

Mr. Speaker: Is the hon. Member moving further substantial amendments ?

Shri J. R. Kapoor: No. I may be so called but not No. 2.

Mr. Speaker : No 2 of course is an amendment to the amendment of Shri Jhunhunwala. That I am accepting for moving.

Shri J. R. Kapoor : So far as No. 1 is concerned, it does so happen that it has been given the shape of an absolutely original amendment though I had given it to the Notice Office in the form of an amendment to Mr. Jhunjunwala's amendment No. 13. To put it in a better form the office has given it as a separate amendment. Therefore, I hope you will admit it. The whole thing will be open to discussion and the admission of this will not in any way interfere with the proper disposal of the subject.

Mr. Speaker : It is not a question of disposal. If I were to permit amendments at the last minute, they will be coming in even till the last stage of voting. Therefore, I am unwilling to waive. . . .

Shri J. R. Kapoor : Sir, I was making this submission only in view of the special circumstances of the case. Originally I had put in the first amendment as an amendment to Shri Jhunhunwala's amendment No. 13 in Supplementary List No. 1. But then to give it a better form the office thought it might be put as a separate substantial amendment. If the Chair is so pleased it can be taken in the original form.

Mr. Speaker: Very well. As it is a change in form only I will permit him to move it.

Shri J. R. Kapoor : I beg to move :

(i) For clause 2, substitute :

"2. Application of Code.—This Code or any part or parts thereof applies to all the citizens of India that is Bharat, who after attaining the age of majority, declare in writing that they shall be governed by this Code or any part or parts thereof, as the case may be, and get such declaration registered in accordance with rules prescribed for the purpose by the Central Government."

I also beg to move:

(ii) In the amendment proposed by Shri Banarsi Prasad Jhunhunwala, in the proposed proviso to clause 2, for the words beginning with the words "unless such person" to the end, substitute:

"unless such person, after attaining the age of majority, declares in writing that he or she, as the case may be, shall be

governed by this Code, and gets such declaration registered in accordance with rules prescribed for the purpose by the Central Government.”

Mr. Speaker : Amendments moved :

1. 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.”

2. For clause 2, substitute:

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

3. 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.”

4. 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.”

5. 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).

6. 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”.

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

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

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

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

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

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

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

12. 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”.

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

14. 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”.

15. 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;”.

16. 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.”

17. 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.”

18. Omit sub-clause (2) of clause 2.

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

20. 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.”

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

22. Omit sub-clause (4) of clause 3.

23. 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.”

24. 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.”

25. For clause 2, substitute :

“2. *Application of Code.*—This Code or any part or parts thereof applies to all the citizens of India that is Bharat, who after attaining the age of majority, declare in writing that they shall be governed by this Code or any part or parts thereof, as the case may be, and get such declaration registered in accordance with rules prescribed for the purpose by the Central Government.”

26. In the amendment proposed by Shri Banarsi Prasad Jhunhunwala, in the proposed proviso to clause 2, for the words beginning with the words “ unless such person” to the end, substitute :

“unless such person, after attaining the age of majority, declares in writing that he or she, as the case may be, shall be governed by this Code, and gets such declaration registered in accordance with rules prescribed for the purpose by the Central Government.”

Shri Naziruddin Ahmad : Sir, I would like to suggest a shortcut. There are a large number of amendments, though governing almost the same matter. I think if all these matters are discussed together there would be confusion and I think, from experience, that we will not get replies to our points. If we consider separately, we can curtail our speeches to prevent repetition. I suggest this only as a matter of opinion.

Mr. Speaker : If we are all determined not to repeat the same thing over again, we need not be very much afraid of repetitions. Of course, the Chair may be put to a much greater strain in watching that there are no repetitions, but the Chair will try its best to do so.

Dr. Ambedkar : And apply sanctions to Mr. Naziruddin Ahmad !

Shri Sarwate : Sir, at the outset an objection has been raised that my amendment would enlarge the scope of the Bill. In the course of my speech, I shall try to show that if it does so at all, it is not being inconsistent either with the object of this Bill or with the provisions of the Constitution.

