

will not be necessary to enforce the Code on them; it will be open to them to be governed by it or not. It will satisfy those reformers also who want to have legislation on these lines because it will enable them to declare that they want to be governed by this legislation. It will therefore satisfy everybody and offend nobody. With these submissions I commend my amendment for the acceptance of the House.

My alternative amendment is also on the same lines but it restricts the operation of the Code to Hindus only. According to my first amendment, I want that the whole Code, in whatever form it may be passed, should be applicable to the entire nation, subject to the condition that it will be applicable only to those who declare that they want to be governed by it. If, however, that suggestion is not acceptable for any reason then I submit in my second amendment that the Code should be applicable to the Hindus, Sikhs and Jains as has been provided but that there also it should be applicable only to such Hindus, Jains, Sikhs and Buddhists who by declaration state they want to be governed by it.

***Dr. Deshmukh :** I have two points to make so far as these amendments are concerned. There are various amendments that have been moved but I should first wish to speak on the amendment of Mr. Sarwate and then on the amendment moved by the Hon. Dr. Ambedkar. I feel inclined to support the amendment of Mr. Sarwate on constitutional basis, and I feel that he has certainly brought forward an amendment which advances the cause of the Constitution, in case it is accepted that it requires advancement. I personally think it does since there is a section of Members of this House who do not regard very seriously what we have embodied in the Constitution. I would beg of you to give me a few minutes to refer to article 44 which reads:

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

Now, this is an article from the Directive Principles of State Policy. Although it is not contemplated that any decision of government could be set aside by the Supreme Court or could be regarded as illegal and against law on this score, I don't know whether it would be competent for the Supreme Court to give a ruling. But if we attach

any value or wish to give any serious consideration to the Directive Principles of State Policy in the Constitution, I am unable to see how by passing this Code we would be endeavouring to secure for the citizens a uniform Civil Code throughout the territory of India. What we would be doing by this Code would be entirely and directly contrary to what is laid down in Article 14. Because this is not only not endeavouring to secure for the citizens a uniform Civil Code but trying to enact a different Code for a section of the people. So, before we go ahead, before we waste any more time, we should consider this point. And I am sure we are doing nothing else but wasting time because for the next three days I am certain it would not be easy to go much further than Clause 2 and we don't know how long after that we would be touching the Hindu Code. A suggestion has already been made that it would have been far better, if we really wanted to pass this Code, that one whole session should have been devoted to it. To allot three days during which it would not be possible to advance very far I consider, a pure waste of time, energy and money of this House. It can serve only one purpose and that of merely satisfying the whims and fancies or dogged determination or inclination of certain people. It would be quite easy when we have got a couple of thousand people obstructing our way or shouting slogans to desist Members of this House from passing this Code, to find one or two persons who would like to go to the law courts to get a ruling that what we are trying to do is not only not in keeping with the constitutional provisions but is directly opposed to what has been laid down.

Shrimati Durgabai : Others also will go to courts.

Dr. Deshmukh : Both sides will be there. You will get a notice at the cost of those people who go there first.

Shrimati Durgabai : Others will be there on the basis of provisions regarding discrimination.

Dr. Deshmukh : Yes, there is discrimination everywhere and that is exactly the objection that is raised. If we enact this Code as it is, there will be discrimination in favour of certain people and against certain others who are also handicapped similarly, if not worse. That is a point which goes in our favour.

My second point on these amendments is that I am opposed to the amendment moved by Dr. Ambedkar. By his amendment No. 15 in the printed list, he wants the substitution of the words "persons who are Hindus by religion" for the words "Hindus, that is to say,

to all persons professing the Hindu religion". It is very difficult to find out which version really holds the ground at the present moment when there have been so many revisions and such a huge lot of amendments have been moved. It is not easy to know where exactly we stand. I don't see what is wrong with the original provision contained in the Code as it emerged from the Select Committee. The wording there is :

“ 2 (a) This Code applies to all Hindus, that is to say, to all persons professing the Hindu religion in any of its forms or developments.”

