

Bill as it was placed before the House at the time of the first reading. This clause was introduced in the course of the proceedings of the Select Committee. The idea of those who sponsored sub-clause (4) was this. It was their view that since the intention of the Code was to bring all Hindus under all denominations under the purview of this Code, there was no purpose in setting apart those Hindus who had already performed their marriages under the Special Marriage Act of 1872. It was for that reason to make the Bill all inclusive, that this sub-clause (4) was brought in. I have however found that there is one point which was, I am sure, not present to the mind of the Select Committee when they introduced this clause. It is quite obvious that if sub-clause (4) remained and it applied to persons who were married under the Special Marriage Act of 1872, they would, in the matter of succession and inheritance be governed by the present provisions contained in this particular Code. Now, anyone who is aware of the provisions contained in the Succession Act with regard to inheritance and the provisions contained in this Bill will have no doubt that so far as women are concerned, the provisions of the Succession Act are far more liberal than the provisions contained in the present Code. It does not, therefore, seem right that people who have already married under a particular law and have on that account, become entitled to the more liberal provisions contained in the Succession Act should be dragged down and brought under the present Code which as I said, contains provisions relating to inheritance which are somewhat illiberal as compared with the other provisions. It is for that reason that I propose that sub-clause (4) should be omitted.

Now, Sir, I will turn to the points made by the critics of clause (2). Examining the amendments that have been tabled, I do not find any difference between myself and my friend Pandit Thakur Das Bhargava. His amendments is, more or less, the same as those contained in clause 2. I will presently explain why I have in my draft, named certain communities which he thinks is unnecessary. With regard to the other amendments, one can see that there are really three points which the amendments seek to make. One is this that there is no necessity for a Hindu Code at all. What is necessary is a Civil Code applicable to all citizens. That is one point, of view which is adumbrated in the amendments. The second is that this very Code which is placed before the House and which, according to its terms, is intended to be confined to the Hindu community should be made applicable to non-Hindus, such

as Muslims, Parsis, Jews, Christians and so on. That is to say, it should itself be regarded as a Civil Code, and the third suggestion is that the application of the Code should be voluntary. It should be a matter of choice either for any particular citizen or any particular member of the Hindu society to go before a magistrate and to register his will that he would like to be governed by this particular Code. In no other circumstances should this Code be made applicable in this country. And I believe there is one suggestion—I forget now the author of that suggestion—that this Bill should not come into operation except on a referendum to be taken after the elections or something like that.

Pandit M. B. Bhargava : That comes up later.

Dr. Ambedkar : Somebody said that, I cannot recall who.

Shri J. R. Kapoor : He intends to say so later on.

Dr. Ambedkar : Yes.

Now, I must say that I am very very much surprised to see some of those who until yesterday were the greatest opponents of this Code and the greatest champions of the archaic Hindu Law as it exists to day should come forward and say that they are now prepared for an All-India Civil Code. There is a proverb that a leopard does not change its spots and I cannot believe that those leopards which have been pouncing upon this Bill every time I came before this House have now suddenly so reformed their mentality as to become revolutionary enough to accept a new Code altogether. If they want a Civil Code, do they think that it will take very long to have a Civil Code? Probably the underlying motive why they have made this suggestion is this. As it has taken four or five years to draft the Hindu Code they will probably take ten years to draft a Civil Code. I would like to tell them that the Civil Code is there. If they want it it can be placed before the House within two days. If they are ready and willing to swallow it, we can pass it in this House in half an hour.

What is the Civil Code?—let me ask. The Indian Succession Act is a Civil Code. Unfortunately it does not apply to Hindus. I do not know if there is any person with the greatest amount of legal ingenuity who can devise a better Civil Code than the Indian Succession Act. All that would be necessary to make the Indian Succession Act universal and civil, that is to say, applicable to all citizens, would be to add a clause that the words contained in clause 2 of the Act, namely that it shall not apply to Hindus, be deleted and then you

can have a Civil Code tomorrow. If you want the marriage law as part of your Civil Code there again the text is ready. The Special Marriage Act is there. All that you have to do is to remove the words that it shall not apply to this or that it shall only apply to that. All that you have to say in clause 2 is that it shall apply to all citizens and there is an end of the matter. I want to know whether those who have made this suggestion have done it with a serious intention and pious purpose of really having a good law on these matters. . .

Shri Sondhi (Punjab) : Take them at their word.

Dr. Ambedkar : I am not prepared to do it, because I know them very well. That is the reason why yesterday I did not accept the suggestion of my friend Mr. Rohini Kumar Chaudhary. He said, “Adopt whatever measures and either take the Code through or if you cannot take it through, keep it to the end.” I could have accepted the word and the suggestion of my friend Mr. Rohini Kumar Chaudhary if I could believe and trust him or that he will not have any opposition if I adopted the course that he suggested. I now find that he has been completely isolated. Some of his friends who were walking with him and forming a solid front, I find have now fallen away. They have seen light and they are prepared to support the measure in some parts, if not on the whole. Therefore, this idea of having a Civil Code just does not appeal to me, because I do not think there is either much firmness behind it or, I was almost going to say, seriousness behind it.

