

Pandit Thakur Das Bhargava : Why force it on those who do not believe in it ?

Dr. S. P. Mookerjee : If you believe that monogamy as a social system is the best that India should have, then, do not try to look at it through the Hindu door ; look at it through the human door and make it applicable to all. Behave like a secular State at least in this instance. Take courage in both hands and say that monogamy will be made applicable to all citizens of India. If you cannot do it, do not do it for one section alone. Here, we are living in days of statistics. We swear by statistics, either real or manufactured. I have been trying to get some information : I could not. I wanted to know how many people in India have been marrying a second time.

Shri Himatsingka : Or, keeping two wives at the same time.

Dr. S. P. Mookerjee : That is what I mean : marrying a second wife when the first is alive. The number is extremely small. It is really no problem. Already, on account of advanced views, society has adjusted itself and on account of economic conditions, general public censure etc., this system has gone out. Why make a parade of this that you are introducing a great reform and legislating for this ? If you accept it as a principle, apply it, as I said just now to the whole of India.

So far as the Hindu Code Bill is concerned. I do not know what the decision is going to be. The Prime Minister has indicated that most likely we will not proceed with the rest of the Bill and time may not permit us to do so I am prepared to make this offer. Pass the entire Hindu Code as it is ; only make it optional. Those who want it can adopt it. I have spoken to representatives belonging to the extreme orthodox school of view ; I have argued with them. Although there are some amongst them who are against the passing of any such Bill whatsoever they also realise that just as they claim to think for themselves, others also must have the liberty to do so for themselves and for their future. That would be a splendid beginning. I am prepared to admit, however much there may be opposition to the Code, that this represents a marvellous piece of work on the part of Dr. Ambedkar and those who have been associated with him. I am quite prepared to admit that this is a most thorny subject - and he has gone through the matter with as much ability as any one could have. For that, if he is prepared to accept an honorary degree to be conferred by Parliament, we are prepared to confer a degree on Dr. Ambedkar. But if you look upon it as a measure which has to be pushed down the throat of millions of Hindus who are opposed to it. I say that

you will not be doing a service to the people of India. The only way in which you can proceed even at this late stage is this. Let us not quarrel amongst ourselves ; let us agree to differ on this fundamental issue. If you are prepared to point out that there are certain matters which are immediately anti-social, or corroding into the very life of Hindu society, let us agree to make such provisions compulsory if there are any. Othewise, this new great structure which you have prepared, keep it there for a few years and say that any one, whether a Hindu or not, any Indian citizen, who desires to accept it can make a declaration, and the provisions regarding marriage or divorce or property, whatever it is, will be applicable to such selectors. That would be the beginning of a great era. For after all, who is going to decide ultimately ? your elections are coming. You then go forward. As the Prime Minister has said, his sweeping wind will come and blow away all opponents and....

Shri Kamath: Whirlwind.

Dr. S. P. Mookerjee : Yes, the whirlwind will come. Let the whirlwind come with regard to the provisions of the Hindu Code Bill. Let them go and convince the people and tell them that they are not forcing it on them. Let them say, “we give you the option. Here is a heaven we have created. Come into this heaven and attain *moksha*”. Go and explain to the people and if they feel that it is really such a heaven and not a *dilli-ka-laddu* they will come and take it, and take it with open hearts. There will be ample time. After all, Hindu civilisation has existed for thousands of years, in spite of on slaughts from various quarters, cultural, political and economic invasions and so on. We have survived all that and we are now a free country, and we propose to survive with a much more glorious future than we had attained in the past. But when you introduce social reforms in such a vast country as this, where opinions differ, where attitudes differ and where ideologies differ, then the only way in which you can do it is to go at a slow pace. I am not asking you to abandon principles which you believe to be true. I am not asking that for the time being. But please go and convince the people, the Hindu people who still claim to live under canons and codes which are in no way inferior to those existing in any other part of the world. Give them scope to choose for themselves. That is my appeal to the House and to Government and I hope that appeal will be heeded to.

***Shri B. K. P. Sinha :** A cruel destiny always pits me against Dr. Mookerjee, one of the greatest orators in the House and in the country. Dr. Mookerjee and other opponents of this Bill have brought forward the suggestion. “Why not have a Civil Code ? Why not extend the scope of this Bill to cover all the castes and communities and religious groups in India ?” And also they ask., “Why not leave it to the different states or different people to adopt the various provisions of this Bill ?” The mover of the Bill has effectively replied to these criticisms. The opponents of the Bill have also referred to the clause in the Constitution regarding discrimination between different persons. It was their contention that in view of that clause, or in view of that article of the Constitution. If you have provisions in the Bill applicable only to one community, that will not be constitutionally valid. In that connection they also referred to certain decisions of some Bombay courts and Madras courts. But they were decisions of the lower courts and since then the Bombay High Court has pronounced that in the cases referred to there was no violation of the discrimination article in the Constitution and that in spite of that article we can have laws for the Hindu community, to the exclusion of other communities. Therefore, that point is settled.