[PANDIT THAKUR DAS BHARGAVA *in the Chair.*]

As far as I know, there has been no one definition of “Hindu”. The connotation and denotation of the term “Hindu” has varied from time to time and from place to place. Possibly, there would be a time when it would come to mean what I have suggested in my amendment. I may quote certain instances where the term “Hindu” is interpreted variously. *Satyarthaprakash*, I am told, does say that “Hindu” means : “whosoever resides in India”. *Savarkar*, reformer of Bombay has suggested that whosoever is born in India and who holds her as his sacred land is a Hindu. He has suggested:

आ सिंधु सिंधु पर्यता, यस्य भारत भूमिका ।

पितृभूः पुण्यभूश्चैव, सर्वे हिन्दुरिति स्मृतः ॥

That is to say, one who considers India to be his homeland and also as his sacred land should be considered as Hindu. I need not point out that in America and also probably in South Africa everybody who comes from India is known as “Hindu”. Therefore, my amendment does not seek to do anything novel but is in conformity with the interpretation which has been tried to put on this term “Hindu”. Again, I may point out that in this Bill itself, the term “Hindu” is not restricted to Hindu law, whatever that may mean. In sub-clause (a) of the definitions, it is said to apply:

“to all Hindus, that is to say, to all persons professing the Hindu religion”,

and in (b):

“to any person who is Buddhist, Jain or Sikh by religion”.

So, this Bill seeks to extend the provisions to Hindus plus Sikhs plus Buddhists plus Jains. I need not go into the history of the Hindu religion. Jainism was certainly at one time opposed to and contradictory to the Hindu religion, if that means *Sanatana Vedic Dharma*, Whereas *Sanatana Vedic Dharma* relied on the *Vedas* Jainism did not rely on

the Vedas. Therefore, Jain and Hindu *Sanatana Vedic Dharmas* were entirely different religions.

The House then adjourned for Lunch till Half Past Two of the Clock.

The House re-assembled after Lunch at Half Past Two of the Clock.

[PANDIT THAKUR DAS BHARGAVA *in the Chair.*]

Shri Sarwate: When the House rose for lunch I was trying to show that in the Bill along with Hindus, persons of other religions are also sought to be included—religions which were contradictory to and opposed to Hindu religion, *i.e.*, *Sanatana Vedic Dharma*. For instance, Buddhism was against Hinduism ; so also was Jainism. But these two religions have been included in the Hindu Code Bill. So, if the mover of the Bill is entitled to include certain religions other than Hinduism, then I am entitled to move that certain other religions may also be included and in doing so I think I shall not be outside the scope of the Bill.

I was going further to show that the Bill under discussion also seeks to codify and *reform* Hindu law, if I remember aright, it has been stated in the Statement of Objects and Reasons. Possibly that has been done to obviate or remove any possible difficulty that the Constitution may bring in at this stage or later on. What I mean is this. Article 25 of the Constitution lays down that all citizens of India are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion. If as man were free to practise his own religion, then he would certainly be at liberty to marry according to the tenets of his religion. But what is sought to be done by this Bill is that he will be forced to marry in a particular way. The principles laid down in this Bill may be entirely opposed to the tenets of his religion. I have a feeling that objection to this may probably be sought to be covered by the subsequent clause of article 25 which reads :

“(2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law—

(a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice ;

(b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.”

By my amendment I want to reform what is Hindu religion. I want to reform Hinduism by widening its scope to all those persons who are citizens of India, including Christians, Parsis, Jews, etc.

Now, Sir, what is Hindu law ? Hindu law is said to be based on *Shruti* and *Smriti*, that is *Vedas*. Further it is said that that is not the only source. The other source is the enactment by proper legislature or proper authority. So, let us say that enactment plus *Vedas* is equal to Hindu law. If X represents *Shruti* and *Smriti* and Y represents enactment, Hindu law is equal to X plus Y. The value of X in the beginning was 100 and that of Y zero. But as time went on encroachments were made by enactments one by one with the result that the position was completely changed.

The very basis of the Hindu religion is the caste system and secondly the particular way in which marriage is held. It is held to be sacred ; it is held to be sacramental and therefore it is said to be indissoluble. It cannot be dissolved. There cannot be a divorce according to the strict *Sanatana Vedic Dharma* as practised by orthodox Hindus. But one by one these fundamentals are being removed. For instance, divorce is allowed . In certain cases castes have been totally ignored and in this Bill it has been said that there will be no caste. So this Bill takes away the whole basis of 'Hinduism' according to the *Sanatana Vedic Dharma*. What this Bill seeks to do is that whereas previously X was hundred and Y was zero and the total was hundred, X is sought to be reduced to zero and Y raised to hundred. They are exactly reversing the position. While once the *Shruti* and *Smriti* was the whole source and enactment nil, now the enactment would be the whole source and *Shruti* and *Smriti* nil. Therefore, what I am now saying is that instead of giving this benefit only to those who are *Sanatana Vedic Dharmas* it should be extended to all. That would be doing on the professed lines of the Bill. My object is to give equality to all persons who are inside the limits of India. I am neither partial to the Hindus, nor to Sikhs, nor to anybody else.