In his amendment Dr. Ambedkar proposes the substitution of these words by “persons who are Hindus by religion”. I don't see any difference between the two wordings. By the words “all Hindus” you refer to all people who are “Hindus by religion”. The original wording further explains the words “all Hindus” by saying it means “all persons professing the Hindu religion”. Thereby the Code will apply to any person who claims to be a Hindu. These words are now sought to be substituted. No reasons have so far been given as to why they are going to be substituted by new words. If they are actually omitted, and if Dr. Ambedkar can persuade the House to omit those words, I think a very real difficulty may arise. If you eliminate “professing” how are you going to define who is a Hindu and who is not a Hindu. The words proposed are “all persons who are Hindus by religion”. But how do we know who is a Hindu by religion and who is not ? Is it proposed that every person would be required to make a declaration ? I don't know what procedure is suggested and how it would be ascertained if a particular person is a Hindu or not. I would say that the words as they stood in the original Code as it emerged out of the Select Committee have stood the test of time. So far as my recollection goes, these words are there in Mulla's *Hindu Code* and these words have been used from very old times. They have a sanction of long usage.

In view of that there is, in my opinion, no need for this amendment and I would suggest that it should not be accepted. I support the amendment moved by my hon. friend Shri Sarwate on the ground that if we accept it, we would be acting in the spirit of the Constitution. Otherwise all our efforts are liable to be fruitless in view of the constitutional difficulty I have pointed out.

Shri Syamnandan Sabaya (Bihar): May I make a submission in this connection ? There are several amendments moved formally by the authors, but the movers have not made any speech explaining their viewpoint. One of such amendment is from the Hon. the Law Minister himself. Such of us who have not moved any amendment to this clause and have an open mind would like to hear the Government point of view as also the point of view of the movers of the other amendments in order to enable us either to take part in the deliberations or to decide how to act in the circumstances. May I therefore suggest that movers of the amendments should first make their speeches and then the clause should be thrown open for general discussion. This would help the discussion and the decision. In any case, we would like to hear the Hon. the Law Minister's view point on his amendment, so that we may either support him or oppose him.

Mr. Speaker : I was thinking of calling upon the movers of the amendments one by one, but I found that instead of the movers who did not appear anxious to catch my eye others caught my eyes. That is why I called upon others.

Dr. Ambedkar : The movers have sat back. In fact, I am myself waiting to hear them.

Mr. Speaker : The Hon. the Law Minister is at liberty to choose his own time but I did call upon him now because I thought that if he participated a little later it would be possible for him to clear the ground.

Dr. Ambedkar : I can speak at any time.

Mr. Speaker : He will be entitled to two speeches; that is to say, even if he participates in the debate now, he will be entitled to reply.

Shri Syamnandan Sahay : He may reply to the general debate on the clause, but as regards his own amendment he must satisfy the House that there is some reason for moving that amendment on behalf of Government.

Mr. Speaker : I think his position stands a little differently. He has to take into consideration what others say and then he will be able to explain his viewpoint better. That is why I was thinking of calling upon him at a later stage, though not at the end.

Sardar Hukam Singh : I do not know how the impression has got into your mind that the movers of the amendment do not want to speak on their amendments.

Mr. Speaker : I never said ‘they never wanted to speak’. I said they did not try to catch my eye. In between, Dr. Deshmukh got up and I called on him to speak.

Several Hon. Members : *rose—*

Mr. Speaker : I am not sure whether I should call Pandit Bhargava at this stage—for personal reasons. Mr. Jhunjunwala.

Shri Jhunjunwala : Sir, I have given notice of two alternative amendments. One of my amendments reads thus:

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

Alternatively, I have moved another amendment which reads thus :

“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.”

I want to assure the House that these amendments of mine are not dilatory ; nor am I opposed to all the provisions of this Code. The main object in moving my first amendment is that, as has been pointed out by my hon. Friend Mr. Naziruddin Ahmad, we have been passing many laws which are being declared *ultra vires* either by the High Courts or by the Supreme Court. It is therefore very necessary that before we take any such Bill, Act or legislation into consideration we should make sure that we are acting according to the Constitution. If we pass any law and ultimately that law is declared *ultra vires*, it will be a mere waste of the time of this House and also waste of so much money. It will serve no useful purpose. Under article 15 of the Constitution it is laid down that the State shall not discriminate against any citizen only on ground of religion, race, caste, sex, place of birth or any of them. The amendment that I have moved makes this Code applicable to all citizens of India, that is, Bharat, whereas the clause as it stands is restricted only to a particular class of persons. If the law that we are passing is for the good it is good for all people. It is not right that we should discriminate one particular community against another. We should not discriminate one set of persons who are professing one religion from another set of persons who are professing another religion if our law is for their good. If it is not

for their good, then it is not right that we should thrust any law or enactment upon a particular community or caste which is professing a particular religion.

One of the points which I wanted to make out was this : the House should see whether this Bill is one which Parliament can make, especially as it is restricted to a particular kind of persons professing a particular kind of religion. We can have such a law under Article 25 of the Constitution. Now let us see what are the provisions in article 25 which entitle us to take up such legislation. Article 25(1) reads :

“Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion.”

