



Babasaheb Dr. B.R. Ambedkar
(14th April 1891 - 6th December 1956)

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Dr. BABASAHEB AMBEDKAR WRITINGS AND SPEECHES

Vol. 14

PART TWO

(SECTION IV)

Edited

by

Vasant Moon

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Kumari Selja



**Minister for Social Justice and Empowerment
& Chairperson, Dr. Ambedkar Foundation**

MESSAGE

Babasaheb Dr. B.R. Ambedkar, the Chief Architect of Indian Constitution was a scholar par excellence, a philosopher, a visionary, an emancipator and a true nationalist. He led a number of social movements to secure human rights to the oppressed and depressed sections of the society. He stands as a symbol of struggle for social justice.

The Government of Maharashtra has done a highly commendable work of publication of volumes of unpublished works of Dr. Ambedkar, which have brought out his ideology and philosophy before the Nation and the world.

In pursuance of the recommendations of the Centenary Celebrations Committee of Dr. Ambedkar, constituted under the chairmanship of the then Prime Minister of India, the Dr. Ambedkar Foundation (DAF) was set up for implementation of different schemes, projects and activities for furthering the ideology and message of Dr. Ambedkar among the masses in India as well as abroad.

The DAF took up the work of translation and publication of the Collected Works of Babasaheb Dr. B.R. Ambedkar published by the Government of Maharashtra in English and Marathi into Hindi and other regional languages. I am extremely thankful to the Government of Maharashtra's consent for bringing out the works of Dr. Ambedkar in English also by the Dr. Ambedkar Foundation.

Dr. Ambedkar's writings are as relevant today as were at the time when these were penned. He firmly believed that our political democracy must stand on the base of social democracy which means a way of life which recognizes liberty, equality and fraternity as the principles of life. He emphasized on measuring the progress of a community by the degree of progress which women have achieved. According to him if we want to maintain democracy not merely in form, but also in fact, we must hold fast to constitutional methods of achieving our social and economic objectives. He advocated that in our political, social and economic life, we must have the principle of one man, one vote, one value.

There is a great deal that we can learn from Dr. Ambedkar's ideology and philosophy which would be beneficial to our Nation building endeavor. I am glad that the DAF is taking steps to spread Dr. Ambedkar's ideology and philosophy to an even wider readership.

I would be grateful for any suggestions on publication of works of Babasaheb Dr. Ambedkar.

(Kumari Selja)

Collected Works of Babasaheb Dr. Ambedkar (CWBA)

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HINDU CODE BILL

SECTION IV

(Clause by Clause Discussion)

The discussion on the Hindu Code clause by clause was resumed from 14th December 1950. After prolonged debates, some clauses were cleared. Frustrated by the dilatory tactics of some of the members, Dr. Ambedkar submitted his resignation on 27th October 1951.

This Book contains the discussion in Parliament till the date of resignation by Dr. Ambedkar. The text of Dr. Ambedkar's resignation and discussion thereon in Parliament is included in the next Volume i.e. Vol. No. 15 in this series.

—*EDITOR*

**Dr. Babasaheb Ambedkar Source Material
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HINDU CODE—*contd.*

Clause by Clause Discussion

***Mr. Speaker:** The House will now proceed with the further consideration of the Bill to amend and codify certain branches of the Hindu Law, as reported by the Select Committee.

Shri R. K. Chaudhari (Assam): Sir, before the Hon. Law Minister proceeds with his Bill, may I make a most humble suggestion and it is this : either we finish the more important and shorter Bills in the agenda, and then take up the Hindu Code Bill and finish it, or let it be understood that the Hindu Code Bill will be considered from now and until the Hindu Code Bill is finished no other Bill will be taken up. Either of the two courses must be adopted. It seems that some people who are very much in favour of the Hindu Code Bill think that they are merely playing with time by taking up this Bill, considering it for a short period up to one stage, and then putting it off further for a longer spell of time. That is rather unfair to everybody concerned. Therefore, my first respectful request is this. Let us finish these shorter and more important Bills, as for instance, the Preventive Detention Bill. Under that Act, a number of persons who were arrested, were released under the orders of the High Courts. They have again been re-arrested and the whole thing has been held up in expectation of a more comprehensive Bill which was promised by Government. I submit, Sir, that, in the interests of law and order and also in view of the fact that justice should be allowed to run undeterred, we must finish the most important legislation, namely, the Preventive Detention Bill first, then the Employers' Liability Bill, and then sit down on the Hindu Code and finish it altogether. I hope my suggestion would be acceptable to the Hon. Law Minister.