It may perhaps be pointed out that I am trying to extend the scope of the Bill to persons who were not examined; for instance, Christians and Parsis were not examined, and that it would be unfair. My answer is that it would be unfair to include the Sikhs either because they were not examined. So, in point of fairness there is not much to choose between the provisions of the original Bill and the amendment which I am seeking to move. The logical course would be to examine those

persons who were not examined previously and to get their opinion. If necessary the Bill may be held over or returned to do this.

The chief claim of this Bill is said to be this that it is based on a very good sense of fairplay, justice and equity. Suppose it is said, for instance, a person has three sons and three daughters. If he has affection for his sons, he has equal affection for his daughters. If the sons are to inherit because they are born of the parents, it follows that the daughters also having been born of the parents they should also take the inheritance. That is the only reason that can be advanced for giving the inheritance to the daughter, namely, that she is born of her parents, and therefore she necessarily ought to get a share in the property of the father. In a way it is right. Then it should be right not only in the case of Hindus but of Muslims and Sikhs also; it should be so in the case of Christians and others. Therefore, if the law has to be amended it should be made applicable not only to Hindus but to all citizens who happen to be within our jurisdiction and for whom we can legislate.

And here I have a very good support. I shall just quote what Dr. Ambedkar himself has said at a previous stage of the Bill—I am quoting from page 3651 of the report of the proceedings of the House :

“ If my hon. friend's alternative was that there ought not to be communal laws of inheritance and communal laws of marriage but there are to be a common Civil Code applying to all sections, all communities, in fact applying to citizens without discrimination as to religion, cast or creed, I am certainly one with him.”

He said this in the course of the discussion on the Hindu Code Bill at some previous stage.

An. Hon. Member : He has changed his opinion.

Shri Sarwate : He should keep his word.

There is also a provision in the Constitution in my favour, and that is article 44 which says:

“ The State shall endeavour to secure for the citizens a uniform Civil Code throughout the territory of India.”

A Civil Code necessarily means a Code which deals with marriage, inheritance, adoption and so on. The scope of the Civil Code is co-terminous with and almost the same as that of the Hindu Code Bill. The article in the Constitution says that “the State shall endeavour.....”, which is being made by this amendment. So it is but proper that the earliest opportunity should be taken to put this provision of the Constitution into effect and Dr. Ambedkar should be the first person to accept my amendment.

While the discussion on this Code was going on in the previous session, some of my Muslim friends, and also some of my Parsi friends, expressed their entire satisfaction and were very loud in praising the provisions of this Code. I would welcome them and appeal to them to support me. When they consider that the provisions are so good and reasonable, they should follow up their convictions by similar speeches as the one which I am at present making, namely, that the Code should be made applicable to all.

I say that the expression “Hindu” in this Code shall, unless otherwise provided, mean a citizen of India. I have put in the expression “unless otherwise provided” for this reason, namely, that if certain provisions of this law are not applicable to people of certain religions, if for instance they think that adoption is not necessary for them, they can move that for the purposes of adoption “Hindu” should not include, for instance, a Muslim or a Christian. The phrase “unless otherwise provided” would show that it is sufficiently elastic. My definition would be sufficiently elastic to enable every religion to adapt the Code to its own tenets or whatever hon. Members think that their religion requires them to do. So there should be no difficulty in this way either. For instance the Roman Catholics think that divorce is not allowable in their case. If they are convinced they can say that for purposes of divorce “Hindu” should not include a Roman Catholic.

According to this Code there can be two ways of marriage, sacramental and civil. Sacramental marriage would mean a marriage done according to religion. It may be any religion—It may be Hindu, Jain, Christian. That does not come in the way either. For instance there are necessary ceremonies in the *Sanatana Vedic Dharma*. What I am suggesting is that people of those religions need not be afraid that their whole religion would be nullified.

Shri Tyagi: What about those who are already married according to another Code ?

