

of the Hindu religion before they condemn it or suggest any reform in our society? That is a very pertinent question. Merely saying that a group of persons from foreign countries do not like it and suggest some modifications in our law or custom cannot be accepted. If we merely try to please a certain group of individuals without judging the background of the views they hold we would be meeting the fate of the donkey, the old man and his son, who tried to please every group of spectators they met on their way. In the beginning they were carrying the donkey and the old man and his son were walking. People laughed at them saying "Here is a man leading a donkey without either he or his son riding" so the old man got up on the donkey leaving the son to walk beside him. Still people laughed at them saying "Here is the old man riding the donkey leaving the poor little boy to walk along." So the boy also.....

Mr. Deputy Speaker : Every body knows the donkey story.

Shri Bharati (Madras): Who is the donkey here?

Dr. Deshmukh : I want to impress upon the people that they are donkeying.....

Mr. Deputy Speaker : Details of the donkey story need not be retailed here.

Dr. Deshmukh : I would not have referred to this story but since this donkeying is going on time and again, very sensible people who ought to understand the value of the opinions of foreigners somehow or other try to persuade us and influence us by that mere fact. They say because certain foreigners say something there should be certain changes. I for one would not only not listen to such opinions but would not like anybody to give up his own viewpoint on this ground.

So far as the basis of the Code is concerned it should be introduced only where we find that the circumstances demand it and not force things against the will of the people. It is certainly true that there is a very large body of educated women who are behind this Code. They are said to be very firmly of the opinion that the passing of the Code is necessary. If we analyse the amount of education there is especially among the women of India, we will realise that these women are hardly a drop in the ocean; the number of these women who are asking for a radical reform and changes in our law is extremely small. On the other hand, they are so impatient that they are not prepared even to listen to the other point of view of the ladies who have as much sense as they have except their English or Foreign education. When I was referring to

“they”, I was referring to those millions of women living in our villages who have as good commonsense, and who know what they are and what they wish to be; it is they who are apprehensive of the changes that you are suggesting because even the introduction of divorce is going to change the attitude of everybody, of the society as a whole. The question I would like to ask is : Are you going to enter a wedlock with the idea of divorce, or are you going to enter wedlock with the idea of staying in it permanently ? If you adopt measures of easy divorce there is going to be a big change of attitude. Of course we are prepared to have that change and suffer the consequences, but the educated ladies who are sponsoring and advocating the passing of this Bill have not thought of all the consequences that are going to be fall especially to the lot of the illiterate women. After divorce an educated girl may be able to stand on her own legs, get a sufficiently lucrative job anywhere, and probably get a better husband. But what is going to happen to an illiterate woman ? My lady friends here still complain of the dominance of the male sex, and to the extent that the woman is tyrannised by men, what is going to happen to the illiterate woman who will be the object of these vagaries and domination of the male sex ? Have these educated women ever considered the consequences which will result from divorce for example, the care of children and their protection ?

So, although I have expressed myself in favour of it, I would like to caution that in introducing any reform or changing any portions of our law we must coolly study the consequences that are going to result therefrom. Unless we do that we may be trying to do things which may not be necessary at all. I feel that there is much in the Hindu religion, there is much in the Hindu Law which deserves to remain, though probably in a slightly reformed condition. But the attitude behind some of the suggestions is somewhat anti-Hindu : they regard everything Hindu as suspect and look down upon it with contempt. They have somewhere or somehow imbibed the idea that whatever exists in India is absolutely rotten and that unless they go on the lines of foreign nations and imbibe their ideas and introduce them here, the Hindu society will not come up to the standards they expect of it. I am quite prepared to admit that they are actuated by honest motives, but at the same time there can be a different point of view which suggests that merely by blind imitation you are not going to survive. The way to survive is to modify according to the times and not go on in a whole-hogging fashion to change the very basis and fundamentals of our law and society. And

from that point of view I suggest considerable caution. When I spoke yesterday, I thought the intention was to pass this Bill with only the marriage and divorce sections in it and that the rest of the bill was not likely to come up. But now I find that is not the attitude of those who are in favour of the Bill; they do not wish to omit the other portions. They are prepared to confine the enactment to the two chapters only from the point of view of availability of time but they do not wish to give up the rest of the Bill. If that is the idea, then I am afraid many of the Members of this House will probably change their attitude because it does not mean it is a compromise which will last as after getting these two chapters passed they will probably insist upon the property clauses and the other sections of the Code. If we look to the history of the codification, we will find that there is a great and important body of public opinion against the Bill. Most of the bar associations have not only been against modification but they have been against codification also. The Committee that was appointed for the purpose found, when it went round the country, innumerable associations and innumerable individuals who expressed their strong condemnation of the proposals that were going to be made. Under these circumstances, I feel that it is not proper that we should say that after passing these two chapters we will take up the rest of the Bill also and that we will not give it up. It should be definitely understood that so far as this Parliament is concerned, we should confine to the marriage laws provided in this bill. The question of whether there is any possibility of the property clauses being taken up will, I think, determine the attitude of support or opposition of certain Members of the House. If it is the idea that the entire Code should be taken up, then it would be very wise to leave this to ratification by the State Legislatures. Then we will be giving them sufficient time to educate public opinion so that if the Code is really wanted, if there is any important body of public opinion in favour of the various detailed changes sought to be made in the Hindu Law, then the concerned State can accept it. And there is no harm in one State accepting it and another not accepting because this is a matter of personal law and it should be completely open to any individual or group of individuals to choose the sort of law that they want.

