

An hon. Member : Why did my hon. friend go there ?

Shri Naziruddin Ahmad : It is my business to be informed : not to suggest anything to them, not to control, guide nor mislead them. It is for me as a Member to ascertain public opinion. If I know that Hindu opinion moves in a particular way, even at the risk of being called backward I would bring it to the notice of the House. There is no point in trying to be fashionable and clever at the cost of commonsense and equity.

Some hon. Members asked me in an oblique manner, “Who says so?”. They think that the Hindu community has accepted the Code and are agreeable to it. I come from Bengal. At the request of the Government of their opinion they said that they were opposed to it.....

Shrimati Renuka Ray (West Bengal) : What have they said now ?

Shri Naziruddin Ahmad : If they are changing, I do not know about that.

Shrimati Durgabai : You too must change along with them.

Shri Naziruddin Ahmad : I do not think they have expressed any recent opinion. Apart from rumours their legal opinion duly approved by the Government has been sent by their Judicial Secretary and it has been circulated to us. Any other opinion has not been circulated to us. If they have been circulated to the private ears of any Members I cannot take any notice of it here. The Government of Bengal is against the Bill. The big people are against it.

Shri Sondhi (Punjab) : They have compromised, I am told.

Shri Naziruddin Ahmad : I do not think they have put themselves in a compromising position at all. Go to any Bar Association and listen to what they talk. They are getting tired of it. The very eagerness with which the Bill is sought to be pushed through the House.....

An Hon. Member : Is it all relevant to the amendment ?

Mr. Chairman : I would draw attention to amendment No. 31. It is quite relevant.

Shrimati Durgabai : He is only repeating himself.

Shri Tyagi : Since the Hon. Member has alleged that the Bengal Government was against this Hindu Code I want to know from him if the Chief Secretary of the Bengal Government is opposed to it ?

Shri Khurshed Lal : He is not the Government of Bengal.

Shri Naziruddin Ahmad : The Government of India circulated the Bill and asked for opinion. The various State Governments gave their opinion and those opinions have been circulated to us. I have no private communication with the Bengal Government. The public

opinions which have been circulated to us are there, any hon. Member can see them. There you will find that the Bengal Government opposes the Bill.

Pandit Malaviya (Uttar Pradesh) : Why should they see if it is not convenient to them ?

Shri Naziruddin Ahmad : They find that the law is not convenient to Bengal soil. What is more, all the judges of the Calcutta High Court— I suppose they should be regarded as educated people, not orthodox, not the rabble, they are fine, cultured, intelligent men. They are not mere orthodox men—gave their opinion jointly that they are opposed to the Bill.

Shri Raj Bahadur : May I know, Sir, whether it is permissible for the member to attack the very foundation and principle of the Bill now ? Is he speaking on clause 2 or on the whole Bill ?

Sardar Hukam Singh : It was an answer to the interruption on his statement that Hindus did not want it.

Mr. Chairman : Order, order. So far the observations of the hon. Member were relevant under amendment No. 31. But at the same time I would request him not to be very general in his remarks. He ought to confine his observations to the particular points made out by him in his amendment.

Shri Naziruddin Ahmad : The point before us is whether the law should be made applicable to persons who do not agree to be bound by it. If you do not give the option you will be forcing the law upon people who do not want it. That is why I thought that in order to strengthen that point the objection of eminent authorities like High Court Judges and the Government of Bengal was relevant. It shows that the people are against it—not the backward people but intelligent, civilised people who have some status in society. That was my purpose in referring to it.

I, therefore, submit that in view of all these objections, the law should be made applicable to those who are particularly enamoured of it, who think they will be benefited by it, but it should not be made applicable to one and all to those who do not want it. I submit that those who are opposed to the Hindu Code Bill are a minority in the House, but those who are in favour of the Bill are a microscopic minority in the country. The whole question is : is it enough for you to be fired with the idea that the Hindu Code is a good thing if the people do not want it ? In a democratic society you must not force

a benefit upon those who do not want it. The people do not want it. Therefore, you must not force this upon them. I therefore heartily support the two suggestions made by the two hon. Members that the law should be made applicable first to those who want it. Then if we find that there is ready acceptance, that it is palatable to the Hindus, that they want it, that they readily accept it, then this Parliament may later on extend it to other people or to other classes of people. That should be the proper way. As has been suggested, if once we accept this principle, make its application voluntary, the whole controversy will vanish. The bitterness of the majority outside and the minority in this House will disappear at once. Then there will be no question of a difference of opinion. If it is good it is good for the highest class of society. It is not good to the condition of people who belong to the middle classes and to the lower classes. It is for this reason that I think that the suggestion in that amendment should be accepted.

Then, one of my amendments is that sub-clause (3) should be omitted. That sub-clause runs to the effect that :

“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.”

