In this way what I beg to submit is that I have suggested in my amendment that those persons, who have left Hindu religion and embraced any other faith but whose social customs are still like those of the Hindu Society, should be given the privilege to have this Hindu Code applied to them if they so desire. When Hindus are going to benefit by this Code why don't you allow others too to have its benefits ? After all what objection have you got to that ? There are some Indian Christians whose social customs are like those of the Hindus notwithstanding that they have embraced Christainity. As such why do you exclude them from its application, and why don't you allow them to have the benefits of the Code in the same manner as the Hindus would have ?

I, therefore, request the Hon. Doctor to keep all these things in view. Should I state which of the non-Hindu communities can benefit by it ? I do not want to go into detail, but I certainly want to draw his attention to it. Take for instance, Dr. Gour and Mr. Gupta who are great authorities on Hindu Law. They have given the names of those non-Hindu communities to whom this Code can apply. About Kutchi Memons…..

Shri Syamnandan Sahaya : You know it, he too knows it, but we do not know it. Kindly read them out.

Dr. Ambedkar : Do not be brief. But please read them out.

Shri Bhatt: The Memon Act which has been framed……

Dr. Ambedkar : Do not mind about the time, but please read them out.

Shri Bhatt: I am going to read it out. It is laid down in the Kutchi Memon Act:

> "Whereas it is expedient to enable those Kutchi Memons who so desire to be governed in matters of succession and inheritance by the Mohmmedan law, it is hereby enacted".

The operative section is :

> "Any Kutchi Memon who has attained the age of majority and is resident in British India may by declaration in the prescribed form and filed before the prescribed authority, declare that he desires to obtain the benefit of the Act, and thereafter the declarant and all his minor children and the descendants shall, in all matters of succession and inheritance, be governed by Mohammedan law."

Shri Syamnandan Sahaya : It is an optional clause. So there is a precedent.

Shri Bhatt: So I hope the Hon. Minister of Law would keep some sort of provision in it in the same manner in which some laxity has been allowed in the above clause, otherwise you are only limiting its scope. The then Home Member Mr. Henry Craik made a mention of it in his speech and said:

> "I think it deserves very careful consideration, whether it is not wise in those matters to give the individual the option and not to compel him to accept a rule or law of which he may be imperfectly informed."

Shri B. Das (Orissa)**:** I think Sir Henry Craik was a bachelor—he did not understand society.

Shri Bhatt: I have taken this from the Debates of 1937 where it is given on page No. 2544 of Volume No 3. Hence, my submission is that we too should keep a provision of this nature in it. Look into the Baroda Act which all of us appreciate. Baroda is several years ahead of us, ask them now where they are at present. Ask them what facilities they enjoy and from what difficulties they suffer, and how they enforce their various laws. They might perhaps admit that the old days were by far better. I do not say all that with any special motive. I hold that so far as social laws are concerned Mysore is ahead of all other parts of India. And if I am not wrong—Mysore friends would excuse me— Sir Sayaji Rao Gaikwad was the first to introduce Educational and Health reforms long before Mysore and other stepped in.

Dr. Ambedkar : He did a blunder :

Shri Bhatt: You want to take us, the people of Rajasthan, on to progress. We find that we are a tardy people and go slow. Our speed is that of a camel which cannot go along with the speed of your aeroplane. So it is good to slow down the speed of your aeroplane. The Baroda Hindu Code also lays down :

> "This Act shall apply to all persons domiciled in the Baroda State.
>
> (a) who are Hindus by birth or by conversion to Hinduism or to whom any part of this Act is made applicable by this Act, to the extent to which it is so applicable.
>
> *Explanation 1.* The people to whom the Hindu law or any part thereof is applicable by custom and usage shall be deemed to be Hindus....."

Shri Syamnandan Sahaya : Which Code is this ?

Shri Bhatt : The Baroda Hindu Code.

Shri Syamnandan Sahaya : Monogamy Act.

Shri Bhatt : Yes. It lays down :

> "The people to whom the Hindu law or any part thereof is applicable by custom and usage shall be deemed to be Hindus for the purposes of this Act in so far as the matters in respect of which the Hindu law or any part thereof is so applicable or concerned".