While I support the provisions with regard to monogamy and divorce and say that they may be passed, although I would like to suggest certain modifications, and one I have already moved yesterday, namely that the customary divorce should be allowed to continue—and I am glad

to find it is likely to be accepted, I suggest that the present proposals should be confined only to the marriage and divorce laws and nothing else should be enacted by this Parliament for the present.

***Shrimati Jayashri (Bombay) :** I beg to support the amendment moved by the Hon. Law Minister to clause 2. I am glad that sub-clause (4) of clause 2 is sought to be dropped. That sub-clause says :

“Notwithstanding anything contained in the Special Marriage Act, 1872 (III of 1872), this Code shall apply to all the Hindus whose marriages have been solemnized under the provisions of that Act prior to the commencement of this Code.”

10-00 A.M.

I am glad that this sub-clause has been dropped, because under the Special Marriage Act the rights that people enjoyed were much broader. This applies to the Indian Succession Act also. Although under the Hindu Code we are trying to bring about reform, yet this Code does not confer the same rights which are available under the Special Marriage Act..

Mr. Deputy Speaker : Under the Special Marriage Act, they cannot adopt. Under this Code, they can. Is that not an advance ?

Shrimati Jayashri : I am saying that the inheritance rights there are broader than under the Hindu Code. So, I am glad that he has dropped this sub-clause from the Bill.

With regard to the argument as to why we should not make this an ideal and universal Code which can be applied to Muslims, Parsis and Christians, I would like to say that we must first find out whether Members are prepared to go so far. It would be an ideal Code if we could reach to the stage of the Indian Succession Act and the Civil Marriage Act, but it is clear that our society is not at present prepared even to accept the reforms under the Hindu Code and go thus far. So, I wonder whether Members will accept the broader principles which underlie the Special Marriage Act.

Yesterday, Dr. Mookerjee said that the Muslims also should be asked to accept the monogamy principle. I would like to say that the Muslim Law gives much more rights to women. Under our existing Hindu Law, women are not given those rights.

Mr. Deputy Speaker : He was on the question of monogamy.

Shrimati Jayshri : Monogamy and sacramental marriage. In regard to our sacramental marriage, this is what the married couple pledge themselves to do :

“Having taken these seven steps with me, we have become companions. May I retain that companionship and never part from thee nor thou from me. Let us be united. Let us always take counsel together, loving each other and ever ready in each other’s company, let us be united in mind and grow together in strength and prosperity. Let us join in our aspirations, our vows and our sorrows.”

May I ask whether this ideal of sacramental marriage is kept in our present society ? I would request Dr. Mookerjee to give his honest opinion whether he really thinks that no reform is necessary in our present Hindu Marriage Law. We all know that our Hindu society allows a man to marry as many times as he likes. This vow which we take during the marriage ceremony is only meant for women. Our laws are one-sided. They are only meant for women. We all know that when a man becomes a widower, even at the burning ground when he goes there to attend his wife’s funeral his engagement takes place. So, a man considers marriage in such a light manner. And still, we talk of our Hindu marriages being sacramental.

Mr. Deputy Speaker : Widows also can marry.

Shrimati Jayashri : Women are more conservative in that way. They still consider that they would not like to marry even if they become widows. They do not seek to have second marriages, but due to the one-sidedness of our Hindu Law *Nariprathishta* has gone down.

Hon. Members must have read K. Mushruwala’s article in the *Harijan* where he shows how we are treating women in our society at present. We all know how in the Mahabharat the clothes of Draupadi were removed and she prayed to Krishna:

“कौरवार्णवमननामाभुद्धरस्व जनार्दन”

(“I am sinking in the sea of *Kauravas*. Save me O Krishna.”)

Similar cries we hear today from our poor women who are ill-treated by our society. We call our Hindu society *Sanatana*, that is to say, *Sada Nutan* (always new)—it is always changing. Change is the essence of life. If society does not change, it becomes stagnant. For thousands of years our society has survived because it has accepted changes.

