

Sir, you will pardon me if I say that the Hon. Law Minister would not have dealt with the House in the way he is proposing to do, hurling insults upon individual Members of the House if it were not for the declaration of the hon. the Leader of the House that he stands or falls with this Code.

Shri Syamnandan Sahaya : Forget that. That is not the position now.

Shri Biswanath Das : I am not speaking to the Members : I am speaking to you, Sir. I will be happy if the Members will leave me alone, though I very much like and appreciate their help.

Therefore, I claim that the Hon. Law Minister has not been fair to the hon. Members of this House.

Then, I come to the second assertion that he made and that is the declaration that there is lack of commonsense in those who demand a common code for India. Why ? I should have been glad to be favoured with reasons for an insult which I claim is not merited. He said not only that but he proceeded further and said that he could present a Civil Code in two days.

Dr. Ambedkar : Yes.

Shri Biswanath Das : Then by all means, let him do so. We have been waiting for it for the last so many months. If it is possible to let us have a common Civil Code in two days, by all means let us have it. Let him then favour us with it.

Dr. Ambedkar : That will do, Mr. Das. You will exhaust yourselves. Conserve your energy. You are not in best of health, I find.

Shri Biswanath Das : I take note of the advice tendered by my, hon. friend.

I do confess that the caste system will do no good to India, that the sooner it goes the better. I cannot think of a society living on the *Bhat Handi* system, on a system which says that if anyone touches my pot of *Bhat* or cooked rice, or my roti, caste is violated, because he does not belong to my caste. That is harmful. Let us do away with that system. The sooner we do that the better. At the same time, do I not realise that my ancestors, my forefathers have founded a system much nobler and much higher than the *Bhat Handi* system ?

चातुर्वर्ण्यं मया सृष्टं गुणकर्म स्वभावशः

I created the four Varnas (i.e., fourfold castes) according to the *Gunas* (i.e., qualities), *Karmas* (i.e., action) and the *svabhavas* (i.e., natures)

Have the frame-work on the lines laid down in the Gita—that will be acceptable to all. Instead, what does my hon. friend do ? Instead of taking me upwards he takes me downwards. I could agree to go with him upwards, but.....

Shri J. R. Kapoor : To heaven and not to hell.

Shri Biswanath Das : To heaven or mid-heaven, but I refuse to go with him downwards.

Dr. Ambedkar : You do not know how to choose your friends.

Shri Biswanath Das : I am glad I have committed that blunder.

Well, a common Code is not unknown. In Portuguese India you have it to-day. There are Hindus living in Portuguese India. Why not have it in India which is far more advanced than Portuguese India ? And if it is so easy to have a common Civil Code as my hon. friend says it is, let him come forward with it, and he will find at least some of those who are now against him will be with him. But, in respect of this Hindu Code, we cannot and we will never agree to go along with him. You cannot touch Muslim society, because then it will be the cry of religion being in danger. You cannot touch Christian society, then also it will be a question of religion being in danger. But you can kick Hindu society and have your new experiments propagated in that society with ruthless uniformity. We cannot agree. Being a man of sixty, I cannot agree with my hon. friend in his constitution of a society based on rationalism. In our country there had been eternal strife between spiritualism and rationality, and in that fight it is spiritualism that has come out and rationalism has gone down, and the rationalists were branded *Nastikas* and the spiritualists as *Astikas*. I refuse to be *Nastik*. The form of society that the Hon. Minister proposes through his Hindu Code is nothing short of a society for which agitation was carried on in India in days of yore, and the country as a whole rejected it and the country today I make bold to say, will reject and is bound to reject it. If my hon. friend refuses to leave it for option, it is because of his apprehension that society will not go with him. If he is afraid of a plebiscite it is because of his apprehension that he cannot carry the country with him. If he is afraid of any other legislature but a packed Parliament in an indirectly elected legislature, it is because of his apprehension that so bitter a pill as this cannot be swallowed by any other. It is these apprehensions that make the hon. Minister and those of his way of thinking to rush the measure through this Legislature. Because my leader the Hon.

the Prime Minister stated that he stands or falls by this Code, and though that statement was made without the concurrence of the party, we have to stand by him. And we do stand by him, and I appeal to him and I do so through the Hon. Minister of Law.....

Dr. Ambedkar : A bad medium.

Shri Syamnandan Sahaya : But that is the only medium left.

Shri Biswanath Das : If it is a bad medium, I leave it and I would appeal to you, Sir, for that is the only medium left to me now.

Mr. Deputy-Speaker : This medium is colourless.

Shri Biswanath Das : I appeal to him to eliminate the most controversial items in the Code so that there may be an easy passage. I have already stated, and I repeat it, that we cannot agree to this Code, and so far as I am concerned, even on my death-bed I will record my protest and say “no” to any attempt to constitute Hindu society on a rationalistic basis, as is being proposed in this Bill.