You have been saying that whomsoever would it apply to would be considered a Hindu whether he professes the Hindu religion or not. But I say all the people who live in India are Hindus. I do not say so from the cultural point of view alone. I am saying it from the English point of view as well. After all why are we called Indians or *Hindustanis* ? As a matter of fact the word 'Hindu' refers to the man who is born in a particular territory and certainly not to his religion. And because it refers to the man born in a particular area rather than to the Hindu faith, it means that it covers all the people who inhabit that land. See the following:

> "(b) who have not renounced following the Hindu Law shall, be deemed to be Hindus".

This is the thing and so I request the Hon. Minister to accept my amendment. Now I come to the portion which is not still covered.

Shri J. R. Kapoor: Which of the amendments do you support specially ?

Shri Bhatt: I support my amendment *i.e.* "Those who want to be governed". This covers everything that I want.

I would like to draw your attention to one thing more. Our Hon. Shri Gadgil and Pandit Kunzru too have dwelt upon this point. When Sarda Act, *i.e.* the Child Marriage Restraint Act was introduced in 1928, originally its title was the 'Hindu Child Marriage' Bill. But in 1929 when the report of the Committee was received, some alterations were made in it and its name was changed to "Child Marriage Restraint Bill". You know there were some Muslim members as well on that Committee. They opposed it. When it was discussed in the House in the year 1929 they again opposed it, but in spite of their opposition it was thought desirable to enforce it throughout the country as it was a good legislative measure. With the exception of Mr. Jinnah all the Muslim Members opposed its application to Muslims and said that their divines were opposed to it and as such it should not be applied to them.

If I remember well there was a Christian member, Mr. Chatterji, of the House in those days. He too pointed out that it went against their religion and as such it should not be applied to them. There were speeches of this nature. But in spite of all that opposition the Government applied it to all sections of the population because it was, in fact, good measure. My submission is that if monogamy is really a good thing why don't you impose this restraint on all sections of the population and why do you leave out some people from its purview. May be some Muslim friends are having two wives—there are very few such cases in Hindu society. Generally it has been seen that people from lower classes alone keep two wives but they keep them only to help them in their occupations. Broadly speaking, the majority of Hindus are monogamous either by nature or by circumstances. It is difficult to get even one wife, wherefrom can one get two ? At that time it was stated in the Select Committee Report that :

> "The object of the Bill, as introduced in the Legislature, was to impose restraint upon the solemnisation of child marriages and the method adopted was, broadly speaking, that of declaring all marriges of boys and girls below a certain age to be invalid."

I would like to draw your attention to the fact that the aim and object of the Sarda Act was 'to declare the marriage to be invalid'. But afterwards it was altered. And why was it altered ? It was done because it would have been very strict. You have to keep this thing in view. I would speak about monogamy when I would come to it. After making alterations it was laid down :

> "The Bill has been circulated under the orders of the Government and has elicited a strong expression of feeling that it is objectionable both on religious and on legal grounds of interfere with the validity of a marriage which has been performed.
>
> In our opinion, these objections are at present insuperable and we have accordingly acted upon a suggestion which has been widely made that the Bill should effect its purpose of restraining child marriages not by declaring such marriages to be invalid but by imposing punishments upon those who participate in them."

You would see what a difference it has made. The things that were formerly contemplated to be rejected, were not rejected. Those marriages were not made invalid. But some punishments were imposed on them. Further it was laid down that :

> "The Bill, as introduced applied to Hindus, Jains, Sikhs, Brahmos, Arya Samajists and Buddhists and was a measure relating

to the validity of marriage. As we propose to amend the Bill by making it a measure imposing criminal penalties on participants in a child marriage, it seems invidious that it should be restricted to those particular communities, since child marriages do occur, though not so frequently, in other communities. We propose, therefore, that the amended Bill should be general in its scope and apply to all classes and communities in British India."

This was a marked departure. They did it after fully appreciating the trend of the public mind and so the Hon. Minister of Law should also go ahead after taking into view the trend of the society. This is my only request.