Clause 2 of the Bill relating to the Application of the Code reads :

“(1) This Code applies—

(a) to all Hindus, that is to say, to all persons professing the Hindu religion in any of its forms or developments, including Virashaivas or Lingayats and members of the Brahmo, the Prarthana, or the Arya Samaj;

(b) to any person who is a Buddhist, Jaina or Sikh by religion ;

(c) (i) to any child, legitimate or illegitimate, both of whose parents are Hindus within the meaning of this section;

(ii) to any child, legitimate or illegitimate one of whose parents is a Hindu within the meaning of this section; provided that such child is brought up as a member of the community, group or family to which such parent belongs or belonged; and

(d) to a convert to the Hindu religion.

(2) This Code also applies to any person, who is not a Muslim, Christian, Parsi or Jew by religion :

Provided that if it is proved that such person would not have been governed by the Hindu law or by any custom or usage as part of that law in respect of any of the matters dealt with herein if this Code has not been passed, then, this Code shall not apply to that person in respect of those matters;

(3) The expression “Hindu” in any portion of this Code shall be construed as if it included a person who, though not a Hindu by religion is, nevertheless, governed by the provisions of this Code ;

(4) Notwithstanding anything contained in the Special Marriage Act, 1872 (III of 1872), this Code shall apply to all Hindus whose

marriages have been solemnized under the provisions of that Act prior to the commencement of this Code.”

I have not been able to understand why this Code is being enacted only for the Hindus, if the right has been given—as has been done under article 25—that “ subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion.” If this right has been given to the Hindus and persons professing other religions, I do not see any reason why it is sought to be taken away from Hindus by enactment of such laws, such as the one now before us. I would ask the Law Minister whether he is not encroaching on the rights of Hindus of their religious liberty sanctioned by the Constitution.

Clause (2) of article 25, however says that:

“ Nothing in this article shall effect 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.”

But if this piece of legislation which is now under discussion is being enacted as a measure of social reform and for the welfare of the people, in that case I cannot understand why it should be confined to persons professing particular religions and not extended to all.

Shri Raj Bahadur : May I raise a point of order, Sir.

Three or four hon. Members of this House have raised the point that the scope or application of this piece of legislation should be extended to all the citizens of India. In the course of the first reading of the Bill the house has already committed itself to the principle that the Bill shall apply only to the Hindus. Having accepted this principle, is it now open to Members to take up this point anew and afresh ?

Mr. Speaker : The point of order practically comes to this—I am stating it in my own way. Briefly stated it would be as to whether some of the amendments which seek to extend the application of this Code to communities other than those included in the Bill is not tantamount to an extension of the scope of the Bill—is that the point of order ?

Shri Raj Bahadur : The House had agreed that this Code shall apply to one section of the Indian people alogb ne. Can we now take a new decision that it shall apply to all ?

Mr. Speaker : It comes to the same thing. The objection is that the scope of the Bill is being extended now—that is the point of objection. Personally, I myself was feeling doubtful about the admissibility of certain amendments which are now proposed and which apparently seek to extend the scope of the Bill but I have not come to any conclusion. I should first hear Members and then decide at the end as to whether I should put the amendments to vote or not.

Dr. P. S. Deshmukh : It is quite open to the House to extend or limit the scope of any legislation. So long as any particular clause is not passed by the House, it is completely at liberty to do that. Supposing the original Bill says that the Code will apply to the whole of India and the House proposes an amendment by which it excludes certain States or *vice versa* ? I feel certain the House is quite competent to do so.

Mr. Speaker : The extension of the Act to the whole of India and then limiting it to a part of India would not be an extension of the principle of the Act. The principle of the Act is something of substantive law, which extends not territorially but in other respects. It is perfectly competent, *prima facie*, to say that it shall not apply to Sikhs, Jains or Buddhists; but the point is whether it is competent now to say that it shall apply to Christians, Muslims, Parsis and Jews.

Shri Syamnandan Sahaya : There are two submissions I wish to make.

Before you give a ruling I would request you to give us a little chance.

Mr. Speaker : I shall give members every chance.

Khwaja Inait Ullah (Bihar) : Are these amendments which are being moved directed to bring in Muslims also within the scope of the Hindu Code and directed against our Fundamental Rights under article 25 of the Constitution ?

Mr. Speaker : That does not arise. It is a part of the wider question again as to whether the Code itself goes against the spirit of the Constitution.