My hon. friend said that he was only making the legislation easy. As a student I knew, and most of my friends here also know that we were accustomed to read not text-books but “made easies”. Some of the professors of the Calcutta university used to make a lot of money by bringing out such “made easies” editions. And I know the terrible trouble that the students had to take because of this. Hon. Members will find reference in the Calcutta University Commission’s Report— I think it is the Sadler Commission’s Report—to the system of cramming. It is called the “crammig system” and I refuse to follow that cramming system in Hindu Code ; and I implore my hon. friend not to think of constituting any society—leave alone Hindu society—on the basis of—I have no other expression by which to call it—of cramming.

To give an illustration from ordinary life there are among *Vaidyas* both learned and quacks. The learned *vaidya* never takes to *rasa* or *pashan*: they dread them. But a quack throws open his *batua* and immediately treats you with *rasa* and *pashan*, such as mercury and arsenic. I refuse to have this arsenic treatment from my hon. friend and I would beg of him not to apply the treatment to a society which has lived thousands of years with harmony. Looking at the history of the world you will see that the Hindu family or the Hindu home is the only happy home you find. There may be difficulties in some cases, they are bound to arise in a society of 30 crores of people. But the fact remains that you do not have here the horrible and tragic

incidents that mar the social life of the West. I do not say that our society does not want changes, it does. Have changes by revolution or evolution as you like but let proper consideration be given to them before you launch on a legislation of this character.

While talking of marriage under this Code, my hon. friend from Bihar, who is a jurist of eminence, stated that in marriage, the husband and wife are partners. I join issue with him on that. The Bill does not make them partners. If they were partners I would have little difficulty in accepting it. But the Law Minister is bringing contractual relations, thereby doing away with the sanctity of marriages enjoined by *samskara*. He is introducing contractual relationship of the Western type into our society and enforcing it in all its rigidity by means of registration. Are you going to have legislation for 'haves' or 'have nots'? If you want to have legislation for 'haves' by all means have it with all your pleaders, vakils *advocates*, etc.....

Shri Syamnandan Sahaya : 'haves' do you mean those who have wives ?

Shri Biswanath Das : I am not concerned with them. You go to the mofussil. India lives in its villages and Indian life is village life. Barring the few upper class people, the rest of the people celebrate their marriages for ten, 15 or even less in some cases. You are now going to have registration departments with all their formalities, making it more expensive.

I want to know from my hon. friend whether he has calculated what the expense under this head is going to be to the State. I record my strongest caveat in this regard against the Bills that have been thrust upon this House without any calculation of the expenditure that a Bill entails on State Treasury in its operation. I was a member of the old legislative council and I know that under the Devolution Rules it was a part of the business of the then irresponsible Government to calculate the financial implications of each Bill. I have a claim to ask my hon. friend to give us the financial implications of a Bill of this important nature and the expenditure it will involve on the State treasury.

[MR. SPEAKER *in the Chair*]

You are going to have your cases mostly decided by the district court, which means a higher court than the Munsiff's court. As a member I am being called upon to give my assent to this Bill. I have a right to know what is the money that I have to spend under each

of the items. You are going to open registration department. You are going to have special marriage courts. I have a right to know what? you are spending now and what you propose to spend hereafter. It seems to me that the expense that the State would have to incur under this head would be unimaginable. Think of a population of 33 crores. You can laugh.....

Mr. Speaker : The hon. Member may address the Chair.

Shri Biswanath Das : I am sorry, Sir. The Hon. Law Minister may laugh or others may laugh. I do not worry. But I claim that Government have the responsibility to place a working sheet before the House to show what they would have to spend to give effect to the various provisions of the Bill as used to be done by former Governments. Taking one per cent of the total population as people resorting to courts your country will be flooded with courts and registration departments.

Mr. Speaker : May I point out that we are at present discussing clause 2 of the Bill which refers to the application of the Code. The point that the hon. Member seems to make relates to the cost to be incurred in the administration of the provisions of the Code. Could that not more appropriately be taken up when we consider the question of marriages ? In the clause where it is provided that marriages shall be registered this question will arise. This is not the stage of a general discussion of the entire Bill. We are at present at the clause by clause stage. Therefore, instead of interfering with the hon. Member's speech now and then, I would request him to reserve his remarks till we come to the clause which provides for compulsory registration of marriages.

Shri Biswanath Das : Sir, I thank you for the guidance you have given me, which I bear in mind. But I have also to make my submission in this regard. There are amendments to clause 2 to the effect that State legislatures may be given the option to give effect to the provisions of the Bill after it is passed into law. Therefore I submit the question of finance comes in prominently in various States. You have been good enough to refer to marriage. But it is not about marriage that you have to spend money.....

Mr. Speaker : I referred to marriage because the hon. Member was referring to it. It was only by way of illustration that
3 P. M. I referred to it. The State Governments would be required to give effect only in case the amendment is carried. But assuming

that that amendment is accepted, still effect will be given only to such provisions as are ultimately accepted by the House. So when we come to any provision which involves expenditure then it will be competent for the hon. member to advance that argument—not at this stage. That is what I was pointing out.

