not know whether these facts are absolutely correct, but I have consulted some members who were in the Select Committee and they have informed me about it and at the same time from the report of the Select Committee also it appears that as a matter of fact

Mr. Speaker : I am afraid the honourable member is practically repeating what the honourable member Mr. Naziruddin Ahmad has said. It is the same thing. I have gone through the report myself bearing in mind the points raised and while I would like to give the honourable member the fullest liberty to place any other facts not included in Mr. Naziruddin Ahmad's speech, I do not think we should go into the same repetition

Pandit Thakur Das Bhargava: I do not like to repeat. I only want to know if these facts are taken to be correct. If ultimately another honourable member gets up and says these facts are wrong, then the whole argument would fall down. Therefore, I want to place before you how I have come to the conclusion that these facts are correct. If you take them as correct, I do not want to trouble the House and your goodself. I submit that as a matter of fact it appears from the report of the Select Committee itself that the substituted Bill was alone considered, because from the majority committee's report as well as the dissentient's report it appears that no other Bill was considered and the Bill which was referred to the Committee was not at all considered.

Now, Sir, Dr. Ambedkar has kindly placed before us a comparative statement. If you will kindly see these tables, there are two parts, one shows how from this Bill the original Bill was different. He has given another table showing the difference between the Draft Bill and the Select Committee report. This also shows that only the re-drafted Bill was considered and not the original Bill. Any way, taking this to be the right tiling, if it is accepted that the re-drafted Bill was only considered, the question arises before you whether the re-drafted Bill could be considered by the Select Committee or not, and if this action of theirs is not tantamount to the breach of privileges of this House as well as abuse of the powers that this House granted to the Select Committee. Now, Sir, I may not be taken to say that there was any wrong motive behind it; such a course may have been intentional or non-intentional; it may have been done with the best of motives or with the worst of motives; I am not concerned with that. I am concerned with one central fact that the original Bill which this House referred to the Select Committee was never considered by the Select Committee.

The Honourable Shri K. Santhanam (Minister of State for Railways and Transport): On a point of order, I wish to know whether this House can go into the manner in which a Select Committee has

dealt with a Bill. In that case, it would require verbatim reports of all proceedings in a Select Committee. We can reject the report or accept the report or do anything with the report but how the Select Committee dealt with it is a matter which, I think is not relevant and it is not the practice of the House either to go into it. Otherwise, every future Select Committee will have to give us a verbatim record of its proceedings, so that we can judge of the propriety. . . .

Mr. Speaker : I am afraid various points of order are being raised and stated too widely. As regards the present point, if the position is that the Bill which was sent by this House was not considered at all by the Select Committee, I think it would be perfectly competent to go into the question as to whether the Select Committee did or did not consider. Then the question will arise as to how far it would be permissible to go into the proceedings of the Select Committee and to that my present reaction is that this House or myself will not be sitting as a fact-finding committee or court, but we shall take into consideration—we are entitled to take into consideration—what the Select Committee itself has stated in its report, and therefore, the matter will be more or less one for inference—coming inferentially to some conclusion as to what the Select Committee did and not by taking evidence of every member of the Select Committee and taking extra evidence. Now, I may point out to my friend Pandit Bhargava, that in spite of all that he has said the argument is not being advanced any further. Whether you call it a breach of the privileges of the House or abuse of procedure, the argument, in short, comes to this—that the Select Committee considered a substitute Bill; that it did not consider the original Bill sent by this House, and that this conclusion is based on certain remarks or observations in the Select Committee report—majority as well as the minority report—and therefore he infers—to state more correctly—from these documents that the original Bill was never considered. That, in short, is the point of order. The question of breach of privilege or abuse of procedure will arise, if we come to the conclusion that the Select Committee did as he infers, but if we come to the conclusion that the Select Committee was not guilty in the manner in which he infers it to be, then the question of breach of privilege or abuse of procedure does not arise at all. I can assure honourable members that I have carefully gone through every point that the honourable member is going to read from the report of the Select Committee and, perhaps, something more also,

and I have my own conclusions about it. I think I can make the whole thing short by stating what I have felt about the Bill and decide the matter rather than take up the time of the House. That is my feeling in the matter. (*Some Honourable Members*: “Quite so, Sir.”) Anyway, we are not going to finish this Bill today. We can just clear the ground and I think without further going into arguments, I may perhaps