It says in effect that though a man is not a Hindu, if the Code applies to him he is a Hindu. It begs the very question. It could have been said a Hindu is a Hindu ! The draftsman was not satisfied and he tried to make confusing words confounded by the addition of sub-clause (3). To whom would you make the Code applicable ? If you say a man is a man who is a human being it does not help anyone. It simply shows some confusion of mind. You cannot say that a Hindu is not a Hindu but that although he is not a Hindu provided the Code applies to him he is a Hindu. I think a simpler way of approach should have been far more satisfactory and better. If you say all persons having two legs and two hands are Hindus I have no objection. If you say all Hindus are Hindus even that would have made some sense. You say, all Hindus are Hindus, all Jains, Buddhists, and Sikhs are Hindus, the illegitimate children of those are Hindus and then all those are Hindus who are not Muslims, Christians, Parsis or Jews. You are not satisfied with this round-about and circumlocutory way of expression. You say that even though a man is not a Hindu he is a Hindu if this Code applies to him. You should be more straightforward, more logical, more clear in your expression. The draftsmanship of this clause

shows the hand of many a person but it has not been properly drafted. That is why there has been so much of confusion, so much of roundabout expression. I therefore submit that sub-clause (3) should be omitted. A Hindu should be a Hindu, one who follows the Hindu religion. With regard to Buddhists, Jainas and Sikhs, I should quite agree to them being included provided the Buddhists, Jainas and Sikhs agree to be bound by the Hindu Code. Those persons also are Hindus who are not Muslims, Christian, Parsi or Jew by religion. But you say that a person is a Hindu, though he is not a Hindu, if he is bound by this Code. Somehow or other that is a most unsatisfactory way of approach.

Shri Tyagi: He is a *de jure* if not a *de facto* Hindu.

Shri Naziruddin Ahmad: If you want to call a person a “Hindu”,
5 P.M. I have no objection. That is a simple way. You simply
enumerate him as “Hindu”. Why this circumlocutory, round-
about and circuitous way of expressing it ? It shows, I say with respect,
some confusion of thought.

Dr. Amhedkar: You are more confounded than anybody else in this House, I am afraid.

Shri Naziruddin Ahmad: I have other amendments which I shall try to deal with tomorrow, if I am not interrupted like this.

The House then adjourned till a Quarter to Eleven of the clock on Tuesday, the 6th February, 1951.

HINDU CODE—*contd.*

***Mr. Speaker :** The house will now proceed with the further consideration of the Bill to amend and codify certain branches of the Hindu Law, as reported by the Select Committee. Clause 2 was under discussion. Mr. Naziruddin Ahmad will continue his speech.

Shri Naziruddin Ahmad (West Bengal) : Sir, at the very outset the House is in a very hilarious mood. I believe the subject is extremely important and it requires very grave consideration. Yesterday I dealt with some of my amendments. I shall now come to amendment No. 31 which reads:

After sub-clause (4) of clause 2 add the following new sub-clause :

“(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.”

The Bill is highly controversial and it is improper even for those who believe it to be highly beneficial to the country to force this Bill upon the entire Hindu population. I submit that this House should not take this hasty step. I do not contend that this House has no jurisdiction, but I do submit that this House should not take upon itself the serious responsibility of forcing a law upon an unwilling people. This House was specially constituted to obtain independence from the British Government, and in due course through its constituent side it passed the Constitution.

The Minister of Law (Dr. Ambedkar) : Sir, is this relevant at this stage ? I do not like to interfere in the debate but certainly we have spent more than four hours in discussing a single clause.

Mr. Speaker : I was just watching for a minute or two whether the hon. Member's reference was leading to some sound argument that he was coming to.

Shri Naziruddin Ahmad : I was submitting that this House has not the mandate of the country to pass this Bill. This is a fundamental matter affecting the religious and social structure of India. Therefore, it is proper and relevant to consider our exact position. I am not going elaborately into all the history because that has been done at

the proper stage, but I cannot forget the fact that a large number of hon. Members of this House are new Members and were not present at that stage. So, a very brief resume of those points may, I submit, be not irrelevant.

Mr. Speaker : I may inform the hon. Member that, so far as the representative character of this House is concerned as also its competency to consider such a Bill, that has been sufficiently thrashed out before and the present stage is not the proper stage of again raising that kind of an argument. We are now discussing the Bill clause by clause and clause 2 is before the House, so, he will restrict his remarks only to the provisions in clause 2 and the amendments before the House. Of course, the scope for that is wide enough, but not for questioning or even doubting the representative character of the House or its capacity to pass this Bill. That will be unnecessarily repeating what was said at the previous stages.