With regard to the plea that this Code should be applied to all citizens, I think my friend Pandit Thakur Dass Bhargava has replied to the critics who have made this suggestion and I do not think I can improve upon what he has said. I do not know that those who made this suggestion could be regarded as so ignorant—I was almost going to say so foolish—as not to realise the sentiments of different communities in this country? It is all very good to say that we have proposed in our Constitution a Secular State. I have no idea whether any Members, when they use these words “Secular State” really mean what the Constitution is intended to mean. It does not mean that we can abolish religion : it does not mean that we shall not take into consideration the religious sentiments of the people. All that a secular State means is that this Parliament shall not be competent to impose any particular religion upon the rest of the people. That is the only limitation that the Constitution recognises. We are not here to flout the sentiments of the people.

Babu Ramnarayan Singh : You are doing it.

Dr. Ambedkar : I am not doing it at all, as I will show you. Therefore, it seems to me that it is a suggestion which really lacks even commonsense and I do not therefore propose to deal with it.

Now in regard to the other question that the Code should be made voluntarily applicable. I think this is a very dangerous suggestion. What does this suggestion mean? It means that this Parliament is only a body to recommend a certain thing. All that the Parliament can do, if we accept the suggestion is to say to the people outside. “ This is a law we have passed. We think it is good. Gentlemen, it is for you to say whether you will accept it or not.” If that is the position that we are going to adopt and if we accept this principle now, we shall be setting a precedent and there will be no end to such recommendations that may be made by Parliament, namely that much of its legislation should be left to be passed by people outside on a referendum. I do want to say that this Parliament is a Sovereign Parliament. Beyond seeking the mandate of the people it has no obligation to the people to obtain their consent. It can decide what it likes. It is supreme : It has authority to make a law, to unmake a law. If every time this Parliament is to be subjected to the vote of the ignorant people outside who do not know the A.B.C. of the technicalities of the law, this Parliament will have to be suspended : it would be much better not to have a Parliament at all.

Secondly, I have not seen any single example in the history of the Legislative Assembly of this country of such a course being recommended to Parliament. This is not the first time that Parliament is passing a law dealing with Hindu Law. I have made a modest computation of the laws passed by the Indian Legislature ever since legislative power began to be exercised, practically from 1833. Altogether 29 laws have been passed, some of them of a very drastic character making fundamental changes, but there never was any plea in this House that any of those laws should be left to be passed and sanctioned by public opinion or public referendum. (*An hon. Member :* They were not elected legislatures). It is worse still. Even when the legislatures were not elected legislatures, they exercised the lawmaking power and imposed it upon the people. Now when the legislature is far more representative than it ever was a plea is made that this Parliament cannot make a law for the people.

An Hon. Member : Nobody has said that.

Dr. Ambedkar : That is what some hon. Members suggested when they said there should be a referendum.

Now, I will go back to some of the comments which were made on the draft of clause 2. These comments were made particularly by my friend, Mr. Naziruddin Ahmad, and my friend Pandit Thakur Das Bhargava. Yesterday you were not in the Chair, Sir, but . . .

Prof. Ranga (Madras): But the Chair was there.

Dr. Ambedkar : The Chair was there. What I wanted to say was that Mr. Naziruddin Ahmad started in a very accusing mood. He tried to prejudice the House against me by saying that the language of my amendments was mandatory : “*substitute* this.” He thought that the more polite way of putting down amendments was to say, such-and-such words shall be substituted for such-and-such words”. Really speaking, I need not have taken this point seriously because drafting is not my business—drafting is the business of another body of people who have their set rules of drafting and I could have very easily said that I am not responsible for it. But I did make enquiry into the matter whether the draftsman in using the language which he has used had really fallen from grace or from the usual standard. The facts are these. For instance, the formula suggested by Mr. Naziruddin Ahmad that is, “such-and-such a word shall be substituted”, I found is generally used when you draft an Act. There seems to be a distinction between the language adopted in drafting an Act and the language to be adopted in drafting an amendment. Therefore, as the draftsman was drafting the amendments he did not use the usual formula which I said is used in drafting an Act. The second thing is this. As the House will remember, the President has issued certain orders under the Constitution which he is entitled to issue. In that series of orders—I think it is a very fat book which some of my hon. Friends must have seen—the language that is used is the language which the draftsman has used in these amendments. He says, “I have followed the precedent which has been adopted by the President, in making these amendments”. I went further and enquired, “Why did the President depart from the usual practice”? And the answer given was that the orders were so bulky that it was necessary to economise in printing paper and ink. Therefore, the draftsman who helped the President in framing his orders followed this particular way of putting these amendments. My draftsman, therefore, has really committed no error, no fault, in following the precedent adopted in the Constitutional orders. I, therefore, submit

that my learned friend's attempt to depict me in rather unsavoury colours has fallen to the ground. I will not deal with that further.