Then there is the question of leaving it to the different States or people to decide by referendum. What are the grounds on which they have advanced this argument ? They say that the provisions of the Bill conflict with the fundamental tenets of Hindu law, that they are revolutionary and that they bring about far-reaching changes in the law, and that these changes are not at all essential. These are the arguments advanced by them in support of their contention. Let me scan the provisions of the Bill and see what is the substance of their contention. I will for the present confine myself to the question of marriage and divorce, for that is the only chapter that is going to be discussed.

Pandit M. B. Bhargava (Ajmer): Kindly confine yourself to clause 2.

Shri B. K. P. Sinha : Yes. I confine myself to clause 2 and I will illustrate my statements only from marriage and divorce chapter. I will not go beyond that. What are the features of this chapter ? It has four features. One that it widens the scope within which one can have marriages. You can go beyond the particular sub-caste or group and

still the marriage will not be illegal and the children will not be illegitimate. Secondly, this Bill restricts or narrows down the field of prohibition. There were many prohibitions. One could not go beyond certain castes. One could not have marriage within the same *gotra* or *pravara* and with certain relations which fell within certain degrees from the father and mother. This bill narrows these prohibitions. And then it introduces the principle of monogamy, and lastly it introduces the principle of divorce.

First of all, there is this widening of the Field of marriage. Are the provisions of this measure really in conflict with the principles of Hindu Law and Hindu religion? In my opinion they are not. Dr. Mookerjee said that this measure offends the orthodox people, that it offends their religious sentiments, their religious susceptibilities. I am not ashamed to admit that I consider myself as much an orthodox Hindu as anyone else. Have I not very often met Dr. Mookerjee on the banks of the Ganges when we went there for our bath. We have also often met in the temple of Lord Shiva at Banaras. Our orthodoxy is of the same character and of the same extent. Still I do not find anything in this Bill that wounds my religious feelings or susceptibilities. What was the pristine or original condition of Hindu society? That we see in the texts of the *Mahabharata* and other scriptures. There were no caste distinctions then as they exist now. Then there were divisions according to the work.

Shri Syamnandan Sahaya : Every man is a *Shudra* by birth. It is by the sacraments that he becomes a Brahmin.

Shri B. K. P. Sinha : But due to certain adverse factors things changed. Well, I do not want to quote and prolong the discussion, otherwise I will be playing your game. Well, as I was saying, there were no distinctions as they exist now. Every *Arya* was free to marry any other *Arya*. You know that *Anuloma* and *Pratiloma* marriages were permitted by Hindu law. And in adopting the provisions of this measure. I am sure that we are reverting to the old order of things. But that old order was disturbed by certain unfortunate developments in the country.

Pandit Malaviya : Will the hon. Member please elaborate that point a bit?

Shri B. K. P. Sinha : I have elaborated it sufficiently. We will have to talk for seven days if we are to give enough elaborations.

Pandit Malaviya : I want to learn. I want to understand things and what the hon. Member says. I want to know where *Pratiloma* marriages were allowed in India.

Shri B. K. P. Sinha : You will find in any book on Hindu Laws that *Anuloma* and *Pratiloma* marriages were common.

Mr. Deputy Speaker : *Anuloma* marriages were allowed and not *Pratiloma* marriages.

Shri B. K. P. Sinha : It was not allowed. The children were known as *chandalas* but they formed a branch of the Hindu society.

Mr. Deputy Speaker : All that has been settled by Acts of Parliament.

Shri B. K. P. Sinha : There are so many Acts of Parliament in this regard such as the Special Marriage Act of 1872, the Hindu Marriage Validation Act of 1949 allowing marriages between Hindus, Sikhs and Jains and also between different castes and sub-castes then there is the Hindu Marriage (Removal of Disabilities) Act which allows marriage between sub-divisions of the same caste. So these Acts are there and they are of an all-India character and it is open to any Hindu to marry any other Hindu, Sikh or Jain. What we are doing here is simply re-enacting the old laws. Dr. Mookerjee asked if the laws are there, why re-enact them here ? I would put it to him that if they are there what crime are we committing by re-enacting them in the Hindu Code ?

Then I come to the second feature; restricting or narrowing the field of prohibition. Under the Hindu Marriage (Removal of Disabilities) Act, is it not true that *Sagotra* and *Saprarava* marriages are permitted and that nothing new is introduced in this Code ? This provision is already a part of the Hindu law. In the Hindu society it was only amongst the Brahmins, strictly speaking, that *Sagotra* marriage was taboo. To the *Kshatriyas* and *Vaishyas* *Gotra* had a spiritual or religious significance only. *Gotra* did not mean to them that they were descended from the same ancestor. Only in the case of the Brahmins the sameness of *Gotra* meant that they were descended from the same ancestor. In the case of the *Shudras* *Sagotra* marriage was always permitted. Whether under the law as it was or as it is, we find that *Sagotra* marriages were legal and valid and that is only being incorporated in this Code.