Shri Sarwate : My hon. friend Mr. Tyagi may suggest the necessary amendments at the proper stage for that.

I, therefore, suggest that my amendment meets the provisions of the Constitution ; it is in conformity with what has been said by the Mover of the Bill, the Hon. Dr. Ambedkar ; it meets also all the claims which have been made for this Bill, those of logic, justice and fairplay. I therefore commend my amendment to the House and to the Mover of the Bill for acceptance.

Mr. Chairman: There are some amendments from the hon. Member Shri Gopinath Singh. They have come today. The rule in this House has been that unless the hon. Member in charge of the Bill consents, the Chair does not allow them. The notice has been received only today; I would ask the Hon. Dr. Ambedkar if he is willing to accept them.

Dr. Ambedkar: I have not got copies of those amendments at all and I cannot say anything.

***Shri Indra Vidyavachaspati:** (*English translation of the Hindi Speech*) Sir, my amendment is that the Hindu Code Bill when passed, should be made applicable to every Indian. There should be no distinction of caste, creed or religion therein. This is my amendment. In the beginning, I would like to submit as to why I am speaking today, I have been a member of this Parliament for one year. But I have not taken a single minute of the House. It was because our Hon. Speaker had said that every minute of parliament costs fifty rupees. Thus I have saved thousands of rupees of this Parliament, but I am not inclined to make a saving today. The reason is that I have a fear lurking in my mind. The fear is that I feel there would be difficulties both if this bill is passed and if it is not. I am a staunch social reformer and I want that there should be such legislations for social reforms. The State has a right to frame laws for making reforms in the society. Therefore, what I want to point out is that it cannot be said that it is an interference with any religion. On the other hand I am of the opinion that the State and the legislature must take steps to provide for such legislations relating to social reforms. I do not say that this Bill should not be passed but I am afraid, this bill will not be passed in the form in which it has been presented although Dr. Ambedkar and our Prime Minister have repeatedly expressed the view that it would be passed. I think even in a long session as the Budget Session, we will not be able to pass it unless the guillotine is used. But it is not proper to use guillotine in the case of such bills which affect the whole country. So, this is the first difficulty. The other difficulty is that by passing the Bill in its present form, we will give encouragement to an evil which must not be there and against which we have always stood up. And that evil is communalism. If we pass the Hindu Code Bill, this evil of communalism will raise its head for ever. As this Bill is not applicable to all sections of the

* P.D., Vol. VIII, Part II, 5th February 1951, pp. 2387-92.

population. It will definitely give rise to communalism. If the Bill is not passed. I fear the avenue of making social reforms through legislation may be closed for ever. I have very little hope of its being passed but if it is passed the feeling of communalism will arise and what should have been a boon will turn into a curse. Therefore, when I saw these obstacles and difficulties in the way of social reforms. I decided to say something. I would clearly submit that I am in favour of making laws relating to social reforms. I do not want to go into the details of the proposed reforms, but I would like to say a few words on subjects like polygamy. I want that monogamy should be enforced by law in our country not only for Hindus but for all sections of the population. In the same way, I also say that there should be justice for women and their economic rights should be safe-guarded. I do not believe that only Hindu women are oppressed. There are women of other communities as well who are also oppressed. These atrocities must go. It is better if the society itself removes these atrocities, otherwise law must intervene. If a Constitution can be enacted on principles of equality and equity for the whole of the country, why not laws be made for the entire society? In the same way I think, there is the question of divorce. We hear many quotations from the *Shastras* against it. I do not want to discuss that subject but I can say on the basis of *Dharma Shastras* as that it is wrong to say that this has not been mentioned in the *shastras*. Everything for and against a certain subject is given there. There are 137 *Smritis*. In the principal one i.e. *Manusmrit* it is written :

Vidvadbhi Sevitah Sadbhirnityamadwesharagibhih

Hridayenabhyanyatoyo dharmastannibodhata Sannibodh.

(meaning thereby the Dharma is that which is constantly practised by the good, the learned and those who are devoid of prejudice and attachment and which is in full accord with the heart).

Manu has himself said that there were *Smritis* before him. So these *Smrities* are in existence for a very long time. It is wrong to say that there should be no reforms in our society. It will put an end to all the progress in our country. All necessary reforms in the society must be made. I will not go into details because the Bill will be discussed clause by clause later on and amendments can be made at that stage. Therefore I am not in favour of postponing it. But one thing seems certain, that many difficulties will arise if it is passed in this very form. In my opinion, the government may enact an Indian Code, but it should be applicable to the whole country. The reforms should be made for the whole of India.