Mr. Speaker : Is this suggestion acceptable to the Hon. Minister ?

The Minister of Law (Dr. Ambedkar): No. Sir.

Mr. Speaker : So, we will proceed with the further consideration of the Hindu Code Bill.

Shri Naziruddin Ahmad (West Bengal): Sir, I have a point of order. The Hindu Code Bill is before the House for a very long time.

* Parliamentary Debates (Hereinafter called as P.D.), Vol. VIII, Part II, 5th February 1951, pp. 2356-77.

Meanwhile, some important things have taken place, namely, that the Constitution has been passed and a large number of Acts and sections have been declared to be *ultra vires* of the Constitution. The present Bill would seem to offend against certain definite provisions of the Constitution. We have enacted so many things in the Constitution that I was amazed to find that many relevant Acts are declared *ultra vires*. There are two provisions in the Constitution : One is that legislation should not be discriminatory. This is enacted in article 15 ; clause (1) of that article says :

“The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex”

I submit that the Bill is confined to Hindus. Within that expression ‘Hindus’, large number of classes who would not be ordinarily Hindus are attempted to be brought. Even apart from that, there are large classes who will be outside this Bill. I submit that there is discrimination between different castes and persons following different religions. The words ‘only of religion’ do not seem to make any difference. There is discrimination between different sections of our citizens on the ground of religion. The phrase ‘only of religion’ does not mean much, for I find there is no other reason why there is difference between the different religious sects, except on grounds of religion. That is one thing.

The second article which I would like to submit for the consideration of the house is

Shri Tyagi (Uttar Pradesh): May I point out, Sir, that last time when we adjourned, it was decided and all agreed,—he was also a party—that no dilatory motions will be made.

Mr. Speaker : Order, order. He is not making any motion. He is only raising a point of order, according to him.

Shri Naziruddin Ahmad : I shall be very brief, Sir.

Shri B. Das (Orissa) : But, he is making a long speech.

Shri Naziruddin Ahmad : The other article to which I would like to refer is 25(1). It says :

“Subject to public order, morality and health.....” which do not mean

Shrimati Durgabai (Madras) : In the name of raising a point of order, is the hon. Member allowed to argue the question on the merits of the case ?

Mr. Speaker : He is arguing and he is entitled to argue ; let us not be impatient with the people who differ.

Shri Sonavane (Bombay) : What is his point of order ?

Mr. Speaker : The hon. Member should hear what he is saying.

Shri Sonavane : Is he allowed to argue it ?

Mr. Speaker : I cannot stop a Member, unless I know what he is going to speak, and I cannot know that unless he speaks out. So in order to know what the hon. Member is going to say. I must hear him, and that is the only democratic way in which we can go on.

Shrimati Durgabai : But, will he be allowed to refer to certain clauses of the Bill?

Mr. Speaker : The hon. Member knows that every person who wishes to argue his case is at liberty to speak ; of course, if I find an hon. Member is abusing the liberty or is repeating himself I shall certainly stop him.

Shri Raj Bahadur (Rajasthan) : Sir, I would like to know by way of a ruling from you whether the hon. Member can use such derogatory terms as he did, when referring to certain provisions of the Constitution. He said that “subject to public morality, health, etc.” are meaningless terms. Can he make such observations ?

Shri R. K. Chaudhari : Sir, I submit that when a point of order is raised and when the Speaker is listening to that point of order, there should be no interruptions from any hon. Member.

Mr. Speaker : Order, order.

Shri Naziruddin Ahmed : I submitted that the words in clause (1) of article 25—“Subject to public order, morality and health” do not really mean anything serious. I think they are the usual dreamy kind of safeguards which have no legal significance. The article further says :

“... all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion.”

With regard to the subject of marriage, it is considered by all devout Hindus that marriage is part of their religious profession and practice. So far as I know, a Hindu thinks of marriage as part of his religion, and if a man has no son, he, it is believed, goes to a particular region in hell.

Shri Tyagi : Order, order, I have no son.

Mr. Speaker : Will the hon. member resume his seat ? Order, order. I want the hon. Member not to interrupt.

Shri Naziruddin Ahmad : In order to ensure against a particular kind of hell, the man should have a son, and in order to have that, he must marry. That is one of the ten *samskaras* of a Hindu. It is a religious practice, and in order, to have son, a man can have one wife or more than one. Therefore, I submit that this provision curtails the Fundamental Right given in article 25(1). I am not raising a point which is only of academic interest, for this clause has been utilized by the Bombay High Court recently in declaring a certain Act—Prevention of Bigamous Marriages Act—to be *ultra vires*.