Shri Biswanath Das : Thank you very much, Sir. I would not go further into it.

Shri Syamnandan Sahaya : May I make a submission, Sir, in this connection ? Under our new rules every legislation which involves any expenditure has to be presented to this House accompanied by an estimate of such expenditure. Therefore, perhaps my hon. friend was referring to those rules.....

Mr. Speaker : There is nothing to be further discussed about it. It does not affect the point of relevancy. But I believe this Bill was introduced long before rule came into force.

Dr. Ambedkar : Yes, Sir. And I can tell my friend that this Bill is going to be a revenue-paying measure.

Mr. Speaker : That is another matter. We are not concerned with it.

Shri Biswanath Das : My hon. friend says that this will be a revenue-paying measure.....

Mr. Speaker : We need not go into that now.

Shri Biswanath Das : Well my hon. friend claims the passage of this Bill and especially of this clause on the score that this is progressive. If it is so, I have no objection. If he convinces me that the legislation that he has adumbrated is progressive, I will certainly go with him. But I feel that it is as reactionary in certain respects as anyone could think of. I would in this connection invite my hon. friend's attention to the Child Marriage Restrained Act, an Act which has been in existence for the last twenty years or more and is a dead letter.

Several Hon. Members : No, no.

Mr. Speaker : Let him proceed. That is his opinion.

Dr. Ambedkar : His wrong opinion.

Shri Biswanath Das : I will be glad if it is really “no” but my experience is otherwise. But what has my hon. friend the Law Minister done ? Whether the Child Marriage Restraint Act is dead or is alive, what has my hon. friend done with his show of progressiveness ? He has kept up and carried on the same age of marriage of 18. Why

should you have the age of 18? I cannot see why he is so much enamoured of this 18. A boy to be put to married life and conjugal bliss in his eighteenth year is a thing unimaginable. I cannot think of it. I would appeal to him to consult his advisers of public health and ask whether such a course is desirable. Extend it to twenty or twenty-one years. If you really claim to be progressive, extend it. If you want to restrict, let the restriction be on justifiable grounds which will be for the well-being of the greatest number. That is why I claim that in certain respects the Bill is not at all progressive. In fact in ordinary instance you will not find people taking to married life at eighteen. Very few people do it. Therefore, the age limits of 18 and 16 that you have fixed in the Bill to me look retrograde from the national point of view. (*Interruption*).

Mr. Speaker : I must be very clear on this point that interruptions not only prolong the speeches but they add to the irrelevancies of the debate. I was again going to remind the hon. Member who is on his legs that he is going into questions which do not form the subject-matter of clause 2 or any of the amendments. He is now going into the age of marriage as if this is a general discussion on the Bill. I do not propose to allow any irrelevant discussion. We are taking the Bill clause by clause now; let us be strictly within the relevant scope of the clause. Otherwise we will never see the end of this legislation. I am not keen that it should be passed—it may be passed, it may not be passed—but at any rate I am keen to see that the debate on the clauses proceeds within the limits of relevancy and we go clause by clause to the end of the consideration. That is my point. I am not concerned one way or another. Therefore, the hon. Member will confine his remarks strictly to the provisions of clause 2 and the amendments thereto.

Shri Biswanath Das : Sir, I am very thankful to you but my reference was necessitated by the fact that my Hon. Friend the Law Minister claimed in the course of his speech that his legislation is a progressive one. Therefore, I was forced to say that it is not,

I have stated that the Code is intended for the “have-nots” and I have explained it. My objection to the clause is that the provision to clause 2 is unnecessary and redundant. Unnecessary because it creates new complications and redundant because if anything is added without real necessity to the structure of the clause it creates further complications. Therefore, in any legislation such a redundancy is always given up.

I fail to see why sub-clause (4) is being retained. I don't mind the daughter having more than the son or the son getting more than the daughter. Let it be a matter between the daughter and the son. I for myself would not hesitate to accept Marumakkattayam law instead of accepting division of the family property into bits. That being so, if my hon. friend would propose to give all the property to the daughter I would not object. Let the women have it. In fact, in Malabar, the women are by inheritance having almost all the property. Therefore, you may do that or you can give the daughters and the sons equal rights : this is not a matter with which I am very much concerned. Speaking for myself. I have no daughter to claim any share from me, but I feel for the daughters in general. Now, if you add to the share that the daughter gets from her father's house by sub-clause (4), it means that you add to the financial possibilities of the women. She gets her *stridhan*, her share of the property and also special facilities as provided in the Special Marriages Act of 1872. Therefore, the continuance of sub-clause (4) is, I think, unnecessary also, I believe, unwarranted.

I feel that the time has come when something has to be done to change the social structures of India. That some has to be done with the concurrence of the people and the thinking sections of the society. Therefore, I appeal to the Treasury Benches and to you to see that Government remove the objectionable features of clause 2 as also of the Bill, so that the Bill will have a smooth passage.