Khwaja Inait Ullah : It is clear

Mr. Speaker : It may be clear to the hon. Member, but it is not so clear to me. Therefore, let us hear what the hon. Members have

to say and then coolly consider. There is no use going on presuppositions. After all it is a matter which affects vitally large sections of people. The question is whether it offends against the provisions of the Constitution.

Shri J. R. Kapoor : Before you are pleased to give a ruling on this question as to whether these amendments are or not in order, may I request you to give us an opportunity to speak on that particular point, because so far none of us have expressed ourselves about the admissibility of these amendments ?

Mr. Speaker : I think I shall give them an opportunity. But first of all I want to hear what they really mean and whether they are trying to extend the scope of the Bill. I shall give them a hearing.

Shri Jhunjhunwala : I was pointing out to the House that if a particular kind of legislation is one of reform or is in the interests of public good, then this Parliament will not be partial in enacting such a kind of legislation.

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

When a particular kind of legislation is being enacted for the welfare of the people why should it be restricted wholly to a certain class of persons and why should it not be extended to all ? If it is good, it is good; if it is bad, it is bad. And if it is bad why should we apply it to the Hindus ? Why should we thrust it upon the Hindus ? Why should they not be left free to practise their own religion and act according to their own ancient ideas ? It is said that this Bill is being enacted because the present system of marriage and other things are not in the interest of society, that they are spoiling society and that this particular kind of legislation is good for the society. If a particular kind of legislation may be regarding marriage, may be regarding inheritance, may be regarding anything, I do not want to go into those details which I shall do when the particular clauses come—but if, as I have said, particular things are good for certain persons. I would like to have the reasons from my hon. friend Dr. Ambedkar who is described as Manu of modern age as to why the particular piece of legislation is bad for Muslims, because he is excluding them, he is purposely excluding them by saying that this Code shall not apply to Muslims. I would like to know why it should not apply to everybody and why it should apply only to Hindus. If it is good it should apply to you, me and everybody. And secondly, as I said, if it is a bad law, why should it be thrust upon a particular

class of persons ? Lastly, when the question comes up whether these amendments are admissible or not, just as my friend Mr. Jaspat Roy Kapoor has said, I would request that we should be given an opportunity to explain our position.

***Shri Naziruddin Ahmad :** Sir, as regards the amendment moved by the Hon. Dr. Ambedkar, I raised at that time a point of order. I should first of all try to explain my point of order, because the other amendments depend upon that point of order. You will be pleased to notice that this amendment is drafted in a language which is highly insulting to the House. It says "In clause 2, in sub-clause (1), in item (a), for "Hindus, that is to say, to all persons professing the Hindu religion" *substitute* 'persons who are Hindus' and so on and so forth. In the next item the wording is "substitute" something. In part (2) it is again "omit" something. This is expressed in the imperative form. As Dr. Pattabhi on one occasion said, Dr. Ambedkar speaks in a professorial and dictatorial tone. This amendment is couched in that language. Not merely this, but all the amendments. I have examined one and all of them. They are in the form of correction slips, or orders by a superior officer of Government to his subordinates. So this is really a direction to the House to do this and that, imperatively. The usual form is that "for such and such thing the following shall be substituted" or that "the following shall be omitted". That is the form. I submit that the drafting has been done so carelessly and so much in the official style that they cannot be accepted as setting a new standard of courtesy to the House. All the amendments are couched in that language. I seriously ask the House to consider whether this method of wording the amendments will be acceptable at all. I, therefore, like in some of the amendments to cure this imperious form. I have suggested the usual form. And it is not merely the usual form in this House but in the previous House and in all other legislative bodies. The question is whether we should permit the setting up of a new standard entirely its own. You will be pleased to examine all the amendments and they are all couched like this. The point of order which I submit is whether it is in good form. If it is not, then the next amendment which I have submitted to cure this should be accepted in preference to this. Nothing will be lost but everything will be gained in decorum and official form. Sir, I ask you to give a ruling on this point.

* P.D., Vol. VIII, Part II, 5th February 1951. pp. 2404-23.

Mr. Chairman : I am not impressed by the speech of the hon. Member in regard to the facts to conclude that any point of order regarding my ruling has been made out. He was making certain observations to which the Hon. Dr. Ambedkar will in time reply. Therefore there is no point for ruling.

Shri Naziruddin Ahmad : The two other amendments which I suggested depended upon the rejection of the form or otherwise of the amendments. That is why I want a ruling from you. If it is in good form, of course, we shall also indulge in such forms and the House can also be allowed to degenerate to that sort of form.