The idea has been pressed that we should not have divorce ; that our marriages are sacramental, as Dr. Deshmukh said just now, from olden days we read in our *Smritis* (*Parasara* and *Narad*) that under certain conditions divorce was accepted. In the Hindu Code today we have tried to maintain the sanctity of marriage and the welfare of the parties. The framers have provided prior remedies for avoiding the extreme step of seeking divorce and those are restitution of conjugal rights and judicial separation. Therefore, divorce is not very easy. In Baroda the Divorce Act was passed in 1937, and in the analysis taken in the year 1939 the cases of divorce and judicial separation were 42 in number. Out of these, eleven were due to cruelty ; two due to desertion and cruelty, seven due to desertion by husband ; one due to desertion by wife ; six due to cruelty and habitual drunkenness of husband and marrying a second time. These cases show that divorces are not very easy. Only under special conditions divorces are granted.

Also we know that divorces are prevalent in the lower classes. Only in the upper classes this Code seeks to introduce this change. Yesterday, Dr. Mookerjee raised the cry of 'religion in danger'. I would ask him whether beating of one's wife is considered to be religious. A woman filed a suit in one of the courts in Madras for assault by her husband. And the learned judge gave a judgement that beating the wife is allowed in Hindu Law. So, may I ask him whether such cruel customs can be called religious ? Religion is always personal contact with God.

“ईश्वरः सर्वभूतानां हृद्देशेर्जुन तिष्ठति”

[O Arjun ! God lives in the hearts of all living beings.]

It is not by passing particular laws that religion can be in danger. As I said Hindu religion is a vast ocean where changes take place now and again and we have accepted these changes. That is why our structure of Hindu religion has lasted for such a long time. May I also draw your attention to the necessity of changes in Hindu structure. I would say that at present our law is one-sided. We do not give any relief to our women. We have our National Planning commission which wants to plan on the present structure. I would say that unless the social structure is changed, it is no use planning on that body which is rotten. I would in this connection like to make some suggestions for improvement in our society. In a planned society woman's place shall be equal to that of man: equal status, equal opportunities and equal responsibilities shall be the guiding principle to regulate the status of woman, whatever the basis of society in the plan. Woman shall not be excluded from any

sphere of work, merely on the ground of her sex. Marriage shall not be a condition precedent to the enjoyment of full and equal civic status and social and economic rights by woman.

May I ask whether at present the status of woman is such, so that we can plan properly in the present society. Family life and organisation and woman's enjoyment of a share in the property are very necessary. Marriage and succession laws governing these are also necessary and that is why I feel that unless some change is made in our present Hindu Law, I do not think it would be possible to build on the structure that we find at present.

The Women's Conferences have always asked for a common Code. We are also in favour of a common Code. We are not asking that special privileges should be given to only Hindu women. We all know that at present our women are suffering and are backward. Parsi, Christian and Muslim women are far ahead of Hindu Women in this respect and that is why at present we are supporting this Hindu Code. As I said earlier, if we make this Hindu Code an ideal one, the other communities also will have no objection in accepting our Code.

Dr. Deshmukh said that many women have resigned from the All-India Women's Conference on this question. On the contrary I would say that in our Conference we have from the very beginning, asking for these changes and it was due to our request that so many pieces of legislation on marriage, right of women to property, etc., were introduced. In Bombay when Dr. Deshmukh of Bombay wanted to bring the bill on giving property rights to widows, we requested him not to hurry with this measure, but to wait so that it may include properties for daughters as well as adoption and other clauses. At that time he told us that he would like to hurry with the measure and that he would bring other reforms also. Therefore, these reforms are due for a long time and it cannot be said that we have not taken public opinion. Even this Hindu Code, as you know, is before the public for the last ten years and it is no use saying that public opinion has not been sounded. I think enough public opinion has been created and it is very wrong to say that very few women are supporting this measure. We have had many public meetings in various places and women from all over India are supporting this measure. On behalf of women I give my whole-hearted support to this Hindu Code.

*** The Minister of Works, Production and Supply (Shri Gadgil) :** I heard the speech of my hon. friend Dr. Syama Prasad Mookerjee with great attention. I should say that it was not entirely unhelpful. He said two things which appealed to me. One was that in the matter of social reform we should carry public opinion to the largest possible extent. Secondly he said that this was not a matter of politics, this was a matter in which every citizen of this country was interested irrespective of his or her political views. Because of these two things, I am somewhat optimistic and I am certain that if we are able to create in this House an atmosphere of give and take and of compromise we will be able to put on the statute book something about which individually and collectively we may be proud of.

Dr. Syama Prasad Mookerjee praised the Hindu culture and called it dynamic. I share that view. It is because Hindu culture has the genius of adaptation to circumstances, it is because that it is responsive to new trends that it has survived and it has been the pride and glory of us all. Today there is a greater need for the leaders of thought to consider how we shall attempt to progress further and how we shall bring the law in line with public morality. The old ways may not be effective in the modern times and therefore it behoves us that we must also have to resort to modern methods. There is no dispute about the fact that there are certain evils; although I am a good Hindu and I will yield to none in my admiration for Hindu culture, still I am not blind to the faults which have crept in our life as a community. By adopting a Constitution with the objective of equality of status and social justice, we have taken a great responsibility. We want to inaugurate a society in which there will be perfect equality. If that is the objective, then surely that cannot be achieved by following old methods of shouting old slogans. We have established political equality by adopting the system of adult franchise. We want to secure social justice and remove as far as possible economic inequalities by erecting certain economic institutions which will secure a better standard of life for those who are down-trodden, by securing opportunities for the expansion of the personality of every citizen. And that is only possible in my humble view, by nationalising at least the means of production and securing an adequate standard of wages, controlling profits, and if at all private effort is to be given any place in the economic system by laying down that it shall be under the

regulation and control of the State. In other words, by legislation we are trying to secure social justice and trying to remove economic inequality. If by legislation we have secured political equality, if by legislation we are attempting to secure economic equality or at least to remove economic inequalities, it is only logical that by the same process, namely by legislation, we must try to secure social equality.