***Shri M. A. Ayyangar :** At no stage of the Bill hitherto have I had the good fortune to take part in the debate. You, Sir, were absent in the earlier stages and I had to take the chair. I have always tried to keep my opinions to myself, but the time has come when I should express my opinion regarding this matter. Let me first of all declare to the House and to the hon. the sponsor of this Bill that I am not wedded to whatever is ancient merely because it is ancient nor opposed to whatever is new simply because it is new. Merely because something is old, let us not cling to it; nor decry something that is new because it is new. It is up to us, as wise men, to consider both the pros and cons and accept what is good and reject what is bad. I shall try therefore quite dispassionately to go through some of the points that have been urged. I shall not go over the ground and make this a speech on the second reading of the Bill, but whatever is relevant in general I shall address myself to.

* P.D., Vol. VIII, Part II, 7th February 1951, pp. 2517-31.

I shall, first of all, try to dispose of some of the amendments that have been placed before the House and the objections that have been raised in regard to them by the sponsor of this Bill. It is said in one of the amendments that because this bill has far reaching consequences it must be only an enabling measure, it is said that option should be given to any individual to declare that he will be governed by the provisions of this Bill from the date of registration or declaration to this effect. The Hon. the Law Minister said that down from the earliest times when legislation was embarked upon in this country by the Britishers, there has been no precedent whatever for a measure being passed and option being given to any individual or class to accept or reject that measure by declaration. I am afraid his memory is too short. Now, let us take the Cutchi Memons Act of 1920. Indians who got converted to Islam were very often governed by the Hindu law, the law in which they were born. So the Cutchi memons had the joint family law and they also made adoptions among themselves. But later on it was urged by some reformers that the Shariat, i.e. the law of Islam, should apply to all persons embracing Islam. Islam has its own code of laws regulating inheritance, marriage, succession, divorce etc. The Hindu faith has attached to it its own law made by the *smrithikaras* relating to the same items which are also regulated by the Islamic law. For those persons who got converted to Islam, an enabling provision was made in this Act whereby any Cutchi Memon who wanted to adopt the Hindu law could by declaration before a prescribed authority do so; he could either ask to be governed by the Hindu law or by the customary law which prevailed before his conversion.

Shri Raj Bahadur : That was a very special case.

Shri M. A. Ayyangar : I would refer to a general case also. My friend should be a little patient. Under the Cutchi Memons Act, as amended in 1923, there are the following provisions :—

“Any person who satisfies the prescribed authority—

(a) that he is a Cutchi Memon and is the person whom he represents himself to be;

(b) that he is competent to contract within the meaning of section 11 of the Indian Contract Act, 1872; and

(c) that he is resident in British India

may by declaration in the prescribed form and filed before the prescribed authority declare that he desires to obtain the benefit of this Act, and

thereafter the declarant and all his minor children and their descendants shall in matters of succession and inheritance be governed by the Muhammadan law,”

Now, the argument of my hon. friend Shri Raj Bahadur cuts his own case, because this was not a law intended for the whole of India but was a law specially to safeguard the interests of a particular community. This section is an enabling provision. Cutchi Memons are not the only Musalmans in this country. The majority of Musalmans far outweigh the Cutchi Memons. When 99.9 recurring per cent, of Muslims follow the Shariat, why should a special provision be made for the Cutchi Memons? Therefore, this interjection from my hon. friend, far from helping him, helps the other side. Even if there is one instance, it is enough. Now, is it possible for you to enforce Buddhism on me or for me to impose Hinduism on another man? This Jaw of inheritance, marriage, succession etc. is based upon the same tenets. But if a person who got himself converted wanted to be governed by the ancient law which prevailed before his conversion, he was given an option to change over to the other law. Though he got himself converted, he had to convert himself voluntarily to the new legal institutions, changing one from the other. There was no coercion whatever. But without the suggested amendment, this Bill will be a piece of legislation which is of a coercive nature, bringing various other persons into its fold. So far as Hindus are concerned, if you want to marry out of the ancient law, there is the Civil Marriage Act. It was originally intended to apply to persons who had to declare that they were neither Hindus nor Christians nor Jains nor Parsis. Later on, it was changed. No two Christians could marry unless they disavow their religion. No two Muslims could marry unless they disavow their religion under the Civil Marriage Act. But we are always progressive. We are selfdenying. We are all-embracing even to the point of self-destruction. We have amended this Act by saying that Hindus need not disavow their religion. Hindus, however they are married, may adopt the Civil Marriage Act. That is what we have done. What more is necessary? Now you want to convert those people who follow the ancient law at the point of the byonet to your way of thinking. Why do you want me to change my religion? I have already quoted an instance where a special piece of legislation was made for the Cutchi Memons, a microscopic minority. It is because Dr. Ambedkar feels that a majority of us are archaic—to use the mildest word—that he

has brought forward this piece of legislation. It won't be wrong for me to say that he is still finding it difficult at the age of sixty to know to what faith he has to belong. But he is asking me to decide overnight that I should change. If I may raise my voice—let me not be misunderstood—I am as fit to be in the society as other members can claim to be. I am not ashamed of my religion. I am speaking not only to the men and women in this country but also to the outside world, that we have everything to be proud of the tenets by which we are governed and proud of the law that our ancients gave us. If only the other nations of the world followed our religion and the principles we have adumbrated there, there won't be these constant wars and all would be peace and peaceful. We are always accustomed to adopt things which are found wanting in the western countries. A motor car which has been discarded in Europe becomes a model of a car here; an institution which has been discarded in the west becomes a model in our country.