Now, my friend's objection was to sub-clause (d). He said that I am hoping in the convert to Hinduism. His point, if I understood it correctly, was that I have made no provision either here in clause 2 or in any other part of this Bill to have the rights of the convert in the family in which he was born. I must say that my friend, Mr. Naziruddin Ahmad who legitimately claims a very extensive knowledge of law should have forgotten that there is a very old Act called the Disabilities Removal Act of 1850 which was passed just for this very purpose namely, to remove any disability from a person who wants to change his religion in order to safeguard what is called liberty of conscience. It was an Act which was passed on the agitation of the missionaries in this country who found that the Hindu were not prepared to change their religion because under the ancient Hindu Law a man who went out of the Hindu fold was a *pant—a patit* could not inherit property. In order to do away with that rule of Hindu Law this particular Act was passed and I have done nothing to abrogate the provisions of the Act. If my friend had referred to the Schedule which deals with the Acts which are repealed by this Code he would have found that the Caste Disabilities Removal Act is not included in that Schedule. Therefore, the convert will retain all the rights of inheritance in his father's family if he wants to change his religion. And therefore Mr. Naziruddin Ahmad's complaint is absolutely groundless.

My friend said he had an objection to sub-clause (2). Sub-clause (2) says—

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

Obviously this sub-clause (2) is what I call a residuary clause, a clause which refers to the balance of people who are not included either among Hindus who are specifically mentioned or the Parsis, the Jews, the Christians, or the Muslims. There can be no doubt about it that there are in this country a vast number of people who do not follow any of these recognised religions, so to say. What are we going to do about it ? Certainly this Bill either should say that it does not apply to them or it should say that it does apply to them. And if it said that it does apply to them, it should say to what extent it applies to them. Everybody knows that there are in this country a vast number of people such as, for instance, the Adi Dravidas, the tribal people,

the jungle tribes, the backward classes, the animists, and so on and so on—one can go on enumerating *ad infinitum*. What about them? Surely some provision must be made for them. Sub-clause (2) therefore applies to this class of people whom I called a residuary class. Now, it might be said that in making this Bill the Government has a political motive, namely, to absorb these non-descript people into the Hindu community so to say, by a side door. That is not our purpose at all,

4 P.M. because you will see from the proviso what we are doing.

The Hindu Code will apply to them only if it is proved that Hindu customs and Hindu usages are prevalent in that class; otherwise, they are free to do whatever they like. There, again, the criticism of my friend was quite misplaced.

Prof. Ranga : Can they opt themselves out ?

Dr. Ambedkar : Once they have adopted the customs and so on, they are in; otherwise they are out.

Now, Sir, I will deal with certain points that were raised by my friend Pandit Thakur Das Bhargava and by Sardar Hukam Singh. Sardar Hukam Singh's amendment is that it should not apply to the Sikhs. Later on, I suppose, he moderated his attitude and said that he had only objection to some parts. With regard to the question whether this Bill should apply to persons or communities other than Hindus in the strict sense of the word, I think it is desirable to have some general idea about the matter. The first thing that I would like to emphasize and which I would like Members of Parliament to bear in mind is this, that from a sociological point of view the variety of religions that we have in India or elsewhere seems to me to fall into two categories. There are religions which have as their part a legal system, which you cannot sever from those religions. There are religions which have no legal system at all, which are just pure matters of creed. The peculiarity about the Hindu religion, as I understand it, is this, that it is the one religion which has got a legal framework integrally associated with it. Now, it is very necessary to bear this thing in mind, because if one has a proper understanding of this, it would not be difficult to understand why Sikhs are brought under the Hindu religion, why Buddhists are brought under the Hindu religion and why Jains are brought under the Hindu religion. When the Buddha differed from the *Vedic Brahmins*, his difference was limited to matters of creed. The Buddha did not propound a separate legal system for his own followers; he left the legal system as it was. It may be that the legal system that then prevailed was a good system; that it had

no blemishes and no faults. So, he did not direct his attention to making any changes in the legal system in consequence of the changes that he introduced in certain religious notions.

[MR. DEPUTY-SPEAKER *in the Chair.*]

In the same way, when Mahavir founded his own religion he did not create a new legal system for the Jains. He allowed the legal system to continue and I think Sardar Hukam Singh will correct me if I am wrong when I say that none of the ten Gurus ever created a law book as such for the Sikhs. The trouble is—you may call it trouble; you may call it good fortune; you may call it misfortune; I am not particular about words—the fact is this. In this country, although religions have changed, the law has remained one. That is why the Sikh follows the law.

Sardar Hukam Singh : But now you are making a new law.