Another restriction introduced is that the field of prohibition is being narrowed, in the case of the father's side to five and in the case of the mother's side to three generations. So far as the Hindu law and the practice and customs prevalent in this country are concerned there is

not much of a uniformity. Many commentators advocated seven and five prohibitions : others have advocated five and three prohibitions. They thought it was not necessary to go beyond five and three prohibitions. In the *Yajur Veda* the restriction is three and two and in certain Vedic texts it does not go beyond two. In this Bill it is my contention that we are only reverting to the old order, the Hindu law as it was in the beginning before it became contaminated with contact with others.

(SHRI HIMATSINGKA in the *Chair*)

As regards the principle of monogamy, under the Hindu law as practised today the Hindu woman shall have only one spouse.

Shri Kamath : One living spouse.

Shri B. K. P. Sniha : Living, or dead also.

Shri Kamath : One can have one dead and one living.

Shri B. K. P. Sinha : In certain cases one only, living or dead.

So far as males are concerned, there is a misconception that the Hindu law allows polygamy. But I find that there are certain texts of *Yajnavalkya*, *Manu* and *Apasthambha* which ordain and lay down that a Hindu can have a second wife only in certain well-defined circumstances. When the relevant clauses come up before the House I will quote the *shlokas* and the texts.

Pandit Malaviya : Do you suggest that ?

Shri B. K. P. Sinha : I do not. Now Bombay and Madras have passed legislation laying down that there shall be monogamy. This principle of monogamy has been recognised for Hindus in the Special Marriages Act and in the Civil Marriages Act. I find that this principle, that it is salutary to strick to one spouse has been recognised indirectly by the Married Women's (Separate Residence and Maintenance) Act which recognises that a married woman can get separate residence and maintenance if the husband goes in for another wife or a concubine. It has been recognised that oneness of a spouse is slautary. Any deviation from it is bad and in that case the woman is allowed the right of separate residence and maintenance.

Shri Kamath : What about polyandry ?

Shri. B. K. P. Sinha : Then I come to the other principle, divorce. Dr. Mookerjee was furious; he said that Hindu marriage was sacramental, indissoluble, immutable. There is no escape for a man who once commits a mistake in marrying a certain woman ! But I find from some of the old texts that Hindu marriage was not as immutable, as

indissoluble as Dr. Mookerjee would claim. I would read out a text which tells us that even the woman has a right to go in for another husband. This is the text of *Narada* and *Parashar*:

नष्टे मृते प्रव्रजिते क्लीबे च पतिते पत्यौ ।
पञ्चस्वापत्सु नारीणां पतिरन्यो विधीयते ।

“Another husband is ordained for women in five calamities, namely, if the husband be unheard of or be dead, or adopt a religious order, or be impotent or become outcaste.”

Pandit Malaviya : Will you kindly read also the commentary on that?

Shri B. K. P. Sinha: I will leave it for you.

So it was not as indissoluble as Dr. Mookerjee would like us to believe. There were provisions for dissolution of Hindu marriages in certain exceptional circumstances. Thereby, the principle of contract was recognised indirectly. Moreover, the Civil Marriage Act also recognises the principle of divorce and these authorities apart, in the modern age, in the present conditions of India, If we do not have a law of divorce for the Hindu society we must be prepared for the disintegration and the ultimate dissolution of the Hindu society.

In this connection I am reminded of two or three cases which created such a furore in Bengal, the home province of Dr. Mookerjee. Hindu law as practised there does not leave any scope for divorce. I know at least of two cases in which the parties belonged to the Brahman caste. They were married. They led a happy life for some time. Thereafter, their life was unhappy. There was no escape for them. In both the cases, the wives went to a famous mosque at Calcutta and were converted to Islam and thereby they got the marriages dissolved. Society in India has reached such a stage that if you do not have a law of divorce you must be prepared for such incidents, I do not know whether Dr. Mookerjee by standing against this provision is doing any good to the cause of Hindus or like all fanatical champions he is doing positive harm to Hindu religion and Hindu society.

Shri Chattopadhyay (West Bengal): Did they not later on become Hindus ?

Shri B. K. P. Sinha : At any rate, it is clear that if you want divorce you have to be converted to some other religion. I urge that only.

There are many such cases where parties have adopted some other religion just for obtaining divorce. We must take note of advance and

progress. We must see the stage that society has reached. We are not living in an age when India had no contact with the outer world. We are living in an age when ideas have a knack of crossing the borders of countries. We are living in an age when certain theories of liberty and certain theories of freedom have crept into the minds of men and women, especially young men and women and, if we do not allow scope for the working of those ideas it is my fear that Hindu society as we know it today shall not long be able to maintain its existence.