My friend Dr. Syama Prasad Mookerjee stated that by codifying the Hindu Law you are shutting out altogether those sources of Hindu Law which have been functioning from ages and which has secured the means of progress so far. I agree that the sources of Hindu Law are *smritis*, *shrutis*, *sadachara*, and one's own conscience. All that is true. But all that was good and valid enough when the political constitution or the political set-up of the country was different from what it is now. Even in the West it was considered that a change in the law could be effected either by legislation or by legal fiction which meant that the law apparently remained the same but in practice it underwent a change and by custom. Even in the West the modern tendency is to depend mostly or substantially upon legislation in effecting the necessary changes which will make the law to be in conformity with public morality. Law always follows public morality. Public opinion goes ahead and progresses because that is the life in the community, not being static or stagnant, continually progresses, continually proceeds, because the law of life. Therefore the legislation comes behind. But there should not be such a big hiatus between the two so as to endanger the happiness of the community. It is therefore the duty of every thoughtful citizen, of every person who has the interest of the community at heart to see that the time-lag between the two is as short as possible.

Now, it is no good depending always upon the second method, namely of legal fiction, and allowing the judiciary to strain the meaning of plain words and asking them to try to bring the law in conformity with the prevailing opinion in the community.

The third method, namely that of custom, is, I should say, a misfit in modern circumstances. After all, custom was good when the legal power of the State was not adequate, was not sufficiently developed in order to enforce what was thought to be just and proper and what was thought to be in the best interests of the community. Now, in the modern world to talk of custom prevailing over law is a sort of anomaly. If the custom is prevalent on such an extensive scale I have not the

slightest doubt that legislators will initiate the legislation and the custom will be incorporated and dignified into a rule of law.

That being so I am unable to understand the argument of my hon. friend Dr. Syama Prasad Mookerjee that we are doing something revolutionary and in such a manner that the normal sources of law which were available will be completely closed. It is not so. Whatever we have inherited we have so to say, instead of putting our inheritance into a number of banks consolidated the inheritance and put it in some bank which has the prestige and strength of a Reserve Bank, namely legislation. That is what we have done. In fact in the present Code as it is now before this House what is really done is that we are practically coordinating what is in existence—the present law—to the extent of eighty per cent. There is no doubt an element of progress to some extent. I will even concede that there is an element which to some extent goes in advance of public opinion. But I want to ask one question to the Members of this House. Is it or is it not our duty not merely to think in terms of the needs of the present moment but to think in advance of our society, as we visualise or as we desire that it ought to be? If planning is good in the economic sphere why should it be bad in the social sphere? We are anxious that our society should be such. If that is the ideal on which we are agreed and on the assumption that we are agreed—because we have adopted it as one of the objectives in our Constitution—then we have to consider how we shall manage to take our society to that destination. Can we follow a policy of *laissez-faire* in this sphere or shall we think ahead, think in advance just have our target and gradually, through the mechanism of law, which in due course, become part and parcel of the community's life and arrive at the destination according to the schedule?

Shri R. K. Chaudhari (Assam) : That is questionable.

Shri Gadgil : If we leave it to non-official effort I have no doubt that in course of time, may be two generations hence, things will become as we desire now. But by that time public opinion would have advanced much more. In other words we will never be able to cut the time element between the growing public opinion and the legislation. I therefore say that if there is any element of advance thinking in this Code it is justifiable, and I would say that it is an act of wisdom.

Now the opposition to this Bill has been from several points of view. There are people who do not like any interference by the Legislature in these matters. There are people who think that the Parliament, or the

Legislature of the country, has a right to interfere but not the present Parliament. They rather prefer that the matter should be completely looked after and dealt with by those who will come after this Parliament is dissolved. So far as the first school is concerned I think, as was said rightly by Dr. Syama Prasad Mookerjee, it is too late in the day. Continually, in the course of the last 150 years, legislation after legislation has been passed by the Central Legislature—whatever the denomination of that legislature may have been—and all those things have become part and parcel of the Hindu community and its life. When I said that soon after the passing of this code, same thing would happen, my hon. friend Dr. Syama Prasad Mookerjee was not agreeable. He has accused us, namely the Members of the Treasury Bench of suffering from “Secularities”. I should say, knowing as I do, his views of social reform, knowing as I do that he comes from Bengal, a province where social reform was first mooted, beginning with Raja Ram Mohan Roy and carried on by Kesav Chandra Sen, Tagore and other people of great importance and consequence, that I cannot believe that he is seriously opposed to what is being proposed in the Hindu Code, but probably he is suffering from ‘electionitis’ and if that is so, the cure and remedy will be provided for in the general election. He agreed that it is very difficult to say on which side is the public opinion. I think he is right. We might claim public opinion to be.....