Dr. Ambedkar : By the Bombay High Court ? I am sure that is not correct. It was probably some magistrate.

Shri Naziruddin Ahmad : The question before us is whether some of the provisions relating to marriage may not be *ultra vires* of the Constitution. There is also the ground of discrimination, in view of article 15(1) of the Constitution. There are numerous other articles detailing with minor aspects of the question, but I think, these two would suffice for the time being. I am well aware of the principle that the Speaker cannot rule out a point because the legality of it is doubtful. But these are real stumbling blocks and I would request you, Sir, to consider the legality of the Bills. As we all know, a large number of Acts and sections have been declared *ultra vires*. Even at the time the Constitution was passed, objections were raised that these might be declared *ultra vires*. We have enacted these Fundamental Rights and anything inconsistent with them; to the extent of that inconsistency, would be null and void. There is no way out of it. If there is any law, any Act, which is in any way inconsistent with these articles, those laws or Acts, to the extent of that inconsistency, shall be void. That is the serious question before us now. Should we pass an enactment which would be declared *null and void* ? Should we not reconsider the Bill in view of the structure of the Constitution which we have chosen to give to ourselves ?

Sir, these are some of the matters which I venture to submit for your consideration.

Mr. Speaker : I do not think I need go in detail over the serious points raised by the hon. Member, Mr. Naziruddin Ahmad. The short answer which I can give to whatever he has stated is this. What he urges now may be true in respect of some of the provisions at the most, not all the provisions. And the proper procedure and time to

deal with them would be when the particular provision which he thinks contravenes the Constitution, comes up for consideration, not till then, because to say all the provisions are of that type, and therefore there should be no consideration of the Bill, would be going too far.

That is the short way in which I can dispose of all the objections which the hon. Member has urged. This does not mean that I agree with his view. But assuming that his view is correct, still the proper time would be when the relevant clause comes up for consideration. This House is perfectly competent to add to, or subtract from the Bill as presented to the House, if the House comes to the conclusion that a particular provision is not proper or offends against the Constitution. But it cannot be decided by the Chair just at the very beginning.

I do not think I need go into the merits of the arguments as to how far there is really any discrimination or how far marriage is really a question of religion and so on and so forth.

I think we shall now proceed with the bill, clause by clause.

Clause 2—*(Application of Code)*

Pandit M. B. Bhargava (Ajmer): I have got an amendment standing in my name, proposing the insertion of a new clause 2, after clause 1.

Mr. Speaker: Yes, that is right. The hon. Member may move it now.

Shri Tyagi: Sir, before that, may I refer to a ruling you gave once, and to the ruling which you gave just now? Once when I raised a point about a Bill being declared *ultra vires*, the ruling was that it was for the Courts to decide whether it was *ultra vires* and that it was not within the purview of the Chair. Sir, do you hold to that view now or will you use discretion in declaring certain clauses *ultra vires* or otherwise of the Constitution?

Mr. Speaker: I do not think I have yet any grounds for changing my view. If however, grounds are shown. I may reconsider the matter.

Pandit Thakur Das Bhargava (Punjab): Sir, ordinarily clause 1 is taken after all the clauses are finished. In regard to the Hindu Code I find from the amendments to clause 1 that some of them involve questions of a very substantive nature. They relate to applicability of the Code in certain States. Many amendments to clause 1 have been put on the order paper and may I request you kindly to consider whether it would be possible to take up clause 1 first?

Mr. Speaker : The reason for taking up clause 1 at the end is to see that it may be properly worded, after seeing the final form of the various provisions in the legislation. The hon. Member will see that sub-clause (1) of clause 1 says as to what the name of the Bill shall be : sub-clause (2) deals with the territorial extent of this legislation and sub-clause (3) speaks about the date from which the Bill will come into force.

Pandit Thakur Das Bhargava : Territorial extent is a substantive question.

Mr. Speaker: Even in regard to that, after going through the provisions of the Bill it may be possible for us to see more clearly. As to whether the provisions of the Bill should apply to all parts of India or exceptions should be made in respect of certain provisions in respect to certain States or areas. To my mind, it appears more advantageous to take clause 1 at the end, for then the House will have a more clear picture as to what the provisions of the Bill are. That is a better procedure and we shall proceed with clause 2.