Then some of my friends urged that the provincial laws were there and why we should not leave the matter to the provincial governments. That is exactly the reason why I urge that we should have a Central law. Marriage, divorce, adoption, succession and inheritance form part of item 5 of the Concurrent List. It is open to any State Legislature to Legislate on any of these matters and some States have legislated. Supposing we do not legislate, what would be the consequence ? The consequence would be that custom, for which Dr. Mookerjee shed so many tears, would be abrogated in all the different provinces by the provincial legislations and then you would have statutory laws differing from each other in all the provinces. If custom is the only vehicle of progress and development, that vehicle will be destroyed and there would be rigid compartmentalised law-26 or 30 laws, in fact as many laws as there are provinces or States in India. I shudder to think what will be the effect of that on Hindu society and ultimately on the strength of the nation, for a stable and uniform society is an essential ingredient of a strong and stable nation.

Then there is the question of inter-marriage. In previous times, people of one territory were born in their territories ; they grew up in their territories ; and they died in their territories. They were governed by the customs and usage of that territory. What do we find today ? In this Parliament, in the galleries of this Parliament, there are Members from all parts of the country.

Shri Kamath : On a point of order—can the galleries be referred to?

Shri B. K. P. Sinha : I am not addressing the galleries. If I can talk of the country, I can as well talk of the galleries.

Residents of various parts of the country are assembled here. Not only in this City, but in every important city of this country you find persons from different provinces—in Calcutta you find people from Travancore ; in Travancore you find people from Bihar and Calcutta.

Very often, the residents of the different provinces, in spite of the restrictions imposed by customs and usage and sentiments of the orthodox, find ways of coming together, in nuptial contract. What shall be the effect on them and their progeny if we allow these various provincial laws to operate. Suppose a man from Bombay marries a girl from Bihar and in Bihar he marries another woman. In Bombay monogamy is the law. What will happen to his marriage in Bihar. While his children by that Bihar wife will be legitimate in Bihar, when they go to Bombay they shall be considered illegitimate and shall have no civil rights. What will happen to the hundreds of couples coming from different castes and different provinces? What will be the rights of those children? If you allow individuals to opt, many anomalies are likely to arise. A man may opt for the new Code; his father may be governed by old Hindu law; and the optee's son may not opt for the new Code. What laws would govern such a family? If, therefore, the suggestion of my hon. Friends were to be adopted, there will be such confusion, that the confusion in the tower of Babel as compared to this was nothing. It will take the Judges centuries to clear the confusion. Therefore, I feel that we have reached a stage when in the interests of Hindu society we cannot but have such a law.

Previously in the provinces there was certain rigidity—people living in a certain province had one social tradition. People of the same caste had almost the same intellectual development, the same cultural code, etc. In those circumstances, when one married out of his caste one went to a different world altogether. But today these cultural, economic and intellectual disparities are disappearing. Society in India is becoming one. While previously there was some justification for marriage within one's caste or inside the province, there is no such justification today. because the cultural level, the intellectual level and the economic level of the various communities are coming on a par with each other. According to eugenic principles marriage outside one's caste under the previous state of affairs would have been bad. Today the laws of eugenics point in a different direction altogether. They point to a direction in which the hon. Mover of this bill is attempting to lead us.

Dr. Mookerjee talked about the intensity and the depth and breadth of feeling in the country against this Code. I am a villager. I do not come from one of those advanced cities where the most modern theories are the order of the day. I know the minds of the villagers on this matter. I know that there is a lot of misapprehension in their minds about this

Bill. That is because the opponents of this code have for the last five years or so been carrying on a tearing and raging propaganda against it while the supporters of the bill have been keeping mum and silent. In my area also people were by and large, opposed to the provisions of this Bill. But when I explained to them the provisions of this Bill in detail I can tell you that at least 70 per cent, of them became converts and they realized that nothing short of this was needed for the society. When Dr. Mookerjee says that there is intensity of feeling I concede that. But when he talks of the depth and breadth of that feeling I disagree. There is no depth in it because that feeling is based on ignorance. There is no breadth in it because the people, by and large, are not against this Code. It is only a handful of moneyed people who care more for their property, for their land, for their shares who are putting up such a row against this measure. I have had intimate talks with some of these orthodox people. They do not care a grain, an iota for the Hindu Law or the Hindu principles, or the *rishis* or the *smritis*. What rouses them into opposition is the property clause.

Shri R. K. Chaudhuri : That has been dropped now.

Dr. Deshmukh (Madhya Pradesh): But wife also is property.

Shri B. K. P. Sinha : These are the three lines of my argument. There is nothing revolutionary in this. All that we are going to have is already there on the statute books. Secondly, this Bill does not go against the fundamental principles of Hindu religion. Rather, it tries to bring the circle full. The wheel has gone a full circle and Hindu law is being restored to its pristine purity. Thirdly, this law is essential for the existence of Hindu society in the circumstances of today.