Pandit Malaviya (Uttar Pradesh) : Will the Government be prepared to make this Hindu Code one of the issues in the election ?

Shri Gadgil : In spite of the Government, it has already become. The point is that it is difficult to say on which side the public opinion is. I want to ask in all humility one question to the hon. Members of this House, Has or has not the Government which still carried the confidence of this House some right to initiate social reform, not merely the right, but a duty enjoyed on this Government in terms of the clauses of the Constitution ? You have given us certain directives ; you have laid down the objectives. If we do not do anything on those lines, the electorate might turn round and say : Well you passed this constitution merely to fool us. Half the population in this country, namely, the women will say : You talk of social equality but where is that social equality. (*An hon. Member*: Question). I am sure the hon. Member will lose in his own house if he takes a referendum.

Pandit Maitra (West Bengal) : Does the hon. Member say half a dozen women of half the population ?

Shri Gadgil : I take a better view of my sisters than my hon. friend is prepared to concede. However, as my hon. friend said, the thing will be evident a few months hence. The point is that the legislature has pressed a number of statutes affecting Hindu life, Hindu marriage, divorce, in fact every aspect of the law. Therefore, we cannot say now that this Parliament has no right. The question whether this Parliament has a right or not. I have already answered. So far this Parliament has been considered to be competent enough to make a constitution for this country and it passes my comprehension to accept a proposition that this Parliament is incompetent to pass an ordinary law.

Pandit Maitra : The House was elected for giving a constitution.

Shri Gadgil : This very House passed the Constitution in which they passed the Chapter relating to transitory provisions. I do not think that my hon. friend Pandit Maitra objected then and said that this Parliament should have no right to govern from now till the new House comes into existence after the general elections.

Pandit Maitra : That is nobody's case.

Shri Gadgil : I am glad. What is after all that is attempted to be done ? As I said 80 per cent, is merely a collection of the existing statutes either passed by the Central Legislature or passed by the State Legislature. Dr. Syama Prasad was very eloquent over *Dharmic* marriage. I do not think that the Code prevents it. There is free scope from the Dhushyanta Shakuntala type of marriage to Prithviraj Samyugita type of marriage, namely from *Gandharva* to the *Rakshasa* type and all the eight forms can be practised by any Member of this House or by the public outside. This Code does not prevent love-making, it does not prevent eloping with bride's consent even against the consent of the parents. So far as eight forms of Hindu sacramental marriage are concerned, they are not affected in the least. What is the grievance ? Is it because the word 'sacramental' has been changed into *Dharmic* ? It was changed because all of us wished it; it conveys no meaning and therefore we said : let us take the word *Dharmic* which will fit in and convey some meaning, and that is why '*Dharmic*' was used.

An Hon. Member : It is a misnomer.

Shri Gadgil : My hon. friend Dr. Syama Prasad was very eloquent over the conception of Hindu 'marriage'. Those noble sentiments I personally share. Marriage is something more than mere union of bodies, it is a co-partnership ; it is joint endeavour for spiritual uplift;

it is so to say a custodian of confidences and feelings which cannot be expressed in any language of the world. It is a noble conception : I do share that but at the same time it does happen that sometime an ideal is perverted. We find that in a progressive society things happen which have got to be taken notice of by those who are leaders of society and who are leaders of thought. I today, particularly on account of our contact with the West, we have somehow or other to go down in certain respects, it does not mean that our culture is less ; it only means a challenge to us to reform. We have got the genius to adopt, we had to act, and therefore, those legislations to which reference was made by my hon. friend, Dr. Syama Prasad Mookerjee were quite justified.

What is this prevention of a marriage between a person belonging to one community and a woman belonging to another ? Does it sound very well in our modern days, in the year 1951 ? Does it sound very well that a man because he is born in a particular community that he must remain outside the boundaries of the village perpetually ? Does it sound very well that because a man belonging to a downtrodden caste today by his merit has assumed a position of great importance and is learned today, he must not be given the same social status, the same social welcome, the same social reception as we give to a person belonging to another caste ? Is the *Varna* to be determined irrespective of *guna* or it has to be determined in the context of *guna* or in other words “accomplishment” ? That is a challenge to your sense of equality. If today the old ban against *Pratiloma* marriage is completely broken, you should welcome it. That is exactly what is being attempted. Why should there be such differences ? If marriage is a matter of free choice, why should there be legal impediments in it ? Why should a person belonging to one section or one community not marry a woman belonging to another ? All these artificial man-made impediments must go. I do not remember any case in which the son of a *Brahmin* was born with a copy of *Vedas* or a *Kshatriya* born with a sword or a *Harijan* born with a broom. At birth they are all alike and at death they are all alike. In between the two, it is the duty of the society and the State to see that the same atmosphere of equality shall prevail. Anybody who argues against this, argues against humanity, argues against the very principle which goes to make a man, argues against self-respect. What is being done here ? Nothing contrary to our old traditions is being attempted. On the contrary, my accusation against my friend and colleague Dr. Ambedkar is that as he is growing old and old, he is growing less and less enthusiastic about social reform. Ten years ago,