As regards Pandit M. B. Bhargava's amendment, it more or less seeks to amend clause 1 and he wants to put in a new condition for the application of the provisions of the Bill.

Dr. Ambedkar : It is really an amendment to clause 1.

Pandit M. B. Bhargava: I may be allowed to explain.

Mr. Speaker : The amendment says :

“That this Code or only such part of it shall come into force if and when it is ratified on a referendum by majority of the Hindu electorate of Parliament.”

That is, really speaking, an amendment to sub-clause (3) of clause 1, though he places it as a separate new clause. No further arguments are necessary and I shall proceed with clause 2.

Shri Sarwate (Madhya Bharat): Will the official amendments be moved first or will mine be taken up first ?

Mr. Speaker : I am going by the order so far as the provisions of the Bill go. The official amendments will come later on.

Shrimati Durgabai : If the official amendments are moved first they may cover the points to be raised later by non-official amendments.

Mr. Speaker : We will go by the order.

Dr. Ambedkar : May I make a suggestion in the interest of economy of time

Shri Tyagi: Withdraw the Bill : that is the best economy of time.

Dr. Ambedkar : That would be too much of an economy. If you look at the various amendments which stand on the order paper you will see that most of the amendments are mere variants of one another. There is no amendment which is very substantially different from the other amendments. I was therefore suggesting whether it would not be a proper procedure to permit Members to move their amendments and then to have a general discussion rather than to permit each amendment to be moved, have a debate on it and then to dispose of it, thereafter have another amendment moved, have a debate on it and then to dispose of it. I was thinking that in the interests of economy of time the procedure I was suggesting might appeal to you.

Mr. Speaker: In fact, we have been following that procedure. Where amendments involve a common point, all the amendments are moved and there is a common discussion. That is the practice which we have been following in the past and therefore, I shall follow that practice here too.

Shri Sarwate : I beg to move :

For clause 2, substitute :

“2. *Application of Code.*—(1) This Code applies to all Hindus.

(2) The expression ‘Hindu’ in this Code, shall, unless otherwise provided, mean a citizen of India.

(3) Notwithstanding anything contained in the Special marriage Act, 1872 (III of 1872), this Code shall apply to Hindus, as defined in that Act, and whose marriages have not been solemnized under the provisions of that Act prior to the commencement of this Code.”

Mr. Speaker : May I suggest one thing more. Those amendments that are printed, as well as others too, have been circularised. So hon. Members may only mention the number of the amendment they propose to move and I shall take it that it has been moved. All the amendments relating to one clause and one subject will be moved and discussed.

Shri Tyagi : The point which the amendments seek to amend will be discussed separately.

Mr. Speaker : Yes.

The Minister of State for Transport and Railways (Shri Santhanam): Sir, is it in order to go against the fundamentals of the Hindu Code itself. The amendment seeks to apply the Code to all Christians, Muslims and others. Does it not go beyond the Code itself? I would like a ruling from you, Sir, on that subject.

Mr. Speaker : Let the amendments be moved first.

Shri Tyagi : The amendment seeks to Hinduise the Muslims, which is against the law or Constitution. Everybody has been guaranteed the liberty of practising his religion and to bring the Muslims and Christians also under the Hindu Code will mean interfering with their religion.

Mr. Speaker : Let the amendments be moved.

Shri Tyagi : This amendment has been moved and therefore it is out of order.

Shri Indra Vidyavachaspati (Uttar Pradesh) : I beg to move:

For clause 2, substitute:

“2. This Code applies to all Indians irrespective of their religion, caste or creed”.

Pandit Thakur Das Bhargava : I beg to move:

For clause 2, substitute:

“2. Subject to the provisions of section 1 this Code applies—

(a) to all persons who are Hindus, Buddhists, Jains or Sikhs by religion ;

(b) to any other person who is not a Muslim, Christian, Parsee, or a Jew by religion ;

(c) to every woman who married any person who was not a Muslim, Christian, Parsee or a Jew by religion ;

(d) to any child legitimate or illegitimate one of whose parents was a person who was not a Muslim, Christian, Parsee or a Jew by religion ;

(e) to a convert to any religion except the Muslim, Christian, Parsee or Jew by religion.”

Shri Jhunjhunwala (Bihar) : I beg to move :

For clause 2, substitute:

“ 2. *Application of Code*—This Code applies to all the citizens of India that is Bharat, irrespective of their caste, creed and irrespective of their belonging to or professing any religion.”