Then with regard to clause 2, one important point has been raised by the several amendments and supported by several hon. Members. It is that the Code should be made applicable to all persons in India. I was asked to sponsor this idea and when I raised the point of order, I did nothing of the sort at all, but my point is that the Bill is bad for the Hindus and when it is bad, this bad law should not be made applicable to all. A bad law can not be made good by making it applicable to all. If it is bad for the Hindus, it should be rejected. The point I was driving at was.....

Shri J. R. Kapoor : The fate should be shared equally by all the Hindus and non-Hindus alike.

Shri Naziruddin Ahmad : That is a form of logic which amounts to a joke and is certainly acceptable but seriously in a legislature this cannot be accepted. If a law is bad, it should not be extended to put pressure on those on whom it is going to be applied. Constitutionally this law will bring degradation. This point has been seriously raised outside the House; it has been freely talked about and it is more than certain that this law could not be taken before a court of law. We have passed several principles in the Constitution. We have worded the clauses in the Constitution in a general way with the result that they have landed us already into difficulties. The Constitution stands in the way of this Bill being passed.

Shri Tyagi : We will change the Constitution.

Shri Naziruddin Ahmad : My learned friend says if the Constitution is badly drafted and has landed us into difficulties, why not change the Constitution. I ask why should it be that you are at liberty to pass a law for the Hindus ? Why should there be a policy of distinction followed between Hindus and Muslims in their own

domestic sphere ? I think it is not logic. It is not good. The Hindus should remain Hindus at home and they should be Hindus in their religious practices. Similarly the Christians and Muslims should have their freedom of thought, worship and religion which has been granted in another part of the Constitution. I ask the House to consider whether in view of the number of defects noticed in the Constitution, it requires revision. I think it is easier within two years of the passing of the Constitution to amend it than it would be after two years. So it is time for us to amend the Constitution to make it possible to pass a good law affecting the Hindus. So far as religious and semi-religious matters are concerned the law could not interfere and at least it should not be dictated from the top. This is a kind of dictatorship which does persist in democratic society.

Shri Tyagi : Marriage and divorce do not come under religion.

Shri Naziruddin Ahmad : I believe the Hindu marriage is one of the *Samskaras* ; it is the tenth *Samskara*; it is part of their religion and it is idle to argue that it is not part of their religion. I say you may abolish religion and the law gives you freedom and this House is a sovereign House within the Constitution. You can abolish religion, if you like but will you go so far as that ? So far as this is concerned. I do not want to pursue it further but then look at the condition in which we exist today. We have no food. We had to spend Rs. 200 crores for importing food from foreign countries and to make us live for this year. (*Interruption*). We have no clothes. There are no shelters for many of our countrymen; we cannot give primary education at all but what we give is a free gift to the Hindus in the shape of the Hindu Code. If you want to make them happy, you must give them food, give them education.

The Deputy Minister of Communications (Shri Khurshed Lal) : This might have been a very good argument on the motion for taking the Bill into consideration. We are now considering a specific clause.

Mr. Chairman : I was waiting to hear the last words of his concluding remarks to know the inference he proposed to draw from his preceding observations.

Shri Tyagi : I want to know how is it that a Muslim is quoting our scriptures.

Shri Naziruddin Ahmad : We should not think of this Code but we should think of more and more constructive things which would

make the people happy, give them elementary education etc. In these dangerous times there is the other danger of the world situation deteriorating. War is approaching India step by step.

Mr. Chairman : I am very sorry. I do not want to interfere but I think the hon. Member is at sea on his arguments. He ought to proceed with his amendments.

Shri Naziruddin Ahmad : I was only submitting that this is not the proper time to go on with this Bill.

Shri Khurshed Lal : We are not discussing the consideration motion.

Mr. Chairman : I will ask the hon. Member to speak on his amendments. If he wants to say that so far as the particular amendments of Dr. Ambedkar are concerned, they are not right, I would certainly allow that but if he goes on to say that this Bill should not be proceeded with, I think it is beyond the province of any hon. Member at this stage to say so.

Shri Naziruddin Ahmad : I was encouraged to make this suggestion only for one reason that it is understood that Government has decided to proceed with this Bill only for two or three days.....

Mr. Chairman : I would ask the hon. Member to proceed with his amendments.

Shri Naziruddin Ahmad : (*Interruption*) I rather think that many hon. Members have nothing to think of except interrupting . Sir, there are a number of amendments standing to my credit and I shall deal with them one by one. The first two amendments Nos. 16 and 17, were suggested to improve the form in which Dr. Ambedkar's motion has been tabled. They do not deal with any other principle except improving the form. Then, I come to amendment No. 19.