See what is laid down about the Indian Christians in the Christian Marriage Act. See what is laid down in the Parsi Act regarding the *bona fides* of the Parsees. This is a very limited definition. A Parsi is he who professes Zoroastrianism. There are several cults here in this country and people follow someone or the other. That is why I submit that all the people should be considered as 'Hindus'.

The Sarda Act has not been applied to Part B States so far. According to the amendment of 1950, the subject is in the Concurrent List and can be applied to any State. You can apply anything you like to those States as well. But in spite of that provision being there this Act has not been enforced in Part B States so far.

Shri B. Das : I hope Dr. Ambedkar takes note of this.

Dr. Ambedkar : All that would be cancelled.

Shri Bhatt: So I was speaking to the Hon. Minister of Law about divorce. I respectfully want to submit that he should allow a law to continue so long as it does not go against the social customs. And for those persons who favour these reforms, provision for Civil Marriage is already there.

Dr. Ambedkar : For them too the door should be closed.

Shri Bhatt: Do not close the door for those for whom it is open, notwithstanding whether they come from the door or from the window. But allow the various customs to prevail in the various sections of the population, at least in those sections of the Hindu population who are backward in education and in other respects. Our Hon. Minister of Law has not made a tour to peep into the actual working of the Hindu society. Please have such a tour and contact the people, show them your books and convince them about what you have brought for them. A real thing

can never lose its reality, just as gold can never turn into a stone ; it can only become refined gold. So please allow gold to become more refined and let them have time to understand what divorce actually means. Do not give rise to a dispute here. Those who favour such reforms are at liberty to make use of the Civil Marriage Act, and have the facility of divorce under that Act. You ask how those people, who are not married under the Civil Marriage Act, can have the benefit of divorce. I give you a suggestion in order to find out a way for them. Allow them to get their marriages registered under the Civil Marriages Act so that they may also have the benefit of having divorce, if they so desire. In this way they can have a wider door open for the fulfilment of their wishes.

Shri R. C. Upadhyaya : What do you suggest if the husband favours it and the wife does not ?

Shri Bhatt: The wife listens to the words of her husband. She still considers her husband "God' at home, notwithstanding the fact that she may be an educated one. But that does not mean that Hindus consider their wives as their serfs. She is the mistress of the house and a *Devi*. These are the words which are used for her. I do not believe that Hindu society is so degenerated as to consider its womenfolk as serfs. If anybody has any such impression, he should wash it off. I say even in those sects which are called backward, women are mistresses of their homes and their men do only what they direct them to do. In Rajasthan and other places there are several social customs which are included in the *Shastra* and that *Shastra* is known as the *Doshi Shastra*. People do every thing in the manner in which the old ladies advise them to do. If a *pandit* makes a mistake while performing a sacramental marriage ceremony, it is at once pointed out with the help of songs as to where he has committed mistake. If there would be any mistake in the *Saptpadi* etc. we at once come to know with the help of the songs as to where the mistake has actually occurred. In this way, all those customs go on with the help of the songs not be presumed that women are not honoured in Hindu society.

A drunkard might be a good man, a great man or an educated man but in spite of all that he is a drunkard. It only intoxicates a man, what else can be the effect of the drink. Whether a drunkard is from a backward class or from a higher class he or she is nothing more than a silly person.

Shri R. C. Upadhyaya : What should be done for them ?

Shri Bhatt: Only the next day that intoxication would go by itself and everything would be all right. You do not know that that becomes their habit. All of us have a number of habits good and bad, and so far as in toxication is concerned I have come across a number of people who take two or three bottles of whisky at a time and still do not subject themselves to intoxication. The Hon. Doctor might be remembering that there used to be a number of persons in the Bombay Bar Council who could not argue their case in the courts unless they had taken one or two pegs.

Mr. Chairman : May I know on which provision of clause 2 the hon. Member is speaking ?

Dr. Ambedkar : We are discussing Evacuee Property Bill.