Dr. Ambedkar : It is a new thing now. The Jains come and ask, “What are you going to do to us ? Are you going to make us Hindus ?” The Sikhs say the same thing. The Buddhists say the same thing. My answer to that is this : I cannot help it. You have been following a single law system and it is too late now for anyone to say that he shall reject this legal system wholesale and will have nothing to do with it. That cannot be done. Therefore, the application of the Hindu Law and the Hindu Code to Buddhists, Jains and Sikhs is a historical development to which you and I cannot now give any answer. All that we can do is to say that the thing has gone wrong and change it, reform it or make it more equitable and this is what we are doing. So far as the Sikhs are concerned, I find from the judgments of the Privy Council that this question was debated much earlier than even 1830, when the decision was taken that the Sikhs were Hindus so far as law is concerned. Just count from 1830 to 1950—for how many years you have been regarded as Hindus for legal purposes !

Sardar Hukam Singh : It has not been doubted.

Dr. Ambedkar : In law, we have a principle which is called *stare decisis*—a decision taken a long time ago and on which people have gone had better be stayed although it is wrong.

Sardar Hukam Singh : You are going to change it now. What should I do ?

Dr. Ambedkar : Now, Sir, with regard to the points made by my friend Pandit Thakur Das Bhargava. I was really very happy to hear his speech.

Shri J. R. Kapoor : No praise will bring him into your parlour.

Dr. Ambedkar : I have used no temptations. I now find that really he has been digging various trenches one after the other. He knows very well and I see from the last trench that he knows very well that he would not be able to defend the first trench or the second trench or the third trench. He has got a very small last trench which, of course, is concerned with ousting the married daughter and I think that if that point could be conceded his opposition would be extinguished completely.

He has raised other questions also with regard to customary law. I agree and I have examined this position with great care. The Punjab Law does show that certain matters relating to personal law shall be decided by customary law, but I also know and I think my friend Thakur Das Bhargava also knows that the customary law is Hindu Law really. I do not think that that proposition can be denied, namely, that what is called customary law in Punjab is Hindu Law. The reason why it was not called Hindu Law was because the same customary law prevailed among the Muslims, and the East India Company was frightened about using the words “Hindu Law” when the law was also applicable to the Musalmans. But these are merely differences of words. It cannot be said that Punjab is not governed by Hindu Law : Punjab is governed by Hindu Law.

Now his great point was that I was laying an axe on their customary laws in the province. Well, as I listened to some of the instances which both my friends Pandit Thakur Das Bhargava and Sardar Hukam Singh gave, I found that these customary laws were really not appealable in any sense. I would merely call their marriage laws marriage made easy, their divorce laws divorce made easy and their inheritance law inheritance made easy. There is nothing fundamentally different about it. Therefore, I am not going to discuss the question on this occasion,— what extent the customary law should be saved ; to what extent the Punjab should be excluded. But I want to make this statement that I should never agree to exempt any province from the operation of this law. Let there be no doubt about it at all that the Hindu Code shall be a uniform code throughout India. Either I will have that Bill in that form, or not have it at all.

With regard to the second point as to saving customary law, I think that is a point that he could raise on the various clauses of the Bill where he wants to introduce the customary law, and if he proves that the deletion of the customary law is going to introduce any kind

of hardship I shall certainly consider the matter with great sympathy. I want to make this Hindu Code as easy as I can possibly make it.

Shri Tyagi : As marriage in Punjab !

Dr. Ambedkar : Easy in the sense that I do not want any kind of hostility, or hostile camp against the Hindu Code standing out.

If my hon. friend sees clause 4 he will find that it does not altogether oust custom. Therefore, when any particular clause comes up for consideration, if my hon. friend considers that the existing custom in the Punjab should be saved from the operation of that particular clause and if he can make out a case for exemption, I have no doubt that the matter will be sympathetically considered. I do not intend to give a more detailed reply to that because I think it is quite outside the scope of this particular clause.

***Shri R. K. Chaudhuri :** *rose—*

Shri Raj Bahadur : May I know how many more members are there to speak on amendments.

Dr. Ambedkar : I suggest that this clause be disposed of today. We have spent two days on it and there has been more than enough debate on it.

Shri R. K. Chaudhuri : Sir, I claim the credit of being isolated in the matter of this legislation.

Shri Syamnandan Sahaya : The hon. Member can come to the front bench and speak.

Shri R. K. Chaudhuri : Will you let me sit there tomorrow during the question hour ?

I confess that in this House I am isolated. But I hope the Hon. the Law Minister will have the courtesy to admit—which is a fact—that he is completely isolated outside this House. I do not regret the position in which I am placed, because I find that hon. Members of this House are afraid of speaking out the truth of telling the hon. lady Members of this House what they ought to be told that they are proving themselves far too aggressive. This, I respectfully submit, is not a matter to be laughed over. Hon. Members of this House would have noticed the way in which my revered friend Babu Ramnarayan Singh was squeezed out of his seat yesterday. It is only on account of the relenting heart of a certain lady Member that my hon. Friend has found his way to his seat.