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"

I am sorry that a very large number of widely divergent subjects have had to be moved separately, and have to be argued upon in a lot. That is why some hon. Members seem to lose thread of the argument. Sub-clause (1) which I seek to amend, reads thus:

"This Code applies—

(c)(i) to any child legitimate or illegitimate, both of whose parents are Hindus within the meaning of this section."

Shri Satish Chandra (Uttar Pradesh): This has been read several times.

Mr. Chairman: Let the hon. Member proceed. To keep up the thread of the argument, he must be allowed to read.

Shri Tyagi: This thing about illegitimate child was not read.

Shri Naziruddin Ahmad: The child of a Hindu, particularly, if he be illegitimate, may not himself remain a Hindu. This sub-clause proceeds on the supposition that a child of a Hindu remains a Hindu. But, it is quite possible for him to change his religion. He may discard all religions ; he may be an atheist. He may become a Jew, a Christian or a Muslim, and then again be re-converted to Hinduism. The supposition that an illegitimate child of a Hindu is a Hindu presupposes that he does not change. As a matter of fact, he can change. If he changes his religion, certainly, he cannot be a Hindu, and cannot inherit his father's property and so forth. An illegitimate child of a Hindu father will inherit his fathers properties ; but if he changes his religion, he ceases to be a Hindu and therefore, he ceases to be the heir.

Shri Tyagi: A father can never have an illegitimate child; a mother only can have.

Shri Naziruddin Ahmad : That is a legal question. If a father cannot have an illegitimate child, this clause should have been deleted.

Shri Tyagi: The child is..... (*Interruption*).

Mr. Chairman : Order, order; let him proceed.

Shri Naziruddin Ahmad : My amendment says, "if he has attained the age of eighteen years, is himself a Hindu....." That is to say, after attaining the age of eighteen years, when he attains the age of discretion and is permitted by law to act in a legal manner, if he remains a Hindu, then, of course, he is a Hindu. He is a child of his father entitled to inherit and enjoy all the benefits of the Hindu Law. This amendment tries to remove a lacuna which exists in the drafting. An illegitimate child, if he attains the age of eighteen years and if he does not change his religion, then, of course, he could come in. That is what I have sought to clarify here.

Let us come to another amendment; it is of a drafting nature. It reads as follows:

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

It may be that the parents of a child are Hindus; but they may change their religion. So, I want that in order to have this relationship.....

Shri K. C. Sharma (Uttar Pradesh): May I draw the attention of the chairman to the convention of the House that all drafting amendments be left to the draftmen and the time of the House be not wasted ?

Mr. Chairman : There is no such absolute convention; it all depends on the particular amendment.

Shri Naziruddin Ahmad : This only shows that the hon. Member is not listening to the arguments, but is only trying to find and create objections. Although this is more of drafting nature, I think it involves a substantial thing. The question is this. You say that a child, legitimate or illegitimate of a Hindu, is a Hindu. Supposing the father changes his religion in that case, he is not a Hindu at the relevant time when the question arises. I therefore want to make it clear that he is a Hindu or has been a Hindu. It may be that a father was not a Hindu, but has accepted the Hindu religion at the relevant time. If you say, a man who is a Hindu, it means, who is a Hindu for the time being; he might not have been a Hindu before. That is why I am saying : “a person who is or has been a Hindu”; who has been a Hindu all along. The child of such a parent would be a Hindu. Suppose there is a Muslim who adopts the Hindu religion today. The question of the status of his child comes into question. Could his child, who was born at a time when the parents were Muslims, be a Hindu today because today the father is a Hindu ? That is why I have tried to change the clause. Though it is of a drafting nature, it has substantial effects. I submit that these small points require careful consideration. The question, in effect, is, if a man is converted to Hinduism today, whether his child, who may be a Christian, or a Muslim or a Jew according to the religion of his father before his conversion, would be a Hindu. This is a serious constitutional question, and I hope the House will seriously consider that. But, the difficulty would be for the Hon. Law Minister to carefully listen to these points and to reply to them, and for the House to follow all these arguments and replies. As a matter of fact, Dr. Ambedkar will say, “I oppose all the amendments” and the House will say, “We respectfully agree”.

Several Hon. Members: Never, never.