Shri Naziruddin Ahmad : Sir, I bow down to your ruling. I am not at all questioning the representative character of the House or its competency. But the question is that we have not consulted the people. Not that we have no jurisdiction, not that we do not represent the people, but on a social legislation of an all-embracing character like this we should have obtained some mandate. That was the point which I was going to submit. I do not wish to elaborate it. I wished to refer to this matter in order to develop my argument with regard to amendment No. 31. I want by this amendment to restrict the application of the Bill to the different States, upon the State, by Act, prescribing its application, and also limiting the conditions on which the Bill should apply, the persons or classes of persons to whom the Bill should apply and the stage or stages through which this application should come. Therefore, my point, so far as this amendment is concerned, is that the Bill should not be made applicable to all persons outright.

The State Government are in a better position to know the conditions of the people, their wishes and desires and their needs. It is therefore proper to allow each State to apply the Law and to such extent and through such stages as the Legislature, by Act, may provide. I know that so far as reports are concerned the Government of Bengal has opposed this bill. Though it was given out yesterday that in private conversation some hon. Member was told, some individual Minister in Bengal was in favour of the Bill, that is not the official position

taken by the Government of Bengal. I dare say that each State has its different problems to solve with regard to this Bill: its stage of civilisation, its state of economic condition and various other factors must, I believe, obtain in different degrees and in different circumstances in the different States. My point is that for those hon. Members who feel that this Bill is good there are a much larger number of hon. Members who feel the Bill is not good for them. Therefore, my submission would be to strike a *via media*. Let the Bill be accepted by those who think that it is good for them, but let them not force the Bill upon others.

Now, so far as the States are concerned, the State Legislatures would be the proper authority to apply law, adapting the application to suit the differing circumstances of the case. Though the Hon. Minister in charge of the Bill is enamoured of uniformity in the laws, I think that it is a principle which should yield to practical considerations. I submit that the State Legislatures are the proper authority to ascertain the Actual opinion on the Bill and the application of the Bill should also be controlled by them. To this principle, there should be no objection. If, as is claimed, the Bill is a very beneficial one, acceptable to the people, acceptable to the Hindus of India, nothing could be lost by letting the State Legislatures express their opinion. The State Governments have their Departments through which they are in a position to know the wishes of the people and the members of the State Legislatures are also in a position to know the minds of the people. I therefore, submit that the application of the Bill in different circumstances and to different people should be left to the local Legislatures. If this is done, then much of the sting about the Bill and much of the objectionable features of the Bill would at once disappear and the controversy would immediately stop. The more the supporters of the Bill are convinced that the Bill is highly acceptable, the more they should be ready to subject themselves to this test of acceptance of the Bill by the local legislatures. I submit that this amendment raises an important principle and if the claims are as high as they are alleged then this principle should be accepted. It is conceivable that there are corners in the States where this law would Act adversely. There are various provisions bearing on divorce and there are various customs in different parts of the country for marriage and divorce. If we apply this Bill to them straightaway, that would take away the simplified marriage and simplified divorce and substitute complicated forms of divorce and marriage. To that extent,

their existing rights would be affected. There are, again, people who do not like to enjoy the rights of marriage and divorce as prescribed in this Bill. To them also, it would be a hardship. From any point of view, therefore, the application of this law to the peculiar circumstances of each State must be left to the local Legislature.

Then Sir, I have been jeered and jibed at many times.

12 NOON

Babu Ramnarayan Singh (Bihar) : No.

Shri Naziruddin Ahmad : That has been my privilege. I believe that the delay that has occurred was due to two reasons, the author of both the reasons being Dr. Ambedkar himself. First of all the Bill was sent to the Select Committee. For reasons best known to him, it came back from the Select committee in the form of an altogether new Bill. That led to some controversy, which took about six months' time. I submit that this portion of the delay was not due to me. If I had any fault, it was to point out the error and thereafter it was for the House to give a ruling.

Shri B. Das (Orissa) : Why apologise ?

Shri Naziruddin Ahmad : That delay was due to Dr. Ambedkar himself. I do not blame him for this. I do not attribute any motive to him.

Dr. Ambedkar : He forgives me!

Shri Naziruddin Ahmad : Probably, he wanted to improve matters and make matters worse.

The next reason for the delay was.....

Dr. Ambedkar : I do not think any hon. Member of this House has charged my hon. friend with dilatory tactics and I do not see why he should indulge in an explanation which is certainly not wanted, so far as I am concerned. He is wasting time.