I will now point out the disadvantages of its being applicable to Hindus alone. Firstly according to the Constitution of free India, we do not want communalism to grow. Ours is a secular state. Under these circumstances, the Government cannot make any law for a particular community. The lawyers can discuss a lot on this subject, but as a layman, I would only submit that in a State where religion has not been given any place or consideration, it is against all justice to frame laws for the followers of a particular religion alone, and such a step will always encourage sectarianism.

This Bill originated in the days of British rule. During that time, Hindus and Muslims were used to be kept apart from each other and everything was done to encourage communalism. Thus, the Bill started in that form. I want to submit as to why this remnant of the British period be allowed to stick on while we have thrown out all others so that there may be no discrimination against a particular section of the society.

Shrimati Durgabai : On a point of order, Sir I understand the hon. Member is raising the question of competency of this Parliament...

Some Hon. Members : No. no.

Shrimati Durgabai : At least that is what I understood him to say. If that is so, I wish to tell him that that issue had already been decided.

Mr. Chairman : I am sorry the hon. Member has not understood the point the Hon. Member was making. He never said that this House is not competent but, on the contrary, he holds that this House is fully competent.

Shri Indra Vidyavachaspati : Let me finish all that I have to say and then perhaps there will be no doubt in this regard.

By this Bill the Government want to achieve a big thing, that is they want to remove all injustice that is done to the women. I do not think there is any Indian social reformer who will not co-operate with the Government in this matter or who will not support this move. But I would like to ask one thing from those who want to remove this injustice done to the Hindu women. This is also an injustice that a man can marry four women at a time but a woman is not allowed to do so. This is an injustice. It Must go. Is this injustice done to Hindu women alone and not to Muslim women also ? I ask my sisters whether they will tolerate that justice should be done only to Hindu women and not to Muslim women ? This injustice done to them must also be removed.

How it can be tolerated that injustice may continue to be perpetrated on them. Why do not the Government include them in this Law? It is said that if any such Laws for Muslims and others are enacted, it would mean interference in their religion. If the enactment of social laws is interference in their religion, how this law is not an interference in religion of Hindus also. We therefore should make such a law which may be applicable to all. If it is interference in religion, it is for all. I am of opinion that it is not an interference. The law should be applicable to all alike, Muslims, Sikhs and Christians. There should be no discrimination. There should be no discrimination about it. It is as much our duty to do justice to Muslim women and women of other religions as we do justice to Hindu women. Therefore the present form of this Bill should not be there.

There is another aspect. We may have to face some difficulties regarding this enactment. As we know in Bombay the Bigamy Act was challenged in the High Court and the High Court declared it *ultra vires*. The news has appeared in the newspapers also.

Several Hon. Members : Not High Court, Lower Court.

Shri Indra Vidyavachaspati : Well, let it be Lower Court. Such difficulties may arise. This Act will be challenged in the court. In his recent statement in Bombay, Dr. Deshmukh had invited our attention towards this aspect. We will come across such a difficulty if we pass this bill and if it is challenged and the issue is referred to High Court or Supreme Court then we may have to face new difficulties. Such difficulties may arise if we make it applicable only to Hindus. The Government may well realise that more than sufficient time has passed since this Bill has been introduced and why it has not been possible to make any progress in it. Even the Reformist Hindu Organisations do not support it fully. Even the Reformers are moving amendments to it. To my mind the reason for all this is that we have adopted a wrong measure for social reforms. If a few lines are put in wrongly, there are two ways to correct them. In the first instance we may draw a line in between them or secondly rub them out and draw a fresh straight line instead. But what is being done is that one line is joined with the other line, thus forced insertions are being made. In my opinion the best course would be to withdraw it for reconsideration and introduce such a revised Bill that may have full support. As we have set up uniform political order and economic order in the same way we should introduce such a social order that may be applicable to the whole of the country. Such a Bill should be brought forward.

If Hindu women face some difficulties, the Muslim women also face them. When we have framed such a comprehensive Constitution and set up a uniform economic order for the whole of the country then it is not very difficult to draft such a Bill. Remember, truth is eternal; place, time and person cannot prove obstacle in it. If this principle holds good, then it should be true for all, and if it is not true then it cannot be true for anybody. I think the intention of Government is good. It would be better if that is utilised for the benefit of the whole country. This Bill should be redrafted and introduced here.