Pandit Thakur Das Bhargava: I do not want to go further into arguments after having heard from you how things have taken place, but I do wish to place before you some of the ruling which I have got which go to show that this Bill as emerging out of Select Committee is absolutely unwarranted, illegal and vitiates the entire report of the Committee and before the House there is no report at all. This is my submission. If you will permit, I will place some rulings before you.

Mr. Speaker: However, the rulings follow certain facts. In this case, it is alleged that, as a matter of fact, the Select Committee have failed to consider the original Bill. If that is established, then we shall have ample time to consider the rulings.

Pandit Thakur Das Bhargava: Nobody is denying this fact.

Mr. Speaker : That is just the point, as the honourable member will see. When I give my ruling which I have carefully prepared after reading all the papers. If any further points arise after the facts as stated by me are accepted, then those points of order may be considered.

Shri M. Tirumala Rao (Madras : General): Before you give your ruling, is there no other method of knowing the truth except by inference ?

The Honourable Dr. B. R. Ambedkar (Minister for Law): May I, with your permission, intervene for a minute to correct an impression which my friend Pandit Bhargava has sought to create in this House that the original Bill which was referred by this House to the Select Committee was never before the Select Committee ? I think it is a gross mis-representation. If my honourable friend were to refer.

Mr. Speaker : I have myself studied the position in great details. I shall clarify it by reading out my decision.

Pandit Mukut Bihari Lal Bhargava (Ajmer-Merwara): I have additional facts.

Mr. Speaker: Order, order.

Pandit Mukut Bihari Lal Bhargava: There is one additional fact which has not come to the notice of the Chair. I wrote a letter to the Law Department to find out whether any re-drafted Bill was printed. The information given to me was that only a few copies were printed and they were available in the library of the House. I have referred to that Bill and it is a fact that a re-drafted Bill was printed in July 1948 prior to the meeting of the Select Committee. That Bill was considered clause by clause by the Select Committee and that is the Bill that has emerged from the Select Committee with its report. The report mentions this. Therefore my respectful submission is that that re-drafted Bill may be taken into consideration to find out whether the Select Committee applied its mind to the Bill that was referred to it or some other re-drafted Bill that was printed under the signature of Dr. Ambedkar, after scrutiny of the original Bill and absolutely in a different form. That is a very important material and additional fact which I respectfully bring to the notice of the Chair before the ruling is given.

Pandit Thakur Das Bhargava: I have got a copy of that Bill with me.

Mr. Speaker: I have some facts which honourable members do not have.

The Point of Order that the Honourable the Law Minister's motion for consideration of the Select Committee Report on Hindu Code is incompetent as raised by the honourable member Mr. Naziruddin and supported by a few other members on 31st August 1948, is based on a narrow limit of facts. The objection raised is presented as a chain of reasoning in the following form :

“What the Select Committee considered was a ‘substitute’ of the original Bill in the form of ‘a revised draft’. Therefore the Select Committee did not consider the Bill referred to it, but ‘a new document’, and the present report of the Select Committee, being a report on a new document, there is no Select Committee Report on the original Bill. The Honourable the Law Minister's motion for consideration of the Bill, as it emerged from the Select Committee, is, therefore, incompetent”. That is the substance of the Point of Order. (*Shri Mahavir Tyagi*: “Is that your ruling ?”) I believe I have stated the point correctly.