Shri Naziruddin Ahmad : No, Sir. At least one word by way of explanation is necessary. Although I might not have referred to it, the charge has definitely been made and it goes in the proceedings to be read even after 100 years. I submit that the next reason for the delay was that in the Bill which was referred to the Select Committee, there were enormous numbers of substantial changes and those matters had to be put before the House just to argue that the members of the Select Committee had not a proper opportunity to consider them in detail. Those controversies are gone, but public memory is short and Ministerial memory is shorter. By a strange

coincidence, by a strange freak of fate, the delay is attributed to me. I think it is quite unnecessary to take it up and discuss it. So far as this matter is concerned, as Dr. Pattabhi Sitaramayya said on one occasion, dilatory tactics are permissible. If any Member is satisfied that a Bill must be opposed, dilatory tactics are permissible. He may oppose—so long as he may—fairly, and even unfairly, if he must. I submit that I do not take recourse to this extreme step. I believe that the Bill is a controversial one and therefore some amount of controversy is inevitable. The controversy is embedded in the Bill itself.

Dr. Deshmukh (Madhya Pradesh) : In Dr. Ambedkar ?

Shri Naziruddin Ahmad : Yes, of course. When the draft Bill was circulated, the Hindu Law Commission went round the country and collected a large number of opinions. The opinions were preponderantly against the Bill. These very women who are supposed to be anxious to liberate themselves through this Bill opposed the sittings of that Commission in different places in large numbers.

Shri Tyagi (Uttar Pradesh) : Clause 2 is now under discussion; what has all this to do with it ?

Mr. Speaker : The Chair is taking care of it. But if hon. Members want to do so, they may ; but in that case his speech will be prolonged and may go on till tomorrow evening. Therefore, let him go on in his own way. If he is irrelevant, the Chair will stop him.

Shri Naziruddin Ahmad : Sir, it is these interruptions which certainly create a certain amount of difficulty. When a question is asked, it certainly requires an answer. After all I am accustomed to these interruptions and nothing is more acceptable to me than these interruptions.

Sir, clause 2 is a very important one because it deals with the application of the Code. Many amendments have been suggested to this clause, the underlying idea of all of them being to prevent its universal application straightaway, considering the magnitude of the legislation, I for one feel that the house should take serious consideration of the suggestion to proceed slowly and to adapt the Bill to suit local conditions. If that is done, the impact of the Bill would be more tolerable and the objections would largely vanish.

Sir, I have done.

***Pandit Thakur Das Bhargava** (Punjab): Sir, in regard to the application of the Hindu Code to the various subjects and peoples who come within the purview of clause 2, I have to submit for your consideration a few words.

I agree with the previous speaker that the scope of clause 2 is very wide and therefore, all these matters which have been submitted for the consideration of the course are quite appropriate and should be considered by the House in regard to application of clause 2. But at the same time, I am of opinion that by practical considerations we are compelled to limit the scope of clause 2 to such persons to whom the Hindu law applied previously. I am not here to minimise the efforts of those who think that in pursuance of the directive principles we ought to have a Civil Code for this country. I am for it, the whole country is for it. We should, therefore endeavour to have a Civil Code for the whole country and I would very much like that Hon. Dr. Ambedkar who has done so much for this country in the matter of giving us a Constitution and bringing forward the Hindu Code which affects about thirty crores of people will in time bring forth a new Civil Code for the whole country.

But at the same time I do not think it is practicable to say that this Hindu Code should be turned into a Civil Code, (*an Hon. Member*; Why not ?) The question is being asked “ Why not ?”. I would certainly submit the reason. Now, as I have just pointed out. I admire the spirit of the previous speakers Mr. Sarwate, Shri Vidyavachaspati and Shri Jaspat Roy Kapoor, when they want one Civil Code for the whole country. As a matter of Act this attempt of Dr. Ambedkar in incorporating certain principles which ought to have been the real basis of the Hindu Code is simply laudable. This Hindu Code, according to some, is a Code which ought not to apply to Hindus alone, because this Hindu Code embodies principles which are not taken from the Hindu law alone. In regard to certain principles, they are so broad based that I should think they may eventually furnish a basis for having a Civil Code.

As remarked by the previous speaker, marriage is certainly one of the ten *samskars*. It is a religious affair. But in this Code we have ‘got the provisions of the Civil Marriage Act also. My humble submission is that so far as the question of Civil Marriage is concerned it ought to have been contained in the Civil Code which we have all in view and which will be equally good for all the citizens of

this country. Therefore, the complaint that this Hindu Code is neither based on Hindu Law nor on any universal law is correct to a certain extent and my view is that the principles of the Civil Marriage Act which are embodied in the Act of 1872 should not have been incorporated in the Hindu Code. I would, therefore, very much like that these provisions are taken away and the Hindu Code remained only a Hindu Code. This inter-mixing of the principles of the Civil Marriage Act into the Hindu Code should not have been allowed.