* P.D., Vol. VIII, Part II. 6th February 1951, pp. 2473-83.

Sir, I warn this House against this aggressive character of our women. I think it is time that we speak out. I want to ask the Hon. Minister for whom he is legislating this Hindu Code and who wanted him to push on and proceed with it against the wishes of a large section of Hindu Society. Is it not because the hon. Lady Members of this House have egged him on to do it?

I should, however, like to tell the Hon. Minister that he is not alone in that predicament. This House will recollect what our respected friend Acharya Kripalani said at the time we were considering the Report of the Select Committee, about the attitude adopted by one of his colleagues in this House and his companion in this world. He said that he was making bold to speak because his 'colleague' had gone abroad and when she returned she might ask for an account of the finances of the household, but also his conduct during her absence.

That shows, Sir, where we stand today. It is on account of this that you are prepared to brush aside the sentiments of the less forward Hindu women, who do not know how to dress themselves properly. It is the women who do not have recourse to gaudy and gorgeous *sarees*, women who do not know how to paint themselves—it is that section of the Hindu women whom you are trying to suppress in the way you are doing today.

An Hon. Member : Is all this in clause 2?

Shri R. K. Chaudhuri : I want to make it perfectly clear that I oppose all the amendments, including that of my hon. Friend Dr. Ambedkar, except the one which has been put forward by my hon. Friend Mr. Jaspat Roy Kapoor. I support that amendment because it practically tantamounts to an opposition to the Hindu Code. I will explain how it is an opposition to the Hindu Code. It gives us the fullest discretion to make this Hindu Code a dead letter, because according to this amendment the Hindu Code will only govern those people who would come forward in the open and make a declaration and say that they want this Hindu Code to be applied to them.

Shri J. R. Kapoor : I am tempted to exclaim ' Save me from my supporters'!

Shri R. K. Chaudhuri : I may tell my hon. Friend Mr. Kapoor that he may leave aside the *kambli* but the *kambli* would not leave him. To the end of this debate on the Hindu Code I shall follow him wherever he goes. If my hon. Friend Mr. Kapoor's amendment is carried, it practically means that we shall be in the position that we

are today, This Hindu Code will be more or less a Special Hindu Marriage Code. It will be something like that. Even now a Hindu can marry within a prohibited degree if he makes a declaration as is required under the Civil Marriages Act. Similarly, if this Hindu Code would only govern those who would make a declaration that they want to be governed by it, I believe that two-thirds—not two-thirds but nearly cent per cent—of the Hindus would refuse to come forward and make declaration in the manner which has been suggested by my Friend Mr. Kapoor. That will mean practically that this Code will be shelved and the Hindu Law which governs us today will continue to govern us.

I was very much interested to hear about this Punjab Customary Laws Act. This Punjab Customary Laws Act, as was admitted by my hon. friend Pandit Thakur Das Bhargava who referred to it in this House, did not prohibit bigamy at all. What my hon. Friend Pandit Thakur Das Bhargava wants is that the Punjab should be absolutely left out of this Hindu Code, that this Hindu Code may be in force in the rest of India but not in the Punjab—which means that although bigamy may be an offence in India, it will not be an offence in the Punjab and my hon. friend may go on merrily as he likes. I do not understand this, and I hope my Hon. Friend Dr. Ambedkar will be able to explain the position to us. It is this. When custom has got the force of law and that custom becomes invariable, no legislation can really over-ride it. Ordinarily if you are going to prove a custom, the burden is on you to prove that the custom is invariable, that the custom is not immoral, and that the custom has been followed. But when that custom is embodied in a piece of legislation which has been in force for some time and when that custom has not been abrogated, has been recognized. I do not understand how the application of the provisions of this Code can in any way interfere with that customary law unless it is stated clearly that all that law has been repealed by this Code. I may not have thoroughly studied the Hindu Code, but my impression is that no such provision has been made in this Code to repeal the Customary Law Act of the Punjab. And if that stands unrepealed you shall have inconsistent legislation in this country. Hindus in the whole of India will be governed by the Hindu Code, but those in the province of Punjab, where customary laws have been codified and are in force, will remain unaffected by this Code. I will ask the hon. lady Members of this House whether they are prepared

to allow Hindus of the Punjab to 'commit' bigamous marriages whether they are agreed at any rate that there shall be no divorce in the Punjab and that they would allow their sisters in the Punjab to be "persecuted"—it is their language, not mine. I say no woman can be persecuted. The days of persecution of the woman have gone. Nowadays it is the men who are being persecuted by the tyranny of women. If any hon. Member of this House had the temerity to express himself clearly, he would say something about the tyranny of modern women.