In 1937 we passed a law in this House that in the case of converts to Islam, their customary law according to Hindu system would prevail in regard to adoption etc. Similarly, in the South the Moplahs of Malabar had adopted certain of the Hindu customs, though they were Muslims. It is not even a question of adoption: they were born with such customs. Therefore, they followed one rule so far as their inheritance and succession was concerned and another rule so far as their faith was concerned. We passed in 1937 what was known as the Shariat Law. This is for all India and all Muslims. Section 3 of the Shariat Act says:

(1) any person who satisfies the prescribed authority—(a) that he is a Muslim, (b) that he is competent to contract within the meaning of section 11 of the Indian Contract Act (IX of 1872), (c) that he is a resident of British India—may by declaration in prescribed form and filed before prescribed authority declare that he desires to obtain benefit of this Act and thereafter provisions of section 2 shall apply to the declarant and all his minor children and their descendants as if in addition to matters enumerated therein, adoption, wills and legacies were also specified.

Therefore, there is absolutely nothing novel in my hon. friend Shri Jaspat Roy's amendment. This is a measure which ought to be accepted cautiously. A majority of the community do not want this, and not only do they not want it, but also they are able to take care of themselves. Is this House particularly under the leadership of my hon. friend, entitled

to tell and advise people outside that what they are following is wrong and that they should change their method? I am not basing my argument on the ground that this Parliament is not entitled to do that, though my personal view is that this Parliament cannot enact legislation in the way it was doing during the British days. We are now guided by a written Constitution. My own personal impression is that the personal matters of an individual, and the practice by which he is governed so far as his marital relationship is concerned are governed by his fundamental rights and should not be touched by anybody. So long as the practice which I follow and the procedure I adopt in regard to marriage is not opposed to public morality and is not obnoxious, or indecent, it is my own business and nobody has any right to interfere with it. Therefore, we have to go slow in this matter.

So far as the progressive elements are concerned, we have made a number of enactments now. The Hindu Widow Remarriage Acts are there. My hon. friend referred to the Child Marriage Restraint Act. True, it has put down child marriages. But it has put down marriages also. Everywhere a new problem has arisen: there are armies of unmarried girls today, there will be no dearth of girls if only you want to enlist them in the army as nurses or doctors. This is a new problem that you have created—have you heard of it before? Our friends, including Pandit Thakur Das Bhargava, cried hoarse, that by early marriage girls became widows. But is there any guarantee that a man will continue to live, the moment he marries a girl of fifteen. I do not think God in his wisdom has arranged that a man marrying a girl of fifteen will live long, and that a man marrying a girl less than fifteen would die early. Therefore nobody can stand guarantee on this matter. It is a question of balancing the convenience.

We have not heard of any marriage except in the human kingdom. Animals don't marry; there is no law of divorce among them; they don't have family life. It is only with respect to human beings that the institution of marriage is prescribed as one of the *purusharthas* with a view to avoid inconvenience. As the Maharshi said, of the four *purusharthas*, the three, that is *Moksha*, the other word dharma, maintenance of society, and artha, politics or economics, depend upon a happy family life. This is one thing on which all our ancients laid emphasis, whereas in the Western society individualism has been all along in *excelsis*. Here family is the unit of our society. I do not mean to say that any human institution is so perfect as to obviate

any inconvenience. So far as our marriage laws are concerned, no woman remains unmarried unless she chooses to remain a *sanyasin*. A Sanskrit *sloka* says that no woman is entitled to freedom. But it has been mis-understood. A woman is not born twenty five years old. She is born out of a mother's womb, has to become an adult, marry and become old also. Both of them, whether a man or a woman, when they are in their teens are minors, have to be under the guiding hand of some other person. So long as the girl remains a minor the father has to maintain her. When she becomes old, is there any better person to look after her than her son ? Therefore at the dawn of life as well as at the close of life both man and woman depend upon the father or the son respectively. The only question is during converture. If God has created both man and woman, either the woman should go and live with the man or the man has to go and live with the woman. In a happy marriage the woman must live with the husband or the man must live with the wife. Is there a middle course ? I ask Dr. Ambedkar (*An hon. Member*: they live together). Yes, both of them live together. That is what I am saying. Therefore either the man's voice dominates in the House, or the woman's. Let us assume there is a difference. If the man's voice prevails there is no trouble. Or the man must get himself submerged in which case also there is no trouble. But if there is a difference between the man and the wife as to whom the girl should be given, when is the marriage to be celebrated ? I am only thinking aloud of the inconveniences. It is not as if man produces sons and woman produces daughters. In all seriousness I am addressing this House. What I am submitting to the House is this. Some people have misunderstood, merely because some of our sisters are going about with regard to their share and their sufferings—on account of the experiences that they possibly have had—and the corresponding chillness on the part of our friends here, that it is a woman's Code. It is something like a husband and wife quarreling "to whom does this child belong ? "It is not either to the one or to the other. Therefore, If this Code emerges, it will belong both to the men and women of this country. Let us therefore look at it dispassionately.