I think his language would have been more vitriolic; today he is the very soul of moderation. He said the other day, "Anyhow, with something changed here, something cut off there, and something added or subtracted, let me see the Hindu Code through because it will be considered at least one honest attempt by the present generation to put matters right". He is so anxious. He is in a mood to be prepared to give and take. I would therefore urge on the Members who are keen on opposing to see whether that is not a situation which we should avail of. I warn you that the next Parliament which will be elected on adult franchise is bound to be more radical in the matter of marriage and divorce.....

Some Hon. Members : Leave it to the next Parliament.

Shri Gadgil :although it may not be so radical to begin with in the matter of property. As regards, marriage, as regards divorce, I have not the slightest doubt, at least to the extent I know the mind and general outlook of those who inhabit my part of the country, Maharashtra.

Shri Bhatt (Bombay) : Leave it to the next Parliament.

Shri Gadgil : We would have welcomed it. I would have agreed to that if there had been no duty cast upon us to see that whatever ideals and objectives are embodied in the Constitution should be given effect to as far as possible. It is because of this duty. I have agreed to support this code.

Shri Bhatt : The skies are not failing today.

Shri Gadgil : Will the heavens fall if it is passed ? The sky is above and we are below. See what things are happening down here.

Shri R. C. Upadhyaya (Rajasthan) : That is why it does not rain.

Shri Gadgil : Now Dr. Syama Prasad Mookerjee asked. "Why monogamy only for the Hindus ?". I ask one question. If monogamy is a good ideal, does it become bad because somebody else does not follow ? We talk of *Ram Rajya*. If there is anything in the life and career of the Great Rama, it is his *Eka Pathni Vrata*. I want to test your sincerity. Are you for *Ram Rajya* ? Then, give support for this part at least. It is no good talking about *Ram Rajya* when it suits you for election purposes and when it does not suit you....

Shri R. K. Chaudhuri : What about *Dasaratha Rajya* ? What did Dasaratha who was the father of Rama do ?

Shri Gadgil : That is only an improvement by a new generation over the old. Because he knew the troubles of having three mothers,

he decided that his sons should have only one. That only shows how things progress.

An hon. Member : Was there divorce ?

Shri Gadgil : There was that custom.

नष्टे मृते प्रव्रजिने क्लीबेच पतिते पतौ ।
पतिरन्यत् विधीयते ।

[When the husband is lost, dies, goes to another land, becomes impotent or morally degenerate, another one is allowed.]

This proves it.

Dr. Syama Prasad Mookerjee's argument was that if it is good, let it be made applicable also to the Muslim community. I have no doubt that the Government either this or the Government that will come in . power after the General Elections will not shirk to bring in a measure of that kind in which this particular law will be applicable to every one irrespective of religion.

Some hon. Members : Why not now ?

Shri Gadgil : As a matter of fact, I know that in Bombay, when the bill for Monogamy was under discussion, the same line of criticism which was adopted by Dr. Mookerjee yesterday, was taken by many a Member in the Bombay Legislative Assembly. I remember that the Government of Bombay stated through their Minister that a Bill of that character would be welcome. Dr. Syama Prasad Mookerjee somehow or other thinks that this Government is nervous and may not bring some thing which may offend the Muslim community. I ask him just to consider if 90 per cent, of the people in this country, who are Hindus, agree to this measure, will it or will it not strengthen the hands of the Government to pass a legislation for the remaining ten per cent ? By accepting this, you will strengthen the hands of Government. I might here mention one instance which I am sure you will recall: not you particularly. In 1930, when the first Child Marriage Restraint Bill was under consideration, to which subsequent amendments were moved by my hon. friend Mr. B. Das in 1936, when the original Bill was under discussion in this very Hall. Mr. Jinnah supported it, although the rest of the Mohammedan leaders who were Members here opposed it, on the ground that it was interference with the personal law of the Muslim community. His words are, if there is a conflict between religion and public morality, the latter shall prevail, Mullahas or no Mullahas. You can find this out from the reports of the Legislative Assembly proceedings that this was his stand. If we are convinced that to have

more than one wife is again public morality, I think, we must agree to monogamy. Monogamy in the first attempt at rationing in the social sphere so far. It is necessary in the highest interests of the community, in the highest interests of individual happiness that there must be monogamy and I have not the slightest doubt that the progressive elements in the Muslim community will accept it immediately. If the non-progressive does not accept it, it will equally be the duty of the Government to enforce it. I have no doubt about that, and if I ever am in that government, be assured that I will do my best to enforce it. That is so far as my personal attitude is concerned. My point is, if that is *Amrit*, because it is not taken by somebody else, does it become poison ? I think this is an insult to the intellectual greatness of this House to argue on these lines.