I want to submit one thing more, that here we faced the greatest of legal difficulties and complications, all those have been solved and many laws have been passed because of the fact that today the country wants to make progress on the basis of equality and freedom, and is willing to accept all those laws as are based on equality. If a Bill is drafted on this principle and made applicable to the whole of the country surely it would be accepted. This is my view point. But this Bill is not so. Although the Government are very hopeful, it is very good that they are optimist, but they will find many difficulties in getting this bill passed, it will require a three months' session, even then with great difficulty they will be able to get it passed and then even after that there are many obstacles to be faced. Even if this Bill is got passed we will have to face several difficulties before it is enforced, and we will be involved in legal difficulties. I, therefore, will ask those who have framed this Bill, and especially Dr. Ambedkar, who has laboured hard for it and has worked with firm determination, to broaden their outlook, and with their abilities of legal profession, should make such laws as may be applicable to all Indians instead of Hindus alone. The present minor drawbacks in the Bill would be removed automatically as the path of truthfulness is straight.

[MR. SPEAKER *in the Chair*]

I also wish to say this to my hon. sisters that as they want that full justice should be meted out to Hindu women, similarly full justice should also be done to Muslim women and women of other religions. They may argue as to who would accept them. But in Turkey reforms have taken place; it is a Muslim country, and there all have accepted those reforms. As these reforms have been accepted in that Muslim country, similarly here also these reforms will be accepted. Therefore our sisters should adopt the right course and accept these reforms without making any discrimination among themselves. Only then we will be able to get it passed and if it is passed under such circumstances,

then such difficulties will not crop up. Otherwise we have great difficulties before us and if we get it passed even then we will have to face many difficulties.

I may tell them that I am not saying all this to put hindrance in the progress of the Hindu Code Bill. I am a staunch reformer and want that it should be passed, and with this very intention. I am submitting that it should be so modified as to be made applicable to the whole of the country. It can be made applicable only after such a change, otherwise not.

Shri Shiv Charan Lal (Uttar Pradesh) : I beg to move an amendment standing in my name. I was not present when I was called.

Mr. Speaker : He can move it now.

Shri Shiv Charan Lal : I beg to move :

Omit the proviso to sub-clause (2) of clause 2.

Mr. Speaker : Amendment moved :

Omit the proviso to sub-clause (2) of clause 2.

***Shri J. R. Kapoor** : Sir, with your permission, I may read out the amendment on which I wish to speak, to refresh the memory of Hon. Members, The amendment runs thus :

For clause 2,.....

Shri Jhunjhunwala : Which amendment is the hon. Member referring to ?

Mr. Speaker : It is an amendment which he has given notice of today. It is not printed in the list.

Shri Jhunjhunwala : We have not got copies of that.

Mr. Speaker : It was once read to the House; he is reading it again.

Shri J. R. Kapoor : The amendment runs thus :

For clause 2, substitute :

“2. *Application of Code.*—This Code or any part or parts thereof applies to all the citizens of India that is Bharat, who after attaining the age of majority, declare in writing that they shall be governed by this Code or any part or parts thereof, at the case may be, and get such declaration registered in accordance with rules prescribed for the purpose by the Central Government.”

Secondly, there is an alternative amendment. If this is not acceptable, I would commend the other alternative amendment to the acceptance of the House. The alternative amendment runs thus:

In the amendment proposed by Shri Banarsi Prasad Jhunjunwala, printed as No. 18 in Supplementary List No. 1 in the proposed proviso to clause 2, for the words beginning with the words “unless such person” to the end, substitute:

“unless such person, after attaining the age of majority, declares in writing that he or she, as the case may be, shall be governed by this Code, and gets such declaration registered in accordance with rules prescribed for the purpose by the Central Government.”

Mr. Jhunjunwala’s amendment, as further amended by me, would run as follows:

“2. *Application of Code.*—This Code or any part or parts thereof applies to all the citizens of India that is Bharat.....”

and then follows that this will be applicable only to those persons who would make a declaration in writing and so on and so forth ; I need not repeat that.