Now, Sir, I maintain that today we cannot have a Hindu law like the one which was propounded by our ancestors. In those days Hindus lived in an exclusive way. The impact of civilization and other religions had not begun so far as Hindus were concerned. Now in every Code, in the Muslim Law, in the Christian Law, and in the Hindu law we have got principles which are not germane to those laws alone but which as a matter of Act have been made universal by the impact of other forces. For instance in this Hindu Code we have got monogamy which is a special feature of the Christian Law. The authors of the Hindu Code want that daughters should be given a share of the property. Now this was not known to Hindu law, so far as married daughters were concerned for a very long time. Of course, there is no practice or principle which has not been experimented upon at one time or other by the Hindus.

[SHRIMATI DURGABAI *in the chair*]

This is a different matter. But today I think he will be a bold man who would like to say that the principles of yore be introduced in the Hindu Code. As the society progresses there is also a progress of the principles. Now if anybody wants to say that the laws of Manu should be introduced in Republican India, I think he will be a madman. Does any one in this House want that no *Shudra* should be allowed to read the *Shrutis*? On the contrary, I for one welcome the Code for the very reason that Dr. Ambedkar is supporting it. Now all things have changed and all values have changed. The Hindus have burnt their boats so far. Now he will be a bold man who will come and say, “ I want that the Caste system of the Hindus based, as it is, on birth should be introduced in the Hindu Code”. I will have nothing to do with this Hindu Code if it is based on the caste theory. I know that so far as the original Hindu law is concerned the caste system was not based on birth. I challenge anybody in this house, or outside, if he could convince me that the Hindu Law or the system of the Hindus was based on birth. But what do we find today? Birth

is the real basis of caste, whereas according to the strict notions of Hindu law and the *Shastras*, birth has no place in it whatsoever, we find that Hindu society is not what it used to be. Are we now going to introduce all those laws of Manu, for instance, that a *Shudra* cannot read the *Shrutis* etc.? Now we have finished with them.

So far as the criticism goes that the Code is very bad, so bad that it should apply only to Hindus, Muslims, etc., I am very sorry I have to challenge that statement and fight it. Some of the principles which are put in the bill are exceptionally good, so good that I would like to have this Hindu Code. As I stated. I am not an opponent of every clause and word in it. I want that all the good principles, which are consistent with the principles that we have accepted in our society today, should be passed in this House. I am opposed to certain provisions and I shall have occasion to speak about them at the proper time. But as regards the statement that it is so bad that it should not apply to Hindus or Muslims, etc. I for one do not agree with that statement.

I was considering the question whether it should apply to any but Hindus. Three or four motions have been made, by Mr. Sarwate, Mr. Indra Vidyavachaspati and Mr. Jaspat Roy Kapoor had something to say about it. In regard to them my submission is that, if it were possible to do so I would have myself supported those motions. But may I humbly ask the non-Hindus in the House if they like this proposal? They do not like it.

Shri J. R. Kapoor (Uttar Pradesh) : The non-Hindus have already been brought within its scope.

Pandit Thakur Das Bhargava : It is entirely wrong to suggest that. So far as Muslims, Christians, Parsis and Jews are concerned, it specifically say that the law shall not apply to them. Where is my friend's suggestion that it has already been applied to Muslims Christians, Parsis and Jews ?

Shri J. R. Kapoor : I said non-Hindus excepting Muslims, Christians etc.

Mr. Chairman : Let there be no interruptions.

Shri R. K. Chaudhuri (Assam) : On a point of information, Madam, may I know whether the Hindu Law is not applicable even now to the Muslims, Bohras and Cutch-Memons ?

Pandit Thakur Das Bhargava : My friend has anticipated me. The present Hindu Law as we understand it does apply to many classes

of persons. It does apply to persons who do not call themselves Hindus. And so long they have never objected to it. So far as Sikhs, Jains, Buddhists are concerned, it is the Hindu Law which is applied to them. And it has been applied to them from times immemorial, from the time that the British Government was established. They have always been using it. Even Muslims have been using it. (*An hon. Member*: You are excluding them). We are not going to exclude them. This Hindu Code, according to clause 2, shall apply to all persons who are not Muslims, Christians, Parsi or Jews. So far as Muslims are concerned and so far as their law is concerned we have not changed anything and we have not made any law for them. We do not want to say that their customs as altered by the Hindu Law do not exist.

For instance take the Punjab. We were not bound by the Hindu Law as such, I am speaking of the villages of the Punjab. So far as the cities are concerned, many Hindus and Muslims are governed by the Hindu and Muslim Law. But so far as the rest of the Punjab is concerned we were guided or dominated, or we were governed, by custom. Custom was the first rule of decision in the Punjab so far as Hindus, Muslims and Sikhs were concerned. Even today it is custom which governs us. May I with your permission, Madam, just read out the Preliminary Section of the Punjab Customary Law by Rattigan ? it says :

“Custom in this Province is the first rule of decision in all questions regarding succession, special property of females, betrothal, marriage, divorce, dower, adoption, guardianship, minority, bastardy, family relations, wills, legacies, gifts, partitions, any religious usage or institution, or alluvion and diluvion .”