Therefore, I would ask this House to consider and pause carefully before it gives its assessment to this piece of legislation. Hon. Members of this House will remember that the Members of this House had no mandate to support such a sweeping legislation, a legislation having such far-reaching effects. Our election had taken place in an indirect way. I repeat what my hon. friend Mr. Naziruddin Ahmed said. It is not that we are not competent to pass this legislation. We are competent to pass any legislation today. We are competent to pass a legislation that the rule which is now obtaining—the salutary rule which has been accepted by the Government of India—that no married women should be taken in the Indian Foreign Service should be abrogated, and we can pass a legislation to say that none but women shall be taken therein. We are perfectly competent to do that. There is no question of incompetency here. Women can become constables and carry sticks ; they can put on pyjamas and turbans ; they can even wear beards ! also as Members of the Constabulary. Why can we not pass a legislation like this ? Nothing stands in the way of our doing this.

Mr. Deputy Speaker : How do all these arise under this ?

Shri R. K. Chaudhuri : I was only giving an analogy. Then I come to the most important thing. As we had no opportunity of getting a mandate from our electorate and as we have been ignoring the majority opinion given or received as a result of circulation of this Bill, we must take very great care to consider how far this legislation will be accepted by us. I therefore agree with my hon. friend, Mr. Naziruddin Ahmad that the consent of the people is necessary for passing this legislation. Now, speaking about discrimination, a great deal was said yesterday about the discriminatory character of this piece of legislation and about the way in which the Constitution has been ridden rough-shod. Dr. Ambedkar, if I remember a right, himself

referred to the question of breach of certain fundamental rights of the Constitution. He said if the present Hindu law is not amended, in the manner in which he seeks to amend this code, then a question may arise in the Supreme Court or in the High Court where it will be asked by the other parties that the Hindu law makes a discrimination between Sudras and non-Sudras. A Sudra of any age can be adopted. A sudra can be adopted even though he may be related very closely and then a Brahmin of a similar position cannot be adopted. Therefore there is discrimination in the present Hindu law and therefore he said that unless the present Hindu Code is adopted the present Hindu law will always be subjected to criticism by a court of law on the ground that it is discriminatory.

Now, Sir I come to a more serious point. I suggest that the arguments which have been put forth by me hon. friends. Messrs. Jhunhunwala and Naziruddin Ahmad should also be taken into serious consideration. I also want to draw the attention of the House to one particular point, namely the discriminatory character of this legislation which hurts the Constitution itself. My hon. friend Mr. Naziruddin Ahmad and I are behaving as if we are sailing in the same boat. He is isolated in one bench here and I am isolated in another. My hon. friend, Mr. Naziruddin Ahmad—God forbid—if he were to take another wife, if he wants to marry again during the life-time of his present spouse, then he will not be liable to conviction either under the Indian Penal Code or under the Hindu Code, whereas I being a Member of the same House, being a close neighbour of his, if I dared to follow his example and if I have in undergo another ceremony of marriage, what will be my fate? I shall be simply prosecuted, convicted, sentenced to imprisonment and probably man-handled when I am taken to prison by my own friends. There will be a great public feeling against you that I was spared in any way. Is this not discrimination? If that is not discrimination, I fall to understand the meaning of the word ‘discrimination’. We are subjects of the same sovereign power; we are bound by the same Constitution; we are living in the same realm and while the one enjoys the privilege of marrying as many as four times. I cannot dare to marry more than once. What is then the meaning of discrimination?

Shri Tyagi : Bad luck.

Shri Raj Bahadur : On a point of information, may I know how many times has the hon. Member married already.

Shri R. K. Chaudhuri : That is a personal question. Examples are very contagious. My hon. friend Mr. Tyagi says that it was my

bad luck that I have been put in such a discriminating position. Let us take it arithmetically ; if after having married once, I am called 'unlucky' then what are you to call a gentleman who has not been able to marry so long. Yesterday my hon. friend Mr. Naziruddin Ahmad mentioned about a certain kind of help which some of my esteemed friends would give in the way of vote by quoting Hindu Shastras. He being a non-Hindu probably was feeling delicate and refrained from saying what he wanted to say. Let me make myself clear. I submit that the first premises on which those who want to support this Hindu Code is this : Hindu religion is intimately connected with Hindu law, that is to say the Hindu law is intimately connected with Hindu religion. Divorce of Hindu law from Hindu religion means nothing. Here this is a religious question. If the Hon. Minister in charge of the Home Ministry were to take out a census of those people who believe that not to have a son is to go to Hell, you will find that two thirds of the Hindus believe in that. They believe that if you do not have a son, you will go to hell.

Shri Tyagi : I want to know how can one help it if he has not got a son. What is he to do ? It is not in his hands.

Shri R. K. Chaudhuri : You need not go into irrelevant questions. I would just like to tell my hon. friend that there is no limit of age so far as marriage is concerned. Dr. Ambedkar has been merciful in this respect. He has said do not marry more than once. You may divorce a dozen of your wives and there is no bar to your marrying again.

Shri Tyagi : One by one.