Shri Naziruddin Ahmad : My next amendment, No. 21, I would repeat my argument, enforces a condition that a man, whose religion is in question, is a Hindu if he is a Hindu after attaining the age of eighteen years; because at the age of eighteen, he is entitled to act in a legal manner, and if he has attained the age of eighteen years, he may change his religion. Therefore, the option of a boy, on attaining the age of eighteen years, to change his religion, is provided for. That contingency has not been thought of by the draftsmen. Therefore, I am submitting this amendment for the consideration of the House.

I now come to my next amendment No. 23. It runs thus:

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.”

You say that a convert to a Hindu religion would be a Hindu. It is plain commonsense that a man has freedom of conscience and religion and he would be fully entitled to convert himself to Hinduism. But, what happens to his rights and liabilities before he is converted ? I will explain the position. A Christian, a married man, is converted today to the Hindu religion. What happens to his wife ? Would the wife be automatically divorced because she is not a Hindu ? A marriage between a Hindu and a Christian would be illegal. I agree that a convert to the Hindu religion should be treated as a Hindu. But, what about his rights and liabilities before conversion ? There are numerous rights and liabilities. I do not wish to detain the House by detailing the various considerations which may arise on account of this. I simply put it generally that a convert should be a Hindu, subject to all the rights and liabilities he had before the conversion. Suppose there was a non-Hindu possessing rich property, and suppose he is converted to Hinduism. Should you ask him to lose all his property ? If he is to inherit from some one, before conversion, should he lose this inheritance after his conversion. There are laws relevant to this which occur to me, but I only submit that we should preserve all the rights and liabilities acquired by the man who is converted, before his conversion. The *status quo* of the rights previously acquired should not be disturbed. All those rights should not be lost simply by the conversion. Rights once acquired should not be allowed to be lost.

Liabilities incurred should not be allowed to vanish, all because of a later conversion. The conversion should not affect past transactions, past rights and past liabilities.

Then, my next amendment is that sub-clause (2) of clause 2 should be omitted. This sub-clause is to this effect :

“This Code also applies to any other person, who is not a Muslim, Christian, Parsi or Jew by religion.”

This sub-clause, I submit, is based on erroneous considerations, and on erroneous analogies. In part (a) we have said that this Code applies :

“to all Hindus, that is to say, to all persons professing the Hindu religion in any of its forms or developments, ...”

And we also say that it applies:

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

But the Sikhs, I feel, do not very much appreciate the conferring of the so-called benefits of this Code on them. My friend Sardar Hukam Singh is ready to give up the so-called benefits of the Hindu Code now being conferred upon the Sikhs. So long as he remains a Sikh, I do not think he would very much appreciate the Hindu Code being applied to him and.....

Shri Tyagi : He can become a Hindu.

Shri Naziruddin Ahmad : But let Sardar Hukam Singh speak for his own community. I am only.....

Shri Khurshed Lal : Yes, you are speaking for yours.

Shri Naziruddin Ahmad : Then we come to part (c)(1) which says that the Code applies to any child, legitimate or illegitimate etc. A Hindu is a Hindu and the child of a Hindu should also be a Hindu. But what I say is this. Sub-clause (2) seems to be somewhat misplaced, because it states that the Code applies also to any other person who is not a Muslim, Christian, Parsi or Jew by religion. Looking at it from the drafting point of view, this is a circuitous way of drafting the thing, and it shows the piecemeal introduction of an idea. If this is the idea, why not say straight away that all persons who are not Muslims, Christians, Parsis or Jews are Hindus? Instead of doing that, you first of all say that Hindus are first of all Hindus. Then you say that Buddhists, Jains and Sikhs are Hindus and then you say that the

Code will apply to other persons who are not Muslims, Christians, Parsis or Jews. I think the most straightforward and logical way of putting this definition would have been to say that all persons who are not Muslims, Christians, Parsis or Jews are Hindus. It comes to that. Therefore, I submit, at that time, there might have been some hesitation in the mind of the draftsmen and this idea was introduced at a later stage. Otherwise there was nothing to prevent them from saying what they actually meant.

But there is a snag in this clause 2, sub-clause (2). Does it necessarily follow that a man who is not a Muslim, Christian, Parsi or Jew is a Hindu ? He may be a communist, as is suggested by a friend here. Or he may belong to the religion of *Shintoism* as professed in Japan. Or he may have no religion at all. How can it be accepted as an inexorable principle that a man must be a Christian, Parsi, Muslim, Jew or a Hindu ? There may be a person who belongs to no religion, or there may be a person whose religion is apart from any of these great religions.

Shri Tyagi : Hinduism is a cocktail of all religions.