We have been brought up for three thousand years in a particular institution. I will presently quote a number of jurists who came from the West and who were attracted by the institutions that prevailed here. Some, of them even become converts and Max Muller created an *ashram* also. You have their opinions. They have compared their

own institution with that which was prevailing in this country. They wanted to be converted but for their social habits and customs which weighed strongly with them. As they got enamoured of our institutions we are also now getting enamoured of their ways.

Let us examine whether it is useful or not. Let us see what the authors, the Members of the Hindu Law Committee said. Mr. Rau himself said that this is a concurrent subject and as regards such of the chapters the Provinces may be left some voice as to whether this portion should be applied to this community or not. The territory to which it should be applied, whether it should be enacted at the present time or should be postponed all these are matters which any reformer, the sponsor of the Bill including, ought to take into consideration, so that there may be no impression let in the mind of any person that his conscience or religious faith or scruples have been trodden over. We have to gradually take people along. It is not as if we are declaring a war on Hindu religion. It is not an immediate question like deciding whether we should join America or not in declaring China as an aggressor. Here and there an inconvenience might have been felt by some people. I am asking this House, though you, Sir, to see the balance of convenience. It is not as if any human institution is perfect.

Without going into details, taking the question of marriage, it is a proved fact that till the Sarda Act came into being, the majority of our women—99 per cent of them—were married. Do you want to say, let women remain unmarried, let men remain unmarried, let there be children who have no parents—like forty thousand war babies to be taken care of by others? Is it right for you to do so in our country? You will be creating a new problem. Is it right? So far either the man had to obey the voice of the woman or the woman had to subordinate her voice. Otherwise where is the house and the household? That is exactly why the woman is not under the law. The modern woman who is educated in a foreign system, who has lost moorings in her own faith, wants that she should inherit the property of her father and not her husband. She is indifferent. She wants to have the money in her pocket and feel “Why should I be subordinate to a man?” I know the difficulty in every household but if I am saying these things I am saying so with experience. Girls refuse to marry now because they feel “Why should I subordinate myself to a man? Give me a portion of the property”. Does my daughter expect me to live perpetually? It is not money alone that makes for happiness.

Suppose there is a rich man and his daughter inherits his property. When she is married does it prevent the other man to belabour her and to beat her? What prevents him from doing that? Many people speak supporting this Code. I am not referring to Members of Parliament—they know everything. I am only suggesting what many people outside are saying. Today under the Hindu Law the girl is not absolutely taboo. If a man dies leaving no children behind, the widow inherits the entire property. Apart from Deshmukh's Act, under the ancient Hindu Law she is the heir of all the property of the husband in cases where there are no children. Secondly, if there is a daughter and the mother predeceases the father and there are no other children, she becomes the heir to the entire property. There is absolutely no difficulty. What is sought to be done here is that simultaneously with the son the girl also must have a share. The responsibility of maintaining the household is that of the boy. We are not rich millionaires. The *zamindars* have also been liquidated. *Rajahs* have gone. Only the middle class people are there. I am addressing myself only to them. There are the poorest people where both the husband and wife eke out their living by working as coolies. And what happens to the majority of middle class people? The husband may be working as a clerk getting Rs. 100 or Rs. 200 a month. He educates his boy and expects that when he comes of the age of 21 or 25 he would take charge of the family at a time when he is himself fifty of fifty-five. When he retires there are a number of children to be taken care of. The property that he has accumulated is so small. I know in my part of the country persons who have any holdings over five crores are only ten or five per cent, of the entire persons holding land. Land is the wealth in our country. There may be a few industrialists in Bombay and a few in Ahmedabad. But generally people have neither industry nor land. The only industry for a middle class man is to become a clerk and earn some money, and by the sweat of his labour he earns it. The responsibility of looking after the family is thrown upon that boy. He may get a small land or a thatched house as patrimony. The society expects him to take charge of his younger brothers and sisters and also to maintain the old parents. When the Britishers were ruling us the officials in the Railway Department, station-masters and others, used to get passes sometimes in the year to go round. The pass is for the family. I am sorry to note that the same practice is still continuing as regards the description of the family, namely that the family means himself, his wife and children. What about the old parents? This may

be in consonance with the western system where as soon as the boy comes of age he marries and goes away. The girl also marries and goes away. The old people have to be looking at each other's face ! Do we want that kind of animal life in our country ? I have no quarrel with the rest. It is a misfortune that the individualism is in *excelsis*. The husband and the wife are one unit and they ought to protect the old people. Our joint family system was brought about by our ancients many years ago and that is a natural unit and there the father, mother, the son and grandson all of them go together. I say that this is a happy unit where unemployment never existed. People who talk of socialism and communism pay lip sympathy and I say that this tendency is the germ of Socialism. The husband in a particular family works for the maintenance of his own children on the one side and for the maintenance of the older people on the other side.