Sir, I propose this amendment with a full sense of responsibility, and I hope I will not be misunderstood, as I hope the two previous speakers would not be misunderstood, for my amendment it is very much in line with the two amendments which have already been moved by my friend Mr. Sarwate and my friend Shri Indra Vidyavachaspati. Only mine is an improvement on theirs. I would like to submit first of all, that in proposing this amendment, I am actuated more particularly by the consideration that this Hindu Code should have an easy passage in this House. That is my first consideration. My second consideration is that it should be easily acceptable to the country as a whole, to the various sections of the community, to the various sections of the nation. And thirdly my consideration is that it should not be said of us that in this Parliament, in this country where we have a secular State, where we took very great pains to frame a constitution with the background of a secular State, we are now trying to legislate in a manner which smells of communalism, which clearly indicates that we are trying to legislate for one section of the community and not for the others, that we are trying to legislate for persons who profess one religion and are ignoring the interests of those who profess another religion, or *vice-versa*, that we are trying to do something to encroach upon the rights and religious customs of one section of the community

and are afraid to encroach upon the rights and privileges of another section of the community professing another religion. Therefore, I submit that if my amendment is accepted, it will have very many advantages and absolutely no disadvantage.

I was very happy to hear the point of order raised this morning by my friend Mr. Naziruddin Ahmad, not that I was particularly in agreement with the point of order raised by him, but because of the considerations and the reasons behind his point of order, and the considerations which weighed with him in raising that point of order. He raised the point of order, that the Constitution does not permit us to enact a discriminatory legislation. He referred to article 15 of the Constitution. He referred also to article 25. I feel that the idea working in his mind was, if the provisions of the Hindu Code are beneficent and useful, why should they not be applicable to other sections of the Nation also? And what is in his mind, I am sure, is in keeping with the signs of the times. He would, I am sure, be glad, according to the point of order raised by him, to make an attempt to enact a legislation which would be applicable to all sections of the nation, Hindus, Muslims, Parsis and Christians. There is, of course, another article of the Constitution—article 44 to which reference was made by my friend Mr. Sarwate, that the State shall attempt to have a uniform Civil Code. True, that article is not included in the chapter of Fundamental Rights, but it is under the chapter dealing with the Directive Principles. The Constitution directs us specifically that we should make an attempt to have a uniform Civil Code for the whole country. Well, this is the first occasion when we are attempting to have a Civil Code and in this very first attempt, will it be proper for us, will it be desirable for us to ignore this very important article of the Constitution? Let us not make a beginning by doing something contrary to the specific directive that has been given to us by the Constitution. When we were sitting as the Constituent Assembly—we all were in it, most of us, and many other eminent persons who are not here were also there—many Muslim Members were also there, and there were Parsis also, and there were also Christians, and persons professing every faith were there. All of them, as far as I remember, unanimously agreed to these clauses in the Constitution, I mean articles 15, 25 and 44. When all those persons professing every faith, were seriously and coolly and calmly considering what sort of legislation we should have in this country, they all unanimously decided that we should have a uniform legislation, so as to be in conformity with

articles 15 and 25 of the Constitution, and also article 44. What has happened since then and now to compel us, to persuade us not to act according to those articles of our Constitution? Nothing has really happened since then, which should persuade us to go contrary to those provisions. On the other hand, we find that even persons professing religions other than Hinduism, are also anxious that we should have a uniform Civil Code. Mr. Naziruddin Ahmad is a representative of the Muslims. He himself says that it is not open to have a legislation which will govern only one section of the nation, but that one legislation, must govern all the sections of the nation, all persons professing various religions. That being so, I submit there is no reason why we should hesitate to legislate for persons professing different religions. From the amendments that have been tabled and have already been moved. I find that the Sikhs would like to go away from the operation of this Code. That is the effect of one of the amendments moved by my hon. friend Sardar Hukam Singh. Then I find that there are other Hon. Members who are anxious that this clause 2 should be so amended that it should not be applicable necessarily to all the States and all the community. My Hon. Friend Pandit Thakurdas Bhargava, as we all know, is a very great social reformer, and he is always anxious to introduce legislations in this House directed towards social uplift. According to his amendment what he wants is that it should be left open to the various States to adopt the legislation or not. He also desires that it should be open to the various communities either to be governed by the Code or not.

Shri Tyagi : Surely it will not be territorially uniform in that case.

Shri J. R. Kapoor : Exactly. In order to make it applicable to all the territories and communities my amendment should be accepted. It does not restrict the operation of this Code to one territory or another, nor to one community or another. On the other hand it extends the scope of this legislation and seeks to embrace within its ambit Hindus, Muslims, Christians, Parsis or persons professing any other faith.