Shri R. K. Chaudhuri : Only one at a time ; not more than one. That is what is stated here. He does not lay down any restrictions of age. A woman of 85 years under this new picture of the Hindu Code can marry a young man of 25. There is no civic sense in this Hindu Code.

Shri Deshbandhu Gupta (Delhi) : What about *vice versa* ?

Shri R. K. Chaudhuri : *Vice versa* also. I submit that it is most inhuman for the author of this Hindu Code to suggest that you can, whatever your age, marry again if you are inclined to marry.

Shri Bharati L. Krishnaswami (Madras) : What is the relevance of this to clause 2 ?

Shri Deputy Speaker : He says that the Hindu Code Bill ought not to be applied to all persons except to those who voluntarily submit themselves to the Code. Therefore, he is developing that argument.

Shri R. K. Chaudhuri : Coming to the clause under discussion personally, I would prefer that the provision should remain unchanged, so far as professing the religion is concerned. My hon. friend Dr. Ambedkar and a few others have sought to amend the provision by saying that this Code shall apply to Hindus by religion. It is very difficult for anybody to prove that he is by religion a Hindu. What does the word 'religion' indicate. The word 'religion' is derived from *religio*, to bind. Can I say that I am a Hindu by religion ? I may say that I am born of Hindu parents, that I am a son of a Hindu and therefore I am a Hindu. It would be difficult to say that I am a Hindu by religion. The Hindu religion lays down a very high standard. Judged by those standards, it will be found that most of the people who call themselves Hindus are not really Hindus. I may profess myself to be a Hindu : I may like to be governed by the Hindu law or Hindu Code ; but I cannot call myself to be a Hindu by religion. I do not follow the principles of that religion at all. How can I say that I am a Hindu by religion ? A Hindu is not expected to take meat. According to the Hindu religion, it is a forbidden thing. There may be many in this house, who may be calling themselves Hindus, but who would not be a Hindu according to those standards. Many who may call themselves Hindus may be doing un-Hindu acts. But, still, they would like to be governed by the Hindu Code. To say that this Code shall only apply to those who follow the principles of the Hindu religion would be a misnomer and is certainly opposed to all principles of honesty. I say that although I may not be a Hindu, although I may not be a follower of the Hindu religion, I profess Hinduism ; I say that I am a Hindu. So long as I say that I am a Hindu, the Hindu Law or the Hindu Code may be applicable to me. So long as I do not renounce my religion, so long as I say that I am a Hindu, because I call myself a Hindu, I shall be governed by the Hindu Law. Or as my hon. friend Mr. Jaspat Roy Kapoor contemplates, so long as a man says that he will be governed by the Hindu Code, he shall be governed by the Hindu Code ; not otherwise. Therefore, I say, how can you lay down this condition that one must be a Hindu by religion ?

In our part of the country, that is in Assam, the tribal people have been held to be governed by the Hindu Law. They are not Hindus. They are not Hindus by religion. They do not follow the principles laid down in Hinduism for marriage. They do not observe the same kind of the prohibitive degree of Hindu marriage. They do not follow

the same rules of adoption. All the same they are governed by Hindu Law, because in some cases they have no other law, and in other cases they profess to be Hindus. Therefore, if it comes to a question between the phrases “professing the Hindu religion” and “Hindu by religion” I will prefer the former.

And now, let me come to another aspect of the matter. There is this question of converts, and Dr. Ambedkar has himself brought forward an amendment in this respect. But I maintain that so far as Hinduism is concerned, this word “convert” is not applicable. I can understand reconversion to Hinduism, though I do not know much about it, there is no conversion to Hinduism because Hinduism is not a proselytising religion. To speak of a convert to Hinduism is absolutely meaningless. There cannot be any conversion to Hinduism. Anyone living in Hinduism is a Hindu, unless he clearly says that he is not a Hindu, that he is a Muslim, or a Parsi, or a Christian or Jew. That has been the position from time immemorial. There cannot be a convert to Hinduism. Will Dr. Ambedkar kindly tell me what are the ceremonies to be performed for a conversion to Hinduism ?

Dr. Ambedkar : *Prayaschitham.*

Shri R. K. Chaudhuri : Can anyone be converted into a Hindu ? Did Dr. Annie Besant convert herself to Hinduism ? Can Dr. Ambedkar give any example of a conversion to Hinduism ?

Dr. Ambedkar : There are so many decided cases on the subject and if my friend will only refer to the first few pages of Mulla’s Hindu Law he would get all the information that he wants.

Shri R. K. Chaudhuri : If Dr. Ambedkar is referring to “Sudhi” that is a different thing. It relates to a Hindu who has left Hinduism and is again brought into the Hindu fold. But what is the procedure or the ceremony for converting any one into a Hindu ? If it is a case of conversion, I know the process. The person concerned must fast for a certain period.