Shri Bhatt: Sir, I should be excused, there has been a little digression. But I would like to remind you that some of my friends talked about it. What I was submitting was that nobody stated that you were only bringing any deterioration or improvement in the Bill by keeping or not keeping any provision of monogamy in it. What is the necessity of imposing legal restraints on it ? If you are bent upon imposing them we would have no objection, but then please impose it on all sections of the population of the country, because the Muslims too then would not feel about it. They too would agree that it is a good thing and that as such it should be applied to them as well. As Sarda Act has been applied to one and all, similarly its application too should be extended to all sections of the population. So far as divorce is concerned it is already prevalent in the Muslim community. Hence my request is that whatever legislation you like to make, it should be applied to one and all. Nobody should be excluded from its application, it should apply to Indians generally.

I admit that you have come up to appreciate us and to accommodate our viewpoint. You have become so much accommodating now that you have realized the position. And now if you do not want to do anything, at least please do one thing. Take out the marriage and divorce clauses from the original Bill, pass them as a separate law and make it applicable to all the Indians. If you would do that everybody would be happy over it, would praise you and would say that you have really done a brave deed. All opposition would go automatically ; it would vanish and people would say that the Government have taken the right step which gives them the maximum satisfaction. Although that would not be complete satisfaction, yet that would be the maximum under the

present circumstances. So please adopt this course after taking into consideration the present day situation. When you would proceed to do it, you would come to know what more should it contain and what more improvements you ought to bring in it. (*Interruption*). Hence I request you to look towards them as well so that you may come to know where exactly the shoe pinches. The wearer knows where the shoe pinches. At that time you would come to know that the opposition is very strong. Several sister would come here, would entreat you and then you would come to know about the real position. Several other people too would come here and you would come to know the extent to which this measure would be opposed. But I say do not mind the opposition from whatever quarter it may come. Wait for sometime and then as the Sarda Act was passed by the Government without caring for any opposition, similarly pass a law which may apply to one and all. There is no question of time in it. Prepare a new draft Bill and when we meet in February next, put it before the House.

Shri Syamnandan Sahaya : It would be the month of *Phagun*. I think that would be the opportune time.

Shri Bhatt: Yes, it would be the month of *Phagun*. But whatever month it may be I most humbly put forth my suggestion. I do not say all this simply by way of a joke. It would certainly benefit the whole of India. Why do you benefit a few selected Hindus only, benefit the whole nation. Send your invitation to all and make this law a perfect one.

With these words, Sir, I request the Hon. Minister to think over my suggestions. Last of all I appeal to you that this is not the opportune time to go ahead with this legislation. Stop there, it would bring no harm to the country, it would only bring cheers to the Government. Sir, I have certainly taken much of your time, but I did not make an effort to prolong my speech in any way. I would request the Hon. Minister who is the representative of the Government here, to consider our humble but plain request so that it might bring glory to our Government.

***Sardar B. S. Man :** Sir, I thank you very much for calling me to explain my position.

I have moved an amendment that the Sikhs be absolved from the operation of this Bill and that the Sikh community be not brought into the (315 PSD) orbit of this Bill. I would have very much liked to have

*P.D., Vol. XV, Part II. 18th September 1951, pp. 2835-40.

moved an amendment not embracing simply our community in terms of Sikhs, or Hindus or Muslims ; but looking at the main clause as it has been framed, I was forced to use this word. I would have very much preferred to have used a territorial term saying that the *Punjabis* be absolved, or certain agricultural classes be absolved. But, since the framers of the Bill themselves have used the word Hindu, Jain, Buddhist and Sikh, I have moved an amendment in these terms. In fact, I have an amendment to clause 1 that the operation of the Bill be not extended to Punjab and P.E.P.S.U. I base my arguments not on narrow communal or religious grounds. I shall come to that later. I do not minimise the fact that this attempt to bring the Sikhs under the domain of Hindu Law will savour of bad political communial taste.