During the general discussion of this Bill some good points were made by my hon. Friends Dr. Tek Chand and Pandit Thakur Das Bhargava. They said that this Bill would operate in a great measure as a hardship on various sections of the Hindu community, among whom marriage and divorce laws are easy. In some parts of the Punjab and elsewhere, it was pointed, marriages can be easily performed. Why should they be deprived of this easy manner of their marriages?

Dr. Deshmukh (Madhya Pradesh) : Easy marriage, easy divorce !

Shri J. R. Kapoor : In the matter of divorce they have easy laws in various parts of the country, among various sections of the people. Why should those laws be made more difficult ? On the one hand the contention of some was that marriage and divorce laws were made more and more strict by the Code and on the other, the contention of others was why should these marriage and divorce laws be enforced on persons who did not believe in them. My submission therefore is that this Code in whatever form it is passed, should not be forced on any particular section of the Hindu community, or the Sikhs or Jains. It should be left open to them to be governed by it or not. Secondly, some of the provisions of this Code—particularly those relating to monogamy and divorce, with which I am in entire agreement and would like them to be made a little more liberal—are so good that I see no reason why the Muslims should not be entitled to have the advantage thereof.

My hon. Friends Shri Sarwate and Shri Indra have moved their amendments. Particularly the amendment of Shri Indra wants that the whole Code should be compulsorily made applicable to the Muslims. I do not want that it should be so enforced on Muslims just as I do not want that it should be obligatory on every Hindu to be governed by this Code. I want that it should be open to a Hindu, Muslim, Parsi or for the matter of that any person professing any other religion hereto or hereafter, in fact it should be open to every citizen of India either to be governed by the Code or not.

Dr. Ambedkar : Great liberal !

Shri J. R. Kapoor : Not only that, I want that it should be open to anybody to pick and choose various parts of the Code. I am making this statement with all seriousness, because of this reason. There are various clauses in this Bill which should be readily acceptable to some but not to others, similarly there are other clauses which may be acceptable to others but not to all.

Pandit Thakur Das Bhargava : Does my hon. Friend contend that the choice of the person should be per clause ?

Shri J. R. Kapoor : Not per clause but various important parts of the Code. When I made that suggestion I knew that it may require the legal intelligence of Dr. Ambedkar as also Pandit Bhargava and other legal luminaries to amend the various sections of the Code so as to make them fall in line with my amendment. I am sure that this

task is not beyond the capacity of Dr. Ambedkar or Pandit Bhargava or other legal luminaries. Speaking for myself I am particularly in favour of the clause relating to monogamy and divorce. But there are other clauses which I would not like to adopt. I would therefore like to have the liberty of making a declaration to the fact that so far as I am concerned I would like to be governed by the clauses relating to monogamy and divorce and not others. I would beg of this house very seriously to consider the suggestion. Firstly, that this enactment should be applicable to the entire nation, secondly, it should be open to anyone to say by declaration that he wants to be governed by this Code and thirdly, it should be open to him to say also that he wants to be governed by this or that chapter.

Dr. Deshmukh: If the husband and wife differ on the issue of say divorce, who will decide ?

The Minister of Works, Production and Supply (Shri Gadgil) :
The child will decide.

Mr. Speaker : Let the hon. Member proceed.

Shri J. R. Kapoor : If the husband and wife differ on the divorce issue I am prepared to give the choice to the wife, if thereby I can secure the support of the lady Members here. If my suggestion is accepted, of course the various provisions of the Bill will have to be recast. It is a matter of principle. Once the principle is accepted— namely that we should have one uniform law for the whole country, secondly that we should give the liberty to every citizen to say whether he wants to be governed by the Code or not and thirdly, the liberty to pick and choose various aspects of the Code—proper amendments could of course be drafted. I know how difficult it is but difficult as it is certainly it is much easier than the task of getting this Bill passed by this House and, certainly it is easier than to get the support of the entire nation for this Bill as it is, compulsorily enforceable among the Hindus, Sikhs, Jains and Buddhists.

Therefore, I submit that my suggestion should be very seriously considered. I hope and trust that if we consider it coolly, calmly, dispassionately and without any prejudice either for or against it, certainly we shall be able to come to an agreed solution and perhaps within five or seven days we may be able to pass this controversial measure. It will satisfy everybody. It will satisfy those who want to have a uniform Code. It will satisfy the orthodox Hindus because it