Dr. Ambedkar: I beg to move:

In clause 2,—

(1) in sub-clause (1),—

(i) in part (a), for “ Hindus, that is to say, all persons professing the Hindu religion” substitute “persons who are Hindus by religion” ;

(ii) in part (d), for “ Hindu religion” substitute “ Hindu, Buddhist, Jaina or Sikh religion” ;

(2) omit sub-clause (4).

Shri Naziruddin Ahmad : I beg to move:

(i) In part (a) of sub-clause (1) of clause 2, for “ Hindus, that is to say, all persons professing the Hindu religion” substitute “ persons who are Hindus by religion”.

(ii) Omit part (b) of sub-clause (1) of clause 2.

(iii) For part (b) of sub-clause (1) of clause 2, substitute:

“(b) to all persons who are Buddhists, Jains or Sikhs by religion”.

(iv) For part (b) of sub-clause (1) of clause 2, substitute:

“(b) to any person who is a Jaina by religion ;”.

(v) In part (b) of sub-clause (1) of clause 2, for “Jaina or Sikh”, substitute “or Jaina”.

Sardar Hukam Singh (Punjab) : I beg to move:

In part (b) of sub-clause (1) of clause 2, omit “or Sikh”.

Shri Naziruddin Ahmad : I beg to move:

(i) In part (c)(i) of sub-clause (1) of clause 2, after “ illegitimate” insert: “who, if he has attained the age of eighteen years, is himself a Hindu and”.

(ii) In part (c)(i) of sub-clause (1) of clause 2, for “whose parents are Hindus” substitute “whose parents are or have been Hindus”.

(iii) In part (c) (ii) of sub-clause (1) of clause 2, after “belongs or belonged” insert “and who, if he has attained the age of eighteen years, is himself a Hindu”.

Shri S. P. Misra (Uttar pradesh): I beg to move:

After part (c) (ii) of sub-clause (1) of clause 2, add:

“(iii) to any abandoned child brought up as a member of the community, group or family to which such parent belongs ;”.

Shri Naziruddin Ahmad : I beg to move:

For part (d) of sub-clause (1) of clause 2, substitute:

“(d) to a convert to the Hindu religion, subject to his rights and liabilities before his conversion.”

Babu Gopinath Singh (Uttar Pradesh): I beg to move:

After part (d) of sub-clause (1) of clause 2, add :

“(e) to a Muslim or Christian converted from Buddhism, Jainism, Sikhism or Hinduism in his life time”.

Shri Naziruddin Ahmad : I beg to move:

Omit sub-clause (2) of clause 2.

Sardar Hukam Singh : I beg to move:

In sub-clause (2) of clause 2, after “ Parsi” insert “ Sikh”.

Shri Brajeshwar Prasad (Bihar): I beg to move:

After sub-clause (2) of clause 2, insert:

“(2A) This Code also applies to any woman professing any religion who has married a Hindu, Buddhist, Jain or Sikh.”

Shri Naziruddin Ahmad : I beg to move :

(i) Omit sub-clause (3) of clause 2.

(ii) Omit sub-clause (4) of clause 2.

(iii) After sub-clause (4) of clause 2, add :

“(5) Notwithstanding anything in this section this Code shall apply only to such areas or to such persons or classes of persons in any State from such time or by such stages as the State Legislature may from time to time by Act provide.”

Shri Jhunjunwala : I beg to move :

To clause 2, add the proviso:

“Provided, however, that notwithstanding anything contained in the above clauses, this Code shall not apply to any person, unless such person got his name registered with such authority, and in such manner, as may be hereafter prescribed by Parliament, within one year after this Code comes into force and in case of a minor within one year after such a minor attains majority.”

Mr. Speaker: I called out each Member who has tabled his amendment or amendments and I find that Shri Shiv Charan Lal and Prof. K. K. Bhattacharya were absent when called. But, as we are following a procedure of calling out the number of the amendment it is possible that these two Members may not have expected that they would have been called so soon as that to move their amendments. Though I am very clear that they should have been in their seats when the Bill is taken up for discussion, as we are starting this procedure in the beginning. I am thinking of permitting them to move their amendments later on if they turn up in the House and wish to move them during the course of discussion on this particular clause.

Shri J. R. Kapoor (Uttar Pradesh) : Sir, there are two amendments of which I have given notice. One of them is an amendment to Shri Jhunjunwala's amendment No. 18 in Supplementary List No. 1.