Since one of my friends from Bihar, Mr. Syamnandan Sahaya, when he spoke last referred to Dr. Jayakar, I would like to quote a very small paragraph. While writing his foreword to *Hindu Law* in *Bharat* published in 1951—and the foreword was written in 1951—what has Dr. Jayakar to say about this aspect—not about Hindu Law in general but about the aspect to which I referred ? He says :

“The author has not omitted to note some of the prominent deficiencies which exist in present-day provisions of the Hindu Law, requiring early redress.”

An Hon. Member : Who is the author ?

Shri B. K. P. Sinha : The author is another person, but the foreword is written by Dr. M. R. Jayakar—a scholar of Hindu Law, not the politician.

Shri Syamnandan Sahaya : Also a politician.

Shri B. K. P. Sinha : Probably my friend Mr. Syamnandan Sahaya referred to Dr. Jayakar, the politician. I am referring to Dr. Jayakar, the scholar.

Shri Syamnandan Sahaya : Do you mean that politicians are not scholars ?

Shri B. K. P. Sinha : They are. And then Dr. Jayakar goes on to say in his foreword:

“He observes that in modern times facilities of transit and interchange have enormously increased and various causes, appropriate to the times have compelled people of different races and religions to live together in territories governed by different systems of law. These new factors naturally tend to complicate problems of human life in the sphere of their legal relationships. Rules framed to regulate municipal and purely local set of circumstances prove inadequate or even out of place to deal with such problems arising out of the introduction and presence of foreign elements within the territory. The development of a Body of Rules to cover these new sets of circumstances is already overdue.”

***Dr. Deshmukh :** I am afraid probably my hon. Friends who welcomed my getting up to speak by saying “hear, hear” may be disappointed at what I am going to say today.

Shri R. K. Chaudhari : Have you changed your mind ?

Dr. Deshmukh : To a certain extent, probably, yes.

An hon. Member : Wise men always do that.

Dr. Deshmukh : I have been member of the Select Committee and I have appended a note of dissent to the Committee's report. But that covers only four points. That note of dissent itself shows that apart from those four points, I am in general agreement with the many provisions proposed to the Bill. At the same time. I always felt that the time had not come when it was possible to revise, with some other and different ideals in front of us, the whole structure of the Hindu society and to change it radically. Ours is a vast country and the Hindu community is extremely large and numerous. We are also highly uneducated and absolutely, illiterate. From that point of view if you wish to change the basis of the Hindu society to any violent or great extent, the people who are not capable of understanding the changes are likely to suffer considerably. From that point of view I thought that

the reforms so far as the Hindu Law is concerned should be as and when required and whenever a certain situation demands them, and only when the public opinion was ready and well-informed and was capable of following all the modifications in the social structure which we desire to bring in then alone we should attempt a thing of that nature.

Therefore, I hold that the Hindu Law even when codified will not help us unless it is your desire to remodel the whole Hindu society for which the time, I submit, has not yet arrived. The Hindu law as laid down by the *Smritis* and as interpreted by the High Courts and the Privy Council is fairly well crystallised ; there may be certain differences of opinion ; there is a possibility of conflicts in interpretations but they are understandable and we have had this experience of these 150 years and this has not led to any great suffering or any great hardship....

Shri Lakshmanan (Travancore-Cochin) : On a point of order, are we at the general discussion or discussion on clause 2 ?

Mr. Chairman : He is in order.

Dr. Deshmukh : My remarks are really relevant so far as the discussion on this clause is concerned. What I was going to point out was that if we were going to remodel the society and change the whole law so as to suit modern times in an ideal manner that would be something far different from what we are attempting here. Even in what we are attempting at the present moment, I do not think that the Hindu Code represents a complete remodelling of the Hindu society. We are after all codifying what exists although with some changes. Because at the present moment and in this modern age, if we really want to follow modern ideas, I do not know whether the conception of any private property is going to survive very long. What is the use therefore of discussing the property law and debating whether it is according to the *Mitakshra* or the *Dayabhaga* or we are going to introduce the principle of primogeniture or something else. I personally feel that so long as we have the Hindu laws by which we are governed at the present time, and so long as it is a fairly well understood law, which the whole population and the whole Hindu community understands, the time has not come when we should attempt a radical and whole-sale alteration of the law which governs the society. Because, that is likely to create more trouble than we have at the present moment. At the same time, I have always advocated and I am in favour of removing those difficulties, those harrassments and those persecutions which exist and because of which, there is human suffering. So far as these things are

concerned, I think it should be the endeavour of every Member of Parliament to support the Bill; wherever it is found that our social structure is likely to suffer, and where it has led to a good deal of inconvenience and trouble, those reforms ought to be taken up and there should be no compromise with any orthodoxy.

1.00 P.M.

Shri Kamath : While we would like to hear the hon. Member, there was a half-hour discussion to be taken up at one o'clock

Mr. Chairman : That has been postponed.

Shri Kamath : We have had no notice.