In regard to the Customary Law of the Punjab, all the Hindus, Muslims and Sikhs in the village areas were bound by the Customary Law which practically was the same for all. And it has furnished a very good basis for the Civil Code because the customs were the same, the result was that we were wedded to the agnatic theory of succession and all the customs flowed from that. It is difficult for the Punjabis to accept the principle of inheritance of married daughters because the agnatic theory is there. In fact it prevailed in Assam also before Assam came into the domain of the Bengal High Court. If we find out what was the source of custom, all the principles and notions of Hindu Law which prevailed throughout the country were

the source from which this custom grew in the Punjab and in other parts. Not that custom is an exclusive feature of the Punjab only : in various parts of India custom has to a very great extent altered the original Hindu Law.

Shri R. K. Chaudhuri : I am sorry to interrupt. But may I ask whether the Customary Law in the Punjab will over ride the clear provisions of the Hindu Law, or what will be the position of the Punjab later, that is, after this Bill is passed ?

Pandit Thakur Das Bhargava : So far as the Punjab Law is concerned, I have given the source of law, i.e., section 5 of the Punjab Laws Act. I have just read from section 1 from the preliminary observations of Rattigan which is based on the Regulation of 1825 and section 5 of the Act of 1872, so far as Punjab is concerned. This is the present Law of the Punjab unless it is altered by this Hindu Code. This was my difficulty when I gave an amendment to that effect: leave the Punjabees if they want to be governed by their own custom. I have given an amendment in regard to clause 1 to the effect that Punjab should be excluded from the operation. The reason is that from days immemorial we have been governed by custom and we want to stick to that custom because that custom is the mixture of the Hindu Law as well as other notions of Civil Law.

I may be excused if I just divert for a minute to the present mentality of the Hindus, as a whole. I want to see a Hindu in this country who can say that he is a Hindu according to the old notions of Hinduism. The present mentality of the educated Hindus of this country is a sort of eclecticism. They are followers of Arya Samaj, Brahmo Samaj, some people have in the background of their minds or in the inner sub-conscience, certain conceptions which we have imbibed from Muslims, Christians and from other religions and we educated Hindus—I can speak for myself and some of my friends— want to have a sort of eclecticism. We take the best out of every religion and begin to think that this is the right thing and that this is Hinduism. Perhaps this may be true of the rest of the world also. Where is a true Christian to day who believes in the teachings of the Bible ? I can quote from the Muhammadan Law also. Where is the true Muhammadan to be found ? We know that the Prophet of Muhammadans married a girl who was below the age of 14. When the Sarda Act was passed, if hon. Members of this House remember very well, Mr. Mohemad Ali performed a marriage in the Queen's Garden just

to contravene the provisions of the Sarda Act because people wrote that the Sarda Act had made an inroad on the Muslim religion by taking away the liberty of marrying a minor. Those persons who have prejudices about religions may say whatever they like but to-day at the present moment, there is no orthodox Hinduism, no orthodox Muhammadanism and no orthodox Christianity. This is the bare truth and therefore, I am not surprised if Dr. Ambedkar has brought in a Bill which is consistent with the present times. Many of these provisions look new to those who are absolutely orthodox but at the same time, we must recognize that we have progressed too much on the lines of modern civilization and we cannot go back. If they want to bring back all those ideas of the past which have been practically given up by society in general, they are mistaken. As a matter of fact, Dr. Ambedkar has made an unconscious attempt.....

Shri R. K. Chaudhuri : We are getting more and more confused by what the hon. Member is saying. I want to make it clear whether the hon. Member wants that the present Hindu Code should go to amend the Punjab Customary Law and whether in the Punjab Customary law bigamy is banned or not. If bigamy is not banned and if as the hon. Member wants to have the Punjab to be excluded from the operation of the Hindu Code, may I know his views about bigamous marriage ?

Mr. Chairman : The hon. Member should know that he has already made his point clear and the hon. Member who is now speaking may be allowed to have his say and he need not be interrupted from time to time.

Pandit Thakur Das Bhargava : I am very glad that my hon. Friend has put a question to me. So far as bigamy is concerned. I have made my position absolutely clear when some time back I introduced a Bill in this House. That bill is designed to enforce monogamy in the whole of India even as regards Muslims, Hindus, Christians and everybody and including the Punjab. I want that so far as this Customary law is concerned, if there are any such customs which agree with the accepted ideals of society and humanity as a whole or a major part of that society, then those ideals we should adopt. I want that there should be no bigamy in the Punjab or elsewhere. This is my humble reply. So far as the general question that he has put is concerned whether this Hindu Code should modify a custom or not, I am of the opinion that so far as our custom is concerned, I want to stick to it in the Punjab, and we want to go on with that custom.