In Madras after this marriage-divorce law was passed 38 applications were filed, (*interruption*) Boys alone can marry and no girl can marry a boy. Out of these 38 applications for divorce, 30 applications were filed only by the husbands.

The Deputy Minister of Food and Agriculture (Shri Tirumala Rao) : Are they from the middle-class ?

Shri M. A. Ayyangar : Most of them were from middle-classes, most of them were educated men, unfortunately in western style. As I said, the majority of the petitions were from husbands. I think there was only one case where a woman was said to be sterile. I would bring that under this Code. One other case was the husband, an educated lawyer and he is employed in Bombay. He gets Rs. 100 as salary. The girl is employed somewhere as a Doctor getting Rs. 400. The girl wants the husband and the husband wants the wife. The only pull was that the wife wants the husband to come and live with her and the husband wants the wife to come and live with him. After marriage this trouble has been going on between the husband and wife for three years. The husband said : "How long am I to be without her company" and the Court found that it was a case of desertion by the girl and they dissolved this marriage. I ask all my sisters here present and others outside, in a widow re-marriage after the husband's death nobody knows whether the man has not touched the woman before her re-marriage. Even after this the widow-re-marriage has not progressed considerably. (*Interruption*). My friend says that what I say is a lecture. What my friend says is all truth. The Widow re-marriage Act was passed long ago but still it requires a lot of persuasion.

There was an hon. Member of the Assembly—he was a Member from Bengal—and he brought a single clause Bill which stated that no widower shall marry a spinster. His idea was that a widower may marry at least some widows and when some of our friends pooh-poohed the idea, he withdrew the Bill and said that he committed a mistake. When once a man has learnt that a woman has been divorced, would that woman be touched as a wife and married again as a wife ? I do not want the society to be disrupted in that manner to suit the few conveniences here and there of some individuals. There are difficulties but the other difficulty is far more appalling than this difficulty.

I was told this morning that some delegation is coming from Pakistan for the purpose of recovering abducted women. Have you ever heard of an ‘abducted man’ ? Nature has so made us that without the husband and the wife, there is no unity in this world. Even among the Patagonians the wife is as tall as the husband. In any other community the male is taller than the woman. Is it good if I talk like a woman with a squealish voice and a woman goes on talking like a man. Therefore I must be a man and a woman must be a woman. I see I am evoking laughter of my friends but I feel that God has made the best arrangement by creating a happy family in which the parents will be protected, the minor children will be protected. The affection is not as a result of wealth. Love and affection must flow of its own and it does not depend upon money at all. Most of us are poor and we marry and get a son and in our old age he takes charge of the management of the household and we feel that since we have discharged the responsibility to the aged parents, similarly he will maintain us in our old age. Sanction has the mighty force. That old law has much greater sanction than any other law which has prevailed so far for the last 3,000 years.

When I become a member of parliament you do not allow me to sit here unless I take the oath of allegiance, but so far as this marriage is concerned, I ask you all, are you to displace these old customs such as taking hold of a woman, taking her hand and placing her feet upon straw and saying that “our hearts are placed together like the Ganges and Jamuna” ? This is not such a drab affair. Is it for the purpose of conjugal facility that a man is marrying and a woman is marrying ? Our ancient scriptures enjoined it for the purpose of a happy married life and for the purpose of a good progeny. It is

not open to me to leave a legacy of blind, lame and dumb children to the rest of the community and ask them to take charge of them. Even among race-horses we talk of pedigree and for humanity alone any man can marry any woman and still expect the children to be perfect angles. The new marriage that is proposed will be like tying a race-horse to a lame donkey.

Jayaswal an able commentator of Hindu Law said that our ancients had big herds of cattle and they were also anxious to have first-class progeny so that they may take charge of the rest of the community. That is an honoured practice of our country. Hitler also wanted a good progeny for his country. Even Mussolini got a number of marriages celebrated in his country.

We say in our *Sastras*: “*Aputrasya gathirnashthi*”; “*Punnamno Narakadyasmath thrayathe pithatram suthah*”. That is, the son saves the father from the *Naraka* called *puth*. It is that sanction that has produced a lot of children in our country. Otherwise, we would have had to give a hundred pounds to every mother to get children. Are we to pooh-pooh this culture? What makes me say all this is that it is unfortunate that the Chairman of the Rau Committee is a gentleman who did not marry according to the Hindu law, Many of the Members of the Select Committee were not married according to the Hindu Law; some were bachelors who did not marry at all.

Shri Kesava Rao (Madras): Who says that they were not married?

Mr. Speaker: Order, order. I think we are having this discussion a little beyond scope.

Shri M. A. Ayyangar: I will come within the scope of the Bill.