Mr. Chairman : It has been struck out here:

Dr. Deshmukh : So far as removal of difficulties and hardships is concerned, I am prepared to go even farther than the sponsors of the Bill. The prohibition of polygamy and introduction and enforcement of monogamy are extremely desirable reforms. I also agree that it is time that the Hindu society provided for divorce under the law. There maybe some restrictions imposed ; but I do not think it is possible to shut our eyes to the instances and facts which come to our notice. It maybe a thing which my orthodox and *sanatani* friends may dislike. Of course, many of them dislike any change whatever. Unfortunately that is the position. Here, I must clear a misunderstanding. I have been regarded by some *sanatani* friends as a staunch opponent of the Bill on all points and in every respect. It is therefore that I have prefaced my remarks with the remarks that my hon. friend Pandit Mukut Bihari Lal Bhargava will probably not welcome what I was going to say today. The provisions should, however, be confined to these two aspects.

Further, I would like some provision by which we can better the conditions of our widows. I have seen a great number of instances where they are undergoing inhuman suffering. So far as widows' rights to property are concerned, we have had amending Bills. We have passed certain laws. But, to my knowledge, they have not benefited those for whom they were intended. I would like to persuade the hon. Members of the House that we should make some provision so far as they are concerned.

Shri Bharati : We are not discussing that now.

Dr. Deshmukh : I do not know if any announcement has been made in the House whether we are going to leave out of consideration those other sections and confine ourselves to only these things *viz.*, marriage and divorce. Because I was not here, I do not know what decision has been taken.

Shri Bharati : We are not likely to take them up.

Mr. Chairman : Let the hon. Member go on.

Dr. Deshmukh : If it is intended that we should confine ourselves only to the passing of a law that one person can at one time have only one wife, I would not very much object. But, as has been pointed out by my hon. Friend Dr. Syama Prasad Mookerjee, much ado is being made about a thing which is dying out by itself. The present struggle for existence and the economic forces at play are themselves bringing about the desired change. Therefore, although it is a necessary reform, I do not think it is something that some people may be prepared to die for.

So far as divorce is concerned, I think there is much to be said in favour of divorce. At the earliest possible moment, this provision ought to be made. As has been pointed out by many Members, this is only a permissible reform, merely making provisions for divorces—the mere presence of the provision does not mean that every one will take advantage of it and get a divorce. What is the present position ? There are certain States— Baroda for instance, where divorce is allowed. And many who cannot agree between themselves or for other reasons who cannot get on, merely go and stay at Baroda for some time and obtain some sort of certificate that they are residents there and in this way get their purpose fulfilled. Wherever a married couple cannot get on together, may be for any reason, may be because one of them is suffering from a bad disease or there may be many other factors which cause a deterioration of their relationship they should be able to separate. It is human to expect under modern conditions that this freedom should be made available to them and it should be possible for an individual to get a divorce and separate. From that point of view, I submit that the provisions so far as divorce is concerned, are desirable. But on one point I vehemently disagree with Dr. Ambedkar and that is with regard to not recognising the customary divorce. He wants that all divorce cases must...

Shri R. K. Chaudhari : I want to get a point cleared. Does the hon. member advocate divorce of sacramental marriages and also at the same time the continuance of sacramental marriages ?

Dr. Deshmukh : I do not think there will be any difficulty. Even now a good many sacramental marriages get dissolved. That happens in various communities and under the Hindu law. And who is going to say that marriage under the so-called backward communities, which really are more advanced than others are not sacramental marriages ?

They are and they are recognised by custom and their divorce systems are also recognised by customs and by the caste *panchayats*. But the Hon. Minister wants that all these cases must go through an involved method where lawyers will be necessary and all sorts of evidences will have to be taken and the whole thing will prove to be a hardship to these people.

Dr. Ambedkar : Let there be customary marriage also.

Dr. Deshmukh : If the provisions of the Bill are limited to the removal of the defects now present and we do not go further than that, then I would be prepared to support and I will not say that since you are not going to make it applicable to everybody in India therefore it should not be made applicable to Hindus also. I had raised that point as a major issue, because I felt that if it was intended that the whole of the Hindu society should be radically changed, then there was no reason why we should not make all the provisions of the measure applicable to all the people living in India. But since this is intended as a sort of a reform and the scope of it is confined specifically to certain sections. I have no quarrel so far as this point of view is concerned.