Shri Naziruddin Ahmad : Of course, to say that all the rest belong to the Hindu religion may sound very sweet to Hindu ears. But the question is whether we should force the so-called benefits of this Code on anybody ? Should we call anyone a Hindu and force the Code on him ? That is the point. Suppose there are some foreigners here, or their servants or subordinates or friends. We are encouraging tourist traffic and we can expect many such persons in India. And suppose one such foreigner dies while in India. Who will inherit his wealth ?

Dr. Ambedkar : You will inherit his wealth if he dies in India.

Shri Naziruddin Ahmad : The question is, are those persons who do not belong to any of those religions to be the victims upon whom the so called benefits of this Hindu Code should be forced ? The Hindu community is docile and in an absolute minority in the House, but outside there is a great deal of objection raised and that being the case, should these so-called benefits be forced on all ? Should you force the Code upon all the persons who are neither Muslims, Christians, Parsis or Jews, and because they do not belong to any

of these religions, does it necessarily follow that they belong to the Hindu religion ? Should the Code be applied to them ? That is the question which the House will have to answer. I submit that this sub clause (2) must be omitted because it seeks to enact a proposition which should not be accepted. Let us proceed gradually. You must not force the Code upon such persons. There may be some who follow some other religion or who have no religion at all, or a new religion may come into the world and to them the law should not be made applicable. The application of the law should be gradual. The impact of this tremendous measure should be gradual. In fact I was very much enamoured with part of the amendment moved by my hon. friend Mr. Kapoor. There was a great deal of sense in that part of the amendment which said that the Code should apply only to those persons who want it. That was also the purport of the amendment of Shri Jhunjhunwala. Of course there were some differences with regard to detail. But the important principle is that the Code should apply only to those who want it to be applied to them. Therefore this definition of a Hindu is not warranted. If the Hindu Code was not a controversial one and had been an acceptable one to all there would have been no difficulty. So by accepting that part of the amendment.....

Pandit Krishna Chandra Sharma (Uttar Pradesh) : It means that everybody should be allowed to make a law for himself.

Shri Naziruddin Ahmad : You are trying to force down the throat of a person a medicine which he does not like. However good the Code may be you cannot force it down the throat of the Hindu community.

An Hon. Member : Who says that ? We all want it.

Shri Naziruddin Ahmad : First of all you must take public opinion on your side. You must approach them gradually. Make it first optional and then if the law is good for everybody they will gravitate towards it. They will themselves push each other and compete with each other in getting themselves registered earliest. The law should attract people voluntarily and not by force. That is the great principle which underlies these amendments and suggestions. It is not a case of everybody making a law for himself but a case of a few persons forcing a law upon 33 crores of people.....

An Hon. Member : Who are you to say that ?

Shri Syamnandan Sahaya : That is also lately the correct position. Go ahead. Let them shout at the top of their voice.

Mr. Chairman : Hon. members should not go on speaking to each other while sitting. It will create confusion. Let the hon. Member proceed.

Shri Naziruddin Ahmad : That is why I heartily support the suggestion to make the application of the Code voluntary thereby robbing it of its sting. Then I dare say that if the law is good gradually every one will come to it. I therefore submit that the law should be made applicable to those who are fit for it.

India is a vast sub-continent where there are highly advanced people as also extremely backward people. The law is a good law to hon. Members because it is good to the community from which most of the Members come. It is an advanced law suited to the advanced community from which hon. Members come. But why should it be made applicable to hill tribes, aboriginals and backward people who have no education and who do not even have two meals a day. Why should it be made applicable to them by a stroke of the pen against their wishes ? That is the point which arises out of the suggestions contained in these two amendments. It is experience and not logic that should guide law. I therefore submit that the law should be made applicable to those who accept it and those who are fit for it. Gradually those who are semi-fit for it will qualify for it.....

Shri Khurshed Lal : That is why it is not being applied to you.

Shri Naziruddin Ahmad : I agree that I am too backward to appreciate the benefits of this law. This law is a jumble. It does not contain much of the Hindu law. It is borrowed from the Muslim law, from the Christian law and borrowed all the worst elements of those laws. Therefore I would prefer to be called a backwardman so as to please my hon. friend Mr. Kurshed Lal rather than be looked upon as civilised and be made to accept a law which is not applicable to me and which does not appeal to me either. The great difficulty is that the Government is committed to a principle rather prematurely and the people outside are against it.....

Shri Bharati : Who are you to say that ? Who said that ?

Shri Naziruddin Ahmad : Just go out and see. If you had gone to the Gandhi Grounds yesterday you would have seen something of that.