Coming to the question of divorce, nobody argues that every married couple should go for a divorce. At the same time, if it is the duty of the State to see that there is less of social tension, and efforts are made to create an atmosphere in which every individual will have the right to have maximum satisfaction and happiness, then, it is the duty of the State to create conditions for having judicial institutions or legal institutions of that character. Eighty per cent, or more in this country have something like customary divorce. They are not worried. But, in the five per cent, or ten per cent, or whatever the percentage may be, on account of marriage conditions or on account of several other factors,—probably the modern woman is more intellectual—if she for one reason or another finds that it is not possible to live with a man whom she has married, then, marriage should not be a life sentence. It should not be that there will be no happiness unless one of them dies. No doubt, such cases may be few but the exceptions are there. Therefore, there must be some provision made for the same. You may make it strict; you may not make it as cheap as in the West, but speaking for myself, this is the most orthodox and reactionary law that you are laying down. Left to myself. I would have said that incompatibility of temper was enough ground to dissolve the marriage. After all, what is the assumption under the provisions for divorce ? It is that the parties cannot be happy. Should they go through this tortuous process of adultery or alleged adultery or cruelty or desertion ? What is the idea ? Should they always go to a hotel and have evidence of hotel bills, etc.? I think it must be a straight and honest and genuine affair that those who cannot agree, let them part. That will secure maximum happiness. People think

that this will end society. But if this custom is available in 90 per cent. of the population and in spite of that society has continued to progress all these generations, I do not think the extension of it merely to the remaining five or ten per cent, is going to change the integrity of society. On the other hand, the consequences that will follow will all be for the good. In fact restricting marriages and all the old injunctions that you must not marry in the same *gotra* have good reasons behind them. These restrictions were due to considerations of eugenics. If that is the case with those injunctions, then these will have greater application if the boy or girl marries outside the caste. Then there will be greater virility in the race, better type of persons will come into existence. This is a matter which must be considered in an atmosphere of scientific understanding. This is not the time nor the occasion to dilate on this aspect of the question. I will only add that behind these injunctions against marriage between *sapindas* or *sagotras* there were eugenic considerations. They must be reassessed.

Shri A. C. Shukla (Madhya Pradesh) : An old man marrying a young woman, is it according to eugenics or not ?

Shri Gadgil : You should certainly stop an old man marrying a young girl.

Shri A. C. Shukla : What will be the position of the child born to an old man and a young woman ?

Shri Gadgil : It will be as healthy as possible.

The point is, all those laws or customs which definitely have affected the progressive character of Hindu society ought to go. Dr. S. P. Mookerjee made a reference to *Brahmo Samaj*, *Sadhanan Samaj*. From Raja Ram Mohan Roy, to Ranade, Tilak, Agarkar there is a galaxy of social reformers of whom we are all proud. But why should the process stop there ? If what was done in the past was good we ought to follow? the same principles of progress. And if we follow that same line of advancement, why should you be afraid now ? Why should you think that because Manu was great, therefore there cannot be any man as great as Manu in the centuries that may roll after his death ? I think Mr. Ahmad is as great or as good as Yagnavalkya, only without a *jenuva*. Otherwise he is as good an interpreter. And Dr. Ambedkar is as great as Manu or Gargya.

An hon. Member : He is Manu.

Shri Gadgil : And I am as good as any other old citizen. And why should we feel that the present generation cannot undertake the task of

social reconstructions ? India could not be an integrated unit under one flag during ten or eleven centuries. But if that task was achieved by this generation, is not this generation competent to do something in the social sphere to make society progressive ? I want an answer to that question. You praise us and praise yourselves for having done something great in the political sphere. Why are you afraid of achieving something in the social field ? Why do you have this inferiority complex ? Of course what was done by Manu was good. But—

“ तातस्य कूपोयमिति ब्रुवाणा
क्षारं जल कापुरुषाः पिवन्ति ”

Because this well was dug by my great-great grand-father, and although the water of it is saltish, I must drink it. Well, that is not my outlook.

Shri R. K. Chaudhuri : Then why not throw away your sacred thread ?

Shri Gadgil: I have thrown it away. Look here.

Pandit Malaviya : I believe the Hon. Minister puts it on now and then whenever he feels like it !

Shri Gadgil: No, nothing of the kind. And since it is a matter concerning me, you will kindly permit me to dilate on it for a moment.

Shri Brajeshwar Prasad (Bihar) : Sir, on a point of order. Is it parliamentary for the Hon. Minister to show the House his tummy ?

Shri Gadgil: Well, it was appreciated anyway.