Dr. Mookerjee undoubtedly went too far in asking that it should be left to the option of people. If that be the course that we adopt, then even the simplest possible reform demanded by society would be impossible. I do not know why he took that view though he has been very reasonable on most other points. This smacked a bit of a no-changer. He was prepared to support the divorce provisions if monogamy is made applicable to all the communities living in India. Although it looks plausible, it smacks more of obstructionist tactics than helping the passage of the Code. I for one stand even for radical reform which will not create confusion in the Hindu society. These provisions are not such as are likely to create confusion, because everybody need not resort to divorce or take advantage of the provision. There are innumerable cases where both man and wife suffer and desire that separation would be ideal. For such cases we make provisions by which separation would be allowed and I do not think it should be anybody's business to come in their way merely on the ground that in the remote past we regarded marriage as a sacrament and not as a contract. As I have already said even sacramental marriages could be dissolved according to custom. After all recognition of sacramental marriage is recognition of customary marriage, because it is governed only by custom. There are many different forms of marriage. In some

cases there is *saptapadi*. I hope the modification which I have suggested will be acceptable regarding customary divorce. Originally it was the intention that all custom should be wiped out altogether. I am glad that Dr. Ambedkar has modified that stand but I am afraid he will have to modify it further. In one place where he had to explain his view point he said that custom must be such that it must be sensible, reasonable and satisfy certain other requirements. He expected custom to answer to standards of reasonableness. But what is reasonableness ? It can differ from man to man and from group to group. What may be regarded as reasonable by Dr. Ambedkar would be entirely unreasonable to Mr. Kamath or Pandit M. B. Bhargava....

Shri Kamath : Do you lump us together ?

Dr. Deshmukh : Oh, No ! Not jointly but severally. From the point of view of custom I must say that the learned doctor, must be willing to go a little further, because every custom has had a history and it is not arguable on the basis of reason. Originally the view of the sponsors of the Code was that custom, whatever it was, was bad. That was why they provided that all “custom” was bad and no custom will be recognised under any circumstances. The whole society was to be governed by the provisions in black and white of the Code and no variation of any kind was to be recognised. Fortunately you have come to a stage when you are prepared to recognise custom. But to what extent is the question ? On the one hand you say that it should be reasonable but in many instances this is a contradiction in terms...

Dr. Ambedkar : Why ?

Pandit Thakur Das Bhargava : It has to be reasonable before it is recognised.

Dr. Deshmukh : In customary marriage one of the things essential and recognised as a necessary ingredient is that the bride and bridegroom must take seven steps round the fire. I do not see any reason or reasonableness behind it. What function does it perform ? How does it help so far as the wedlock is concerned ?

Shri Kamath : It is symbolic.

Dr. Deshmukh : Similarly.....

Mr. Chairman : Is the hon. Member likely to continue his speech ?

Dr. Deshmukh : Yes, Sir, I will take sometime longer.

The House then adjourned till Half Past Eight of the clock on Tuesday, the 18th September, 1951.

HINDU CODE—contd..*Clause 2.—(Application of Code)—Contd.**

Mr. Deputy 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.

Dr. Deshmukh (Madhya Pradesh): Sir, between the time I left my speech incomplete yesterday and now, two fine ladies who did not share...

Shri Sondhi (Punjab): What is meant by “fine ladies” ?

Dr. Deshmukh : Two cultured and....

Shri Sondhi : You may say modern ladies.

Dr. Deshmukh : No, not so modern as we are accustomed to see. As I was saying, these ladies placed before me very strongly and sincerely their point of view. It was clear they viewed the Bill from a different angle. And while the Hon. Prime Minister is here I may also say that these ladies complained that their point of view has never received adequate consideration at the hands of the Prime Minister, and that there have been attempts made to come in the way of his being informed of the strength of their feelings and the view point that they wished to present before him. If this is a fact, and if it is not too late to do so, I would feel much obliged if these ladies could call upon the Prime Minister to place before him their point of view. They are entirely opposed to the Hindu Code Bill in any shape or form, including the provisions relating to divorce and monogamy. They say that it is an attack on Hinduism and on Hindu religion which will be not for the good of anyone. They also contend that essentially these are radical changes and these are sponsored by a few...

The Minister of Law (Dr. Ambedkar) : For my own enlightenment, I would like the hon. Member to say what he means by “they”. I could not hear the opening part of his sentence.

An Hon. Member : Two fine ladies, he said.

Shrimati Durgabai (Madras) : Will the hon. Member give us the names of these ladies for the benefit of hon. Members, because this may reflect on many ladies who are not of that opinion.

Mr. Deputy Speaker : Two ladies do not cover the entire world.

Dr. Deshmukh : They are as representative as my learned sister here claims to be in this House. And, Sir, it is also their contention that in their discussions they have been able to convert many persons who had agreed with my hon. sister here and who were of her inclination. They are opposed to divorce because they say....

The Prime Minister and Minister of External Affairs (Shri Jawaharlal Nehru) : Who are they ?

Dr. Deshmukh : Sir, by this interruption I think the Hon. Prime Minister has admitted the statement that he has not seen them.

Shri Jawaharlal Nehru : I do not know who they are.

Dr. Deshmukh : There is a Women's League in existence in India and....

Shrimati Durgabai : Yes, nobody denies that; but we want to know the names of these two ladies.

The Deputy Minister of Food and Agriculture (Shri Thirumala Rao) : He is referring to persons who are outside the House and are not in a position to defend themselves.