The other day, the learned Doctor cited a case to show that the Sikhs have all along been governed by the Hindu Law. With all apologies to him, I may point out that the law that he has cited was confined to the non-agriculturist properties. The Sikhs mainly comprise agriculturists. In fact the agriculturist Sikhs comprise 95 per cent. of the Sikh community. When you have to discern clearly and generalise in this way as to what law applies to them, you have not got to see that commercial classes of the Sikhs, the *khatri* Sikhs or other Sikhs who are resident in the cities, but you have got to look to the main community, the agriculturist Sikhs and see what their laws is. And I can cite not one, but innurable cases. I can cite case after case to prove that in the Punjab the agricultural Sikh, along with other agricultural classes were all along governed by a secular law—and here incidentally it was an advance far ahead of what is proposed in this Hindu Code. So, I say we are there absolutely governed by a secular law. There we have got a uniform law for the agriculthral population who form the bulk of the population. We should not look at the law governing the microscopic minority of the people. We have to look at the law that prevails among the main bulk of the population, the main bulk which in this case forms about 95 per cent. of the population there. There, as I have said, we have an advanced law, that whether he be a Muslim or a Hindu or a Sikh, we are governed so far as succession to property is concerned, by one common law, and that is the customary law. But here you are bringing forward this Hindu Code and so I confront you with the statement that we have got one common, uniform law which cuts across all communities and all narrow communalism in the Punjab. But by this measure you are trying to introduce for the first time communalism in the Punjab. (*Interruption*). Yes. The customs are

1 P.M.

there and they are due to the long usages which have been recognised. Various attempts have been made to over-ride customs ; but all this is is bad and it wiill be a bad policy and quite definitely an ill-advised policy, to promulgate laws from the top and then within these fifteen days change the entire structure of society there which has come through for a very long time and which has imbibed in itself the wisdom of the ages and the spirit of the time. I am mot saying that because a particular law has been laid down by a particular old *Brahmin* and so it cannot be touched or changed. I am not basing my argument upon that sort of sanctity. I only say that the custom has come down to us and it has developed, due to the lack of rigidity it has imbibed into itself certain practical usages, usages very useful to the genius of the people there. I will come to this part later on. Here I only refer to it to say that custom over-rides the written text. The custom in the Punjab has been there and is still the law there.

Apart from that, I shall prove also that my customs are far more advanced than this retrograde step that is now being proposed. They are much more advanced in many respects.

I ask that the Sikhs be absolved from this Bill, for this reason also. It will surprise hon. Members, as it has surprised me, that all along, since the introduction of the Hindu Code Bill in this House by Mr. Mandal—in fact though Dr. Ambedkar is trying to improve upon that Bill, nevertheless he is carrying Mandal's baby—since the introduction of the Bill up to now, there has not been a single Sikh Member on the Select Committee.

Dr. Ambedkar : Giani Gurmukh Singh ?

Sardar B. S. Man : No. No Sikh opinion has ever been consulted on this vital question. Nor has there been appreciable agitation among the Sikhs because we were told that the agricultural property will be an exception under this Hindu Code Bill and this led to a sort of indifference among the Sikh community towards this Bill, 95 per cent. of the population thought that this Hindu Code Bill was not going to touch them in a vital way.

Shri A. C. Shukla : Have the Sikhs passed any resolution against the Code in any of their conferences ?

Sardar B. S. Man : I can speak for the Sikhs much better than the hon. Member. There are a few ladies here and on such a vital matter as this they are consulted and listened to and their advice is accepted. But in this House we are seven Members of the Sikh community and

I challenge the hon. Member to produce a single Member of the Sikh community who is in favour of this Bill completely and totally ?

Shri A. C. Shukla : What about those outside the House ?

Sardar B. S. Man : Again and again on the floor of this House, speaker after speaker has pleaded, let us not proceed with the majority of the Members here. Let us conduct a referendum of the people outside. If that is what you want, let it be referred to a referendum of the Sikh community. Till then it should not be passed with the majority of the Hindu Mebers here. I am not a Hindu. I have never followed the Hindu Law. I am constrained to say that this law is a conversion law for the Sikhs. You are bringing in totally obnoxious principles, certain novel innovations which have never been followed and which in the villages have never been heard of and you are forcing down our throats something alien to us. Even the ladies here, though few, are consulted and listened to and we the seven Members are unanimous about Sikh opinion that certain provisions which are retrograde and obnoxious should not be forced on us. My friend asks whether they have passed any resolution to that effect. My grievance is that Sikh opinion has not been consulted. The very fact that Dr. Ambedkar has not received the memoranda of the Sikh societies and S.G.P.C, which is an authentic body to speak on behalf of the Sikh community so far as their personal law is concerned as also their religious precepts shows that the Sikh community has not been consulted.....