Mr. Speaker: He has already taken more than 35 minutes; I am afraid it is rather too long. He may be short and to the point.

Shri M. A. Ayyangar: I am only referring.....

Shri Thirumala Rao: The reference is too personal with regard to the personnel of the Committee.

Shri M. A. Ayyangar: After all, let it not be said outside that that is quality opinion; it is only a question of personal opinion. I am as much aggrieved about this. Am I to bow down when it is said of the *Smritikartas* that they had absolutely no business to go on changing the *smritis*? What else are we doing? We are passing a law in the morning; we are amending it in the afternoon. The *smritikartas* wanted to change the *smritis* according to the changed

circumstances. They are tabooed as archaic persons. If they have changed, they are equally condemned for having changed. Why are there so many *smritis* ? Each is addressed to particular branch of law. My point is this. The reverence that is due in a change of law of this magnitude is not there. We are looking at the question from a different point of view. I submit that by means of this legislation Hindu society is cut vertically, horizontally, diagonally, into bits and bits. You say, let a man say, “I do not belong to Hinduism”. Even the wording “professing the Hindu religion” is obnoxious. Why do you call yourself a Hindu ? What is there in Hinduism ? There are certain things ; there is the doctrine of *Karma* which even the Buddha and the Jaina believed. The *Vedas* are not peculiar to me. I believe in the hoary antiquity of the *Vedas* as an inspired document. Do not the Muslims believe that there is a *Veda*. Even the Sikhs who belong to a reformist religion, worship a Book. Why should I be ashamed of my *Vedas* and of calling myself a Hindu ? Whether I am a *Brahmo samajin*, or *arya Samajam* or a *Vaishnav*, if I do not believe in the *Vedas*, I am not a Hindu.

Unfortunately, in this country, religion has entered into politics also. It is said that on account of these vicissitudes of castes and creeds, so many Muslims became converts. I ask, was there not one religion in China, Buddhism; was there not one religion in Indonesia, Buddhism ? Where is Buddhism in Indonesia today : Where is Buddhism in Malaya ? Were not a number of people converted to Islam in China ? Again and again, wherever there is any difficulty you attack Hinduism and say that it is this ancient system that is responsible for all this. I say, the remedy is elsewhere. Apart from its disadvantages, it is the Hindu system of marriage and not allowing a divorce, of property not being dissipated by division amongst daughters also, who have no responsibility to maintain the family, etc., that has been the source of strength to the people. I would ask a simple question. If the daughter gets married, do you ask me to live with my son or my son-in-law ? It is said : “*Jamatha dasamo grahah*”, the son-in-law is the tenth planet. I must be supported by somebody in my old age. Why not live with the son instead of the son-in-law ? What happens if you give a share to the daughter ? Of course, she will say, “Come and live with me”. But, my fate will be that of King Lear. I am appealing to all mothers and sisters to anxiously and seriously consider the situation. Let them not be under the impression that I have not consulted my partner at home. We have deliberated for a long time.

In these circumstances, I say, let us go slowly. Whoever wants to have liberal views, let him have his own way of life. Incidentally, I may say that *sati* is opposed to morality; that was rightly put down. You say this is an enabling provision. Why don't you say that a brother may marry a sister? That would also be an enabling provision. Up to certain limits we can go; beyond limits, we ought not to go. We should not allow incest. The question is whether the marriage should be beyond three degrees or seven degrees. I have also read some books on genetics. New things are being discovered. They say there are three kinds of blood and that one does not agree with another. I have also read astrology in the old school. They say that before marriage you must consult the *Rajju*, *Sarpa*, and *Gana* agreement. This *Gana* seems to have been discovered by the westerners. The late Dr. Rabindranath Tagore was a great poet; but we recognised him as a great poet only after the westerners recognised him. Similarly we want somebody from the west to come and say that marriages should be only of a particular order and that the points in the old *smritis* are very good. I am a conservative in the sense that I do not want to leap before, I know that the other ground is steady and strong I would only urge upon this House to stick on to whatever has endured you for such a long time.

Before I finish, I would like to refer to one other aspect of the question, that is the *Marumakkattayam law*. They are all intellectuals; practically in the Secretariat, every Secretary is a Menon, coming from Malabar. I am proud of them. They have got a different way of life. Ask them if they are more happy. Why don't you impose this law on them also? Take the *Aliyasanthana Law*. You may think that it is opposed to all nature, where a man visits his wife and the wife remains in her house, where the children are maintained by the mother and her brother, not by himself. To you it may appear strange. Natural affection is different. Would I embrace my sister's sons with more affection, then my own? Well that is their law and we are allowing them to continue under this law. But, when my hon. friend Pandit Thakur Das Bhargava says that there are certain customs in the Punjab, you say that they should be thrown overboard because my hon. friend is not so vociferous. After all, it is a wrong principle of jurisprudence. Law does not go in advance of custom. It is a human institution. It is something like saying that grammar does not go in advance of language. A child learns to speak first and then comes in grammar. It is a wrong principle of jurisprudence to say that custom is a wrong