Mr. Deputy Speaker : There is no question of defence or offence.

Dr. Deshmukh : I am glad Shrimati Durgabai admits the existence of a Women's League

Mr. Deputy Speaker : There are opinions and opinions on the Code hon. Members are entitled to say that there is a certain opinion, that some ladies came to him and represented it to him. Further reference to the ladies is not necessary. It is for the House to accept or reject such an opinion of those people. In so far as a Member wants to mention the opinion which he is either going to support or controvert he can do so, instead of saying two ladies every now and then.

Shri Jawaharlal Nehru : The difficulty is that he particularly referred to me and wants me to see unknown people of unknown whereabouts. How can I do that ?

Dr. Deshmukh : They will not remain unknown and unseen as soon as they appear before the Prime Minister.

Shri Karunakara Menon (Madras) : Are they above sixty or below sixty ?

Mr. Deputy Speaker : Evidently the Prime Minister has not given an interview to those ladies. If the hon. Member is not willing to give the names, he will communicate them.

Shrimati Durgabai : Unless they want to remain anonymous.

Dr. Deshmukh : Not at all. The mere mention of there being ladies of a different viewpoint has excited our sisters here so much. (*Interruptions*). They are also aware that a good many ladies, not alone the few ladies who came to see me, have resigned from the All India Women's Conference.

Several Hon. Members : Who are they ? (*Interruption*).

Dr. Deshmukh : I can give not only their names but if I present them before you in all their strength you will probably be frightened. Their number is so large that it is impossible to give their names.

Shri Sidhva (Madhya Pradesh) : They are unknown women : they were canvassing in the Constitution House yesterday.

Dr. Deshmukh : You have seen two of them yesterday.

Shri Sidhva : They were unknown women.

Dr. Deshmukh : Those are the very ladies I am referring to. .

Mr. Deputy Speaker : The hon. Member will resume his seat. This is a very contentious matter. There is a large body of opinion in favour of it and there is also a body of opinion against it. It is no good talking of unknown women and unknown men. It does not add to the dignity of the proceedings of the House. The hon. Member need not refer again and again to these two women. There are not only two but two thousand against the code and there are also two million on the other side. So there is opinion both for and against. We are here discussing the bill dispassionately. Let nothing be said which, is derogatory to the high dignity of the House. Unknown women and unknown men are expressions which are not rather very parliamentary. The hon. Member need not pursue the matter by saying two ladies, again and again.

Dr. Deshmukh : I had no desire to do so but for the interruptions. Sir, I will now come to the various amendments moved in the house. My friend Dr. Mookerjee suggested many alternatives to the acceptance of the Code. One of them was to make the provisions of the Code optional. There is also an amendment to say that there should be a referendum and if the majority of the people supported the Code in the referendum, then it should be made applicable. I had given notice of an amendment last time which referred to the Hindu Code as a whole and suggested that it be made applicable in any State after the Legislature of the State after the next elections had ratified it. There is a good deal of force in the suggestion regarding ratification by the State Governments and State Legislatures. After all we are not trying

to go the way of Hitler and other dictators who forced social and other reforms on the people. We are a democratic nation and want to stick to democratic methods. If there is to be democracy and since this is only a personal law and not a law necessary for the maintenance of law and order or other purposes (it may be necessary in the view of some for the advancement of the community) there can be two opinions and one can be as honestly and steadfastly held as the other one.

In the case of some of the reforms suggested the experience elsewhere in the world has not been altogether happy. Take for instance the divorce law. There are various degrees of divorces and varying facilities for obtaining the same current in the world. Those who advocated divorce and wanted to organise society on individual freedom have come to grief and looking at these consequences in foreign countries, when some of our people merely try to imitate others, because they think it is more fashionable to advocate that view, some people feel apprehensive that this is sheer mad and sheepish imitation. That spirit of sheer imitation is there and the support for it is also there, because these people have never had the patience to study the actual results which have come about in foreign countries. So the orthodox opinion which does not share the view of the reformists is equally honestly held and is as well founded. When we know that the Hindu religion, the Hindu law and the Hindu custom have survived the onslaughts of history for thousands of years, naturally we feel that this is the one country or nation or community which has something of its own and instead of there being a flat uniformity, the consequences of which have been evil in many cases, why not try and evolve a system just as it has been evolved all these thousands of years. I do claim that the Hindu religion and the Hindu law are the one religion and the one law which have been evolved through the centuries. They have not remained stagnant and I am sure Dr. Ambedkar will admit that the Hindu law and custom have never been static; they have adjusted themselves to the circumstances from time to time and are capable of doing so hereafter also.

It is quoted that the Chinese and the Americans say that we are a backward people, because we have not got such and such a social system. Before we accept such comments bearing upon our society and before we incline ourselves to accepting their viewpoint, we must know what those people are. May I ask how far these Chinese and Americans have studied our religion and our law ? Have they imbibed the spirit