Sardar Hukam Singh (Punjab)**:** Resolutions have also been passed in certain Sikh conferences against this Code.

Sardar B. S. Man : My hon. friend Sardar Hukam Singh enlightens me that there have been resolutions. At the time of the original introduction of the Bill or at the time of the formation of the Select Committee no Sikh Member was either consulted or represented on the Committee. Dr. Ambedkar says that Gyani Gurmukh Singh Musafir was there. Would be then listen to his advice, if he was there ? If there had been a single Member of the Sikh community would he give due weight to his opinion ? He was not a member of the Select Committee then but when the House adjourned and later when Dr. Ambedkar agreed to consult more *pandits* and he had a sort of informal conference, incidentally then Sardar Gurmukh Singh Musafir was asked to give his opinion. If as he says that he consulted Sikh opinion in the person of Sardar Gurmukh Singh Musafir then please listen to his advice so far as the Sikh community is concerned. But the Government did not think

it proper to include Sikh Members in the Select Committee and we of the Sikh community were never really agitated because till this day we were led to believe that agricultural property would not be touched and will be made an exception. Suddenly when this Bill is introduced we find that in his wisdom he has brought even agricultural property within the purview of this Bill. We were indifferent in the original instance because of the exemption of agricultural property and we never really applied ourselves to the provisions of the Bill. Now this Bill has suddenly emerged : it is a hotchpotch, it is retrograde in many respects and an advance in some other respects, it is a heterogenous combination and it is thrown at our face asking us to accept it. I frankly admit that I for one fail to comprehend its provisions and much less will the illiterate person or peasant in the villages. Much less so an illiterate person, a peasant in the field, because the peasant was told. "do not be worried because it is not going to touch you". My grievance is that Sikh opinion was not consulted to any apreciable degree. And now when you pass this Bill with the help of the Hindu majority here, it will leave a very bad taste and memory in the minds of the Sikhs that in spite of their unanimous opposition to the Bill, in spite of the fact that they were led to believe that most of the provisions of the Bill will not apply to them suddenly, at the fag end of the session it was passed much against the will of the community.

An Hon. Member : Then let your Members show the opposition.

Sardar B. S. Man : Yes. My esteemed friend, Sardar Hukam singh who can speak on behalf of the Sikhs in a much better capacity than myself has shown his opposition. After all, it is not a political matter that you may not accept his advice. It is not such a matter in which because he sits in opposition his opinion may be declined. On matters of personal law, on matters of religious precepts, on matters of adoption of Hindu communal law, you must accept the opinion of the representatives here ; and we are unanimously opposed to it. And if in spite of our opposition you proceed and make the provisions applicable, then it will be a strange thing—it will go down as something autocratic, something savouring of the communal. It so happens that we are only seven Sikh Members here. But we want that so far as religious matters are concered, so far as personal law is concerned, due weight should be given irrespective of the fact that a section may be numerically very much weaker. You have already made exceptions. I am not arguing on these lines because you have made exceptions. Because a Muslim is

allowed to marry four wives, I do not say that I should be allowed to marry four times. The fact is that you have made exceptions. Why ? Because you found that the law of the Muslims, the law of the Christains, so far as their personal law was concerned, was absolutely different. And since it was completely different and in many respects diametrically opposed to the Hindu Code, therefore you made an exception so that it may not be forced down their throat. That way you gave a latitude and thus you accepted the principle that irrespective of the fact that the Hindus may be in majority here they will not force a law of theirs, so far as their personal usage, religious precepts, etc. are concerned, down the throat of any minority. If you have accepted this because the Muslim Law and the Christain Law and even the Parsi Law is fundamentally different, then I may be permitted to prove on the floor of this House—on any given subject that you are trying to legislate, for example, marriage succession or divorce—that the Sikh Law is entirely different. Then I claim the exception which you have extended to the Muslims. Because the Muslims proved that they were governed by an entirely different set of laws they were given an exception. And if I prove here that I am also governed, in every single item which you are trying to legislate here, by a different law, and that my law is fundamentally different from yours, then I claim the same concession which has been extended to Parsis, Muslims and Charistains should be extended to me also.