Mr. Deputy Speaker : I am glad this point was raised. I can only say that it is not proper for questions to be put whether a person is wearing this or that, leading to unnecessary complications.

Shri Bhatt: I want to know one thing. Can he have *Yagnopavita* at the time of *Yagna* ?

Shri Gadgil: I am prepared to satisfy the curiosity of the hon. Member.

Mr. Deputy Speaker : The Hon. Minister need not discard his *Yagnopavita* to support the Bill. He can have it and still support it.

Shri Gadgil : Some years ago when I was in Thana Jail and when I started thinking about Hindu religion, I thought I was not a good *Brahmin* and could not be one merely because I had a *Jeneu* and I discarded it. And only when I am a good Brahmin, even for a moment, I will put it on, and this I did when I attended the Somnath installations ceremony. Then I felt a moment of inspiration. I felt my whole being ennobled when I was there and I put it on for sometime. Later on I threw

it away because I came from Heaven to the dust below. I shall only justify a *Brahmin* using the *Jeneu* if he is following all those great ideals which are enumerated in the Gita.

अभय, अहिंसा, अस्तेय, आर्जवम्

(fearlessness, non-violence, not to commit theft and straightforwardness) etc. Otherwise there is no good having a *Jeneu* and doing all sorts of things.

The point is whether we are competent to make any changes, the whole history of Hindu society shows that it is continually progressing from stage to stage. Otherwise how do you explain the numerous *Smritis*, one *Smriti* laying down one thing and another *Smriti* another ? How do you explain this ? Society is continuously progressing and something has got to be found which is appropriate to the *Sadachara* or *Vyavahara Dharma*. And the definition of *Sanatana* Dharma, as given by a great Shastri is :

सनातनः नित्य नूतनः

[The eternal is always new.]

Change is the watch-word of Nature. Change or perish. We have a progressive society and it is a dynamic society, as was pointed out by Dr. Mookerjee and so we must continuously adapt ourselves to the changing circumstances. Of course, that does not mean that there is nothing steady or nothing stable.

Pandit Maitra : Where in Sanskrit literature is the word *Sanatana* defined as the Hon. Minister has just now given out ? *Sanatana* means.....

सदाभव इति सनातनः It means eternal.

That is the etymological meaning of the word. That is the grammatical meaning of the word.

Shri Gadgil : I am not prepared to accept the grammatical interpretation of the word *Sanatana*.

Shri Bhatt : Kaka Sahib can have his own interpretation.

Shri Gadgil : That is not of lesser importance. Kaka Sahib also knows some Sanskrit. The point is through out history, there is the Hindu community the tendency to progress. Why should we stop now ? Modern conditions require that changes should be effected by legislation and not by custom. If to-morrow something else is required, the leaders of the day, through the Legislature, will effect that change. I agree that this a matter which must be considered in an atmosphere of calmness and understanding. If we agree that there are certain evils, why should

we not remove them ? I remember while speaking on the amendment Bill of my hon. friend Shri B. Das regarding the Child Marriage Restraint Act. I gave figures from the 1931 census and said that there were 1,300 widows below the age of one year. Is not that an evil ? And girl widows below the age often there were millions. And if you prevent them from re-marriage, just consider what will be the effect of it on society ? And only good has come out of the legislation that was passed. Today the position is that the average marriage age has gone up considerably. The problem now is not of marrying earlier, but of marrying at all.

There was threat of opposition to this measure in 1930 and so great
11 A.M. was me threat that all the communities were combined against the measure. I remember the description given at that time ; that before the Act was brought into operation thousands of children were taken from Calcutta to Chandernagore and married there, because it was not part of British India, that thousands of children were taken in the midstream of the Indus and married, because there was no extraterritoriality so far as this Act was concerned at that time. This element of extra-territoriality was incorporated at the suggestion of Mr. B. Das. The point is that there are undoubtedly evils about which there is no dispute and it is not anybody's desire to nurse or keep those evils going on. As to whether the remedy should be stringent or less stringent is a matter on which the Members of the opposition can certainly have a discussion with my Hon. Friend Dr. Ambedkar and a *via media* found out. What I suggest is let this House take some steps towards progress and let us go down in history that in spite of real or created opposition this House had the courage to take at least one step towards the reform of Hindu society. That would be the greatest tribute to you individually and collectively and I do hope the whole House will rise to the occasion. That does not mean that you should accept whatever is suggested nor that you should reject everything. Let us not have a closed mind : let us have an open mind. Let us agree that there is evil in society and let us agree that some remedy must be found. This is all that I have to say and I do hope that in that spirit the House will respond to the Hindu Code introduced by my Hon. Friend Dr. Ambedkar.

Mr. Deputy Speaker : Before I call Pandit Kunzru to speak I might say that I have been hearing speeches as if on the first reading and not on clause 2 which is before the House. Clause 2 consists of four sub-clauses and the amendments refer to them. Not many Members have addressed themselves to the clause proper. Evidently they want the