None of the members, Mr. Naziruddin Ahmad, Pandit Thakur Das Bhargava and Srijut Biswanath Das, who raised or supported the Point

of Order, were members of the Select Committee and naturally, therefore, have no personal knowledge as to what was considered at the meetings of the Select Committee. They, therefore, relied upon some statements in the report of the Select Committee and inferred that the original Bill, as referred to the Select Committee, was not taken into consideration by them.

The question thus raised is purely a question of facts, namely, whether the Bill referred to the Select Committee, meaning thereby the various substantive provisions thereof, as distinct from the form or sequence in which they were put, were or were not considered by the Select Committee; whether the Select Committee did or did not apply their mind to the substantive provisions of the Bill as referred to them.

It is not disputed that the Select Committee had a right to add, to or to delete from or to improve upon the provisions of the Bill as referred, provided the additions, deletions or improvements, etc. suggested by the Select Committee are within the scope of the Bill. I need not therefore, enter into this aspect, as no such question about the Select Committee having gone beyond the scope of the Bill is raised before me.

I may now examine, in the light of the written as well as oral evidence before me, the statement of facts as formulated by the honourable members who have raised the Point of Order.

I may shortly state the facts as to how the Bill that was introduced came to be framed. As stated in the Statement of Objects and Reasons, the Central Government, by their Resolution dated the 20th January 1944, 'appointed a Hindu Law Committee for the purposes of formulating a Code of Hindu Law, which should be complete as far as possible.' This was done in pursuance of 'a growing public opinion in the country in favour of a consolidated and uniform Code dealing with the different topics of Hindu Law for all the provinces and for all sections of the Hindu Society'. It was also felt that, in view of the 'present conditions and trends in Hindu Society' there is a great need to alter the law so as to make it fit the new pattern, to which the Hindu society seems to be rapidly adjusting itself.'

When the motion for reference of the Bill to the Select Committee was carried on 9th April 1948, there was hardly any time for honourable members to express themselves on the substance as well as the form

and the drafting of the Bill. The Ministry of Law, having felt that the Bill 'as drafted by the Hindu Law Committee did not conform to the canons of a Code', decided to revise the draft of the Bill and to remove those defects, so as to enable one to have 'a full and complete picture of the provisions of the Code'. They, therefore, undertook the task of re-arranging the parts and divisions of the original Bill in consecutive sections and in a logical sequence, and also made some further suggestions as they thought proper for consideration by the Select Committee. The Ministry of Law simply placed before the Select Committee a sort of a proper form in which the original Bill could have been shaped by the Select Committee themselves at their meetings or they could have directed the draftsmen to carry out the changes.

It may be noted here that, while circulating the Code in a revised form, the Ministry of Law supplied to the members of the Select Committee an index also giving therein, for facility of reference, the place of a section in the revised Code with the corresponding section in the original Bill, as prepared by the Hindu Law Committee. The members of the Select Committee had thus before them, at all times and at every stage, the provisions of the Code as contained in the original Bill. The Ministry of Law further invited the attention of the members of the Select Committee to changes of substance suggested by them in the revised draft. It was, therefore, clear that at all stages of deliberations by the Select Committee of the provisions of the Bill, both the revised and the original were before them and the deliberations had proceeded on a comparative study of the original provisions and the provisions contained in the revision as suggested by the Ministry of Law.

Coming to the question of evidence as to the above facts, the only member of the Select Committee who spoke with reference to the Point of Order was, Pandit Balkrishna Sharma. Pandit Balkrishna Sharma stated in the House: "The Bill which the House asked us to consider was always before us." The evidence on record consisting of the main report, as also the dissenting minute, amply support this statement. The honourable members, who have raised this objection, relying upon passages in the Select Committee Report or the Dissenting Minutes seem to take certain passages out of the context and by themselves. This is what the main report says:

"We, the undersigned, having considered the Bill"—not the revised draft—"have now the honour to submit etc." This is how they begin the Report.