So far as custom and other things are concerned, if my hon. Friend has just studied the amendments which I have already given, he would see that I want good customs in all places should remain as they are, because I am not in favour of violently changing the law of the people of this land in this manner in which this Hindu Code seeks to do (*Hear, hear*). At the same time, I do not want some portions of this Hindu Code to be enacted for the whole of India. Since I got an applause with a view to pin me to something which I do not myself like, I want to make it absolutely clear that I am not against this Hindu Code. I want that certain portions of it should be enacted, but there are certain portions which I do not like, (*Interruption*). So far as certain principles in this Hindu Code are concerned, which are of a universal nature which will improve the society, I want that those provisions should apply to the Punjab and it is for this reason I am supporting this amendment. Hon. Members have not read the amendments which I have already given. The amendment runs thus:—

That for clause 2, the following be substituted, namely :

“ 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 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 Jew by religion ;

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

I want that this Hindu Code Bill as it is amended by this House and according to my wishes should apply to the Punjab. I do not want that so far as the Punjab is concerned the customs that we have got there should be violently changed by this Hindu Code but consistently with this I want to adopt such of the provisions of the Hindu Code as are acceptable. As for bigamy it should no longer exist in the Punjab. We want to have a monogamous Punjab.

Shri R. K. Chaudhuri : Then I withdraw my applause.

Shri J. R. Kapoor : Do I understand the hon. Member to suggest that different portions of the country and different sections of the

community should be permitted to pick and choose particular portions of the Code which are acceptable to them ?

Mr. Chairman : The hon. Member must address the Chair and he should put the question through the Chair.

Pandit Thakur Das Bhargava : I am very glad that Mr. Kapoor should have put this question to me. Since I also put a question to Mr. Kapoor when he was speaking yesterday, this is tit for tat. I then asked Mr. Kapoor when he was speaking whether he wanted that every person should have liberty of choosing a particular clause and whether he shall be bound or not. His proposition was that out of the Hindu Code consisting of so many sections every individual be he a Hindu, Muslim, Christian or Parsee or whoever he may be able to choose a particular section to bind him and not others.

Shri J. R. Kapoor : On a point of personal explanation, I never said that. What I said that of all portions in the Code one should be at liberty to pick and choose any particular portion. There are different parts relating to marriage, adoption and inheritance etc. It should be open to one to pick and choose the part relating to marriage and say : "I want to be governed by this chapter." I never said that one particular section should be accepted by one and another section by another.

Pandit Thakur Das Bhargava : I am very sorry that my hon. Friend controverted the statement that I made. I put this question in those very words and he replied to that question and his reply was that he would rather like that even a particular section could be chosen. Unfortunately, he does not remember that.

Shri J. R. Kapoor : I will refer him to the speech which I delivered yesterday.

Pandit Thakur Das Bhargava : After reading the section I found the very thing that I am submitting.

Shri J. R. Kapoor : I suppose it is not so.

Pandit Thakur Das Bhargava : I take it that what my friend says is the true version.

May I humbly ask my Friend whether he wants that a person can choose out of the Hindu Code and say that so far as marriage is concerned he shall be bound by the Hindu Law and so far as succession is concerned, he shall be bound by some other law ? That would be an impossible proposition for a person to say that he would be bound only by one Chapter of the Hindu Code and not by others. The whole

law is so interwoven and interconnected that a person cannot say that he would be bound by one provision and not by the other provisions in another Chapter. That is entirely a wrong proposition. Succession, maintenance, guardianship, all these provisions are, as a matter of fact, so inter-connected that it would be impossible to have a proposition like that. Yesterday also when I put my question, it was with a view to bring into relief the wrong proposition that my hon. friend was wanting to lay down for the whole of India. According to him, a Muslim may be able to say that he likes a certain Chapter and would be governed by that and in respect of the rest, he would be governed by the Muslim Law. I ask, is it possible, is it practicable, is it a proposition which can be laid before the House? I submit, not, I submit that that would be a wrong approach to the question at issue. In fact, that is not the question at issue.

The question of even a Civil Code, as I have submitted, is not germane to the subject. While I admire those who want to have one Civil Code for the whole of India, I cannot agree, and I do not think that it would be a practical proposition to have one Civil Code for Muslims, Christians, Jews, etc. What was the reaction of our friend Mr. Naziruddin Ahmad? He never agreed to that. He raised the question of fundamental rights under the Constitution, and said that you cannot have this Hindu Code. When it came to asking a question of him whether he would like to be governed by the Hindu Code, he said, "It is bad enough for the Hindus; you want to give it to the Muslims, Christians, etc.". That was his attitude. I very humbly submit that as a matter of fact, the provisions of the Constitution Act have not been fully understood by my hon. friends who propose that this Hindu Code should apply to Muslims, Christians, etc. I can understand that in a light-hearted spirit. If they want to throw away the Hindu Code Bill they may say anything in order to show the absurdity of the provisions. But, I do not think that it is a feasible proposition to suggest that the Hindu Code should apply to Muslims, Christians, Parsis, Jews, etc.