Mr. Deputy Speaker : Is the hon. Member trying to fix the procedure for reconversions of Hindus, in this Code ?

Shri R. K. Chaudhuri : I am only saying that there can be re-conversions into Hinduism, but there cannot be a conversion. Do not use the word “convert” here. Use some other word.

Mr. Deputy Speaker : Courts have decided that there can be a convert to Hinduism even though he did not belong to the Hindu fold originally.

Shri R. K. Chaudhuri : There can be re-conversion, but what about conversion ? The difference is only with respect to that.

Shri Venkataraman (Madras) : The Madras High Court in the case of Ratansi Morarji-*vs*-the Administrator General, has decided that any person can be converted to Hinduism.

Dr. Ambedkar : It related to an English woman and the question was whether a Christian could be converted into a Hindu and the answer was, yes.

Shri R. K. Chaudhuri : Will the Hon. Minister tell me the procedure or the ceremony for such a conversion ? It is never too late to learn, after all.

Mr. Deputy Speaker : The hon. Member himself is very particular that Hindu traditions etc. should be preserved. Where is the harm in getting as many Hindus as possible and as many people as possible under the Hindu Law ?

Shri R. K. Chaudhuri : I only want that the author of this Bill, Dr. Ambedkar and the founder of our Constitution should not indulge in words which have no meaning. The word “convert” has no meaning when applied to a Hindu.

Dr. Ambedkar : That is an old anti-quoted view of Mr. Chaudhuri.

Shri R. K. Chaudhuri : Can Dr. Ambedkar please refer me to one single original text of Hindu law where it is said that conversion to Hinduism is possible ?

Dr. Ambedkar : I can refer the hon. Member to the case of Morarji-*vs* the Administrator General.

The Minister of State for Transport and Railways (Shri Santhanam) : And there is a monument in Bhilsa which speaks of a Greek having been converted into a Hindu.

Dr. Tek Chand (Punjab) : And many born Christians and Moslems have become Hindus. If my hon. friend wants he can bring any such persons now and they will be converted by Aryas to Hinduism and absorbed in Hindu Society. I have several books giving cases of conversions even during Moslem rule and he can have them and read them at his leisure.

Dr. Ambedkar : Oh do not do that, Mr. Chaudhuri never reads.

Shri R. K. Chaudhuri : I am afraid the hon. Members confusing between conversion and re-conversion and also between conversion and initiation. Anyone can be initiated into Hinduism. I am not speaking about that.

Mr. Deputy Speaker : But he says there can be conversion also.

Shri R. K. Chaudhuri : Let us abandon that point now Sir.

Mr. Deputy Speaker : I thought the hon. Member has concluded ?

Shri R. K. Chaudhuri : Practically it is a conclusion for me, for I am going away to-morrow.

Mr. Deputy Speaker : Will a few more minutes do ?

Shri R. K. Chaudhuri : No. Sir, a few more minutes will not suffice.

Mr. Deputy Speaker : Then we may adjourn.

The House then adjourned till a Quarter to Eleven of the Clock on Wednesday the 7th February 1951

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**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 is under discussion.

Shri Gautam (Uttar Pradesh) : Before proceeding further, I would request you , Sir, to clarify one point. I understand—I was not present yesterday in the afternoon ; therefore I am raising this question—that one of the speakers used some language while discussing this clause which is objected to by some Members. Has the attention of the hon. Speaker been drawn to it ? I would request you, Sir, to issue certain instructions so far as these things are concerned so that Members may be within their bounds and may not hurt the feelings of other Members.

Shri M. A. Ayyangar (Madras) : May I say, Sir, what happened ?

Mr. Speaker : He need not repeat those things.

Shri M. A. Ayyangar (Madras) : No; I am not going to repeat those statements at all, because that would defeat the very purpose. Yesterday, unfortunately, some remarks, I think, quite unwittingly, escaped the mouth of one of the hon. Members who was speaking. No doubt, he always speaks in good humour and nothing is taken exception to. Unfortunately, it descended to something which was not desirable. As soon as it was pointed out to me, as I was in the Chair, I directed that that portion of the statement ought to be expunged from the records. I thought the matter was over. I think all are agreed, and the hon. Member also expressed regret for having made that statement quite unwittingly, that that chapter is closed. It does not form part of the record. I do not think there is any need to bring up the matter again to you for any particular action.

Mr. Speaker : I would only say that I trust that members will take sufficient note of this and so deliver their speeches and pass remarks that there may be no occasion again to repeat this kind of thing.

Shri Frank Anthony (Madhya pradesh) : A bad example is set by the Treasury Benches.

Mr. Speaker : Let us now proceed further with the Bill.

Shri B. Das (Orissa) : Sir, I see the debate on clause 2 has descended to the level of a general debate on the whole Bill. I think today is the last date fixed by you for passing this Hindu Code.....

Several Hon. Members : No, no.

Mr. Speaker : Order, order. Does the hon. Member want to put any time-limit ?