Shri R. K. Chaudhuri: The principles.

Pandit Thakur Das Bhargava: My hon. Friend Mr. Chaudhuri says, and I think he will again applaud me when I say that the principles do apply. I quite agree that some of the principles even of the old Hindu Law are of such a universal nature that they apply to people of all religions, in all circumstances. So far as that is concerned, that would be the basis of the common Civil Code. Even

now, we have certain principles in our present law which are the basis of the common Civil Code, like the Sarda Act, Majority Act, etc.

Reference was made to articles 25 and 15 of the Constitution Act and some of the provisions in article 25 were even ridiculed. My hon. friend Mr. Nazuriddin Ahmad said that he cannot make anything out of the words “Subject to public order, morality and health” and that they were meaningless. They are not meaningless. They have not full meaning; not only full meaning, but are of very great significance. He seems to have failed to realise the significance of articles 25 and 15. It was said that under article 15, there shall be no discrimination, and that therefore, we cannot have a Hindu Code, a Muslim Code and other Codes. My humble submission is this. Although I would very much like to have one Civil Code for the whole country. I submit that it is not inconsistent with the provisions of the Constitution Act to have a Hindu Code, a Muslim Code and other Codes. I am very sorry to say that I have heard my hon. friends who are in favour of the Hindu Code Bill say that so far as the provisions of Articles 15 and 25 of the Constitution Act are concerned the provisions of the Hindu Code Bill are not consistent. For instance. I am very sorry to submit that I have heard even from the author of the Hindu Code Bill to say that so far as the Constitution is concerned, there can be no discrimination between brothers and sisters, between a male and a female so far as the Hindu Code is concerned.

Dr. Ambedkar : Only on grounds of sex.

Pandit Thakur Das Bhargava : I am coming to that. That is one proposition that has been put forward that on grounds of sex there cannot be any discrimination and article 15 of the Constitution will stand in our way. The other gentlemen, who are opposed to the Hindu Code, also rely on articles 15 and 25 and say that there can be no discrimination. May I humbly ask the Hon. Dr. Ambedkar, if there could be no discrimination on the ground of sex, why he has got so many provisions in the Hindu Code itself which discriminate between the sexes.....

Dr. Ambedkar : There is no provision which discriminates only on the ground of sex.

Pandit Thakur Das Bhargava : This provision of one-fourth for a married daughter and one-half for the unmarried daughter ; why is there a different succession if a man dies and a different one if a woman dies ?

Dr. Ambedkar : That is not anything based on sex only.

Shri Tyagi : On death also.

Mr. Chairman : I think the Select Committee report has made no such discrimination.

Mr. K. C. Sharma (Uttar Pradesh) : That article is not under discussion now. He may come to his amendments.

Pandit Thakur Das Bhargava : As a matter of fact, even this discrimination that the married daughter may not have a share in the father's property is not based on ground of sex alone, as my hon. friend says. My submission is that it is consistent to provide in this Hindu Code that a married daughter shall not succeed to her father's property. I was just now on the argument propounded by the Hon. Dr. Ambedkar. On the question of maintenance, a wife is entitled to be maintained by the husband. Is the husband also entitled to be maintained by the wife ?

Shrimati Renuka Ray (West Bengal) : Why not ?

An Hon. Member : There are many such instances.

Pandit Thakur Das Bhargava : My hon. Friend asks ; ' why not ', I am very glad that she has adopted this gallant attitude. Has she consulted her sisters ? Our Chairman does not say so. I submit that it is a very wrong principle to suggest that on the basis of sex, equality should be enforced in such a manner which is not consistent with certain conditions of life. I maintain that the Hindu Code would not violate any provision if we maintain that a married daughter does not succeed to the father's estate. She succeeds her husband or father-in-law. I am dead certain that unless and until we recognise the rights of women, unless we give them full rights, we shall be losing very much in certain strength of character which arises only if women are economically independent. I submitted when I was speaking at the consideration stage, and I maintain it now that we are all committed to that and we cannot but give rights to our sisters; we must see that we give them full rights. The only thing that I am opposing is the manner in which those rights are given.

So far as the Punjab is concerned, as I submitted, we are wedded to this theory that a married daughter when she goes to her husband's family, she becomes a part of that family, and is the pivot of that family. Therefore, the trouble with the Punjab is that they cannot possibly accept that a married daughter should succeed to her father's estate. So far as