Mr. Chairman : The Hon. Member may continue tomorrow.

The House then adjourned till Half Past Eight of the Clock on Wednesday, the 19th September, 1951.

*HINDU CODE—*contd.*

[9-30 A.M.]

Clause 2.—*(Application of Code)—contd.*

Mr. Deputy Speaker : Before the discussion starts I might inform the House that this is the sixth day of the debate on clause 2. Practically all shades of opinion have been covered. (*Interruption*). It is not as if every hon. Member should be allowed to speak. The matter has been sufficiently placed before the House both for and against the Bill as a whole and also particular clauses. We must be able to see the end of the discussion so far as clause 2 is concerned. I would request hon. Members not to occupy the whole time but give opportunities to other hon. Members so that we might close the debate on the clause today. hon. Members will try to be brief and short, as all the points have been elaborately discussed already.

† **Sardar B. S. Man** (Punjab)**:** When the House adjourned yesterday I was advocating that the Sikhs be absolved from the operation of the Bill and I was basing my arguments on two counts. One was that we in the Punjab are predominantly agriculturists, who form 95 per cent. of the population and the Sikh community forms a predominent part among the agriculturists. We in company with other fellow agriculturists, both Hindus and Muslims, are governed not by a Brahmanical rule of law, but by an entirely secular set of laws. We are governed by customs, secular customs and they are different fundamentally from the proposed provisions of the Bill. Secondly, I said that Sikh opinion on this vital matter has not been consulted. I was dealing with the second point.

I have now looked into the matter and gone into the entire body of opinion circulated to us in the report of the Hindu Law Committee and I find to my dismay that not one authentic opinion on behalf of the Sikh community has agreed to this Bill. (*An hon. Member*. How authentic ?) There is an interruption asking how it is authentic. Perhaps many hon. Members in this House may not be aware that we have a statutory body for the Sikhs set up by law which votes according to the law made by the Government of India. There are 151 members who represent the entire community for the management of the *gurdwaras* and the administration of their religious laws. This body is known as the Shiromani Gurdwara Prabandhak Committee. Incidentally it may be taken in this House that this body is dominated by certain very very

* P.D., Vol. XV, Part II, 19th September 1951, pp. 2841-98.

†*Ibid.,* 19th September 1951, pp. 2841-48.

aggressive or communal Sikhs but it will be a surprise to the House to know that at present its president is no less than Sardar Nagoke, a staunch Congressman. The body is entirely dominated by Congressites. This body which is not aggressively communal and which has been set up by statutory law has expressed its emphatic opinion against the Bill. Nothing can be more representative than the opinion of the S.G.P.C., let alone the numerous conferences and gatherings of Sikhs which have expressed their opinion against it.

The Minister of Law (Dr. Ambedkar): Where ?

Sardar B. S. Man: Outside the House, I ask the Government to take one position. Either pass this Bill because you are sure that the majority of the Members here, who are representatives of their communities, want it or you think that the representatives of a particular community are so outmoded that they do not represent the real opinion outside the House, which wants the Bill. Stand on any of these two positions either inside or outside the House. We are six members here representing the Sikh community. (*An hon. Member*: You said seven yesterday.) The senvth is from U.P. Even if you are prepared to base your position upon his opinion I am prepared to risk it, though I have not consulted him because I know very well the opinion of the agriculturists and he is one of them. We six Members here represent P.E.P.S.U. and the Punjab. You cannot say that we all belong to the same party. Here are Ministerialists, there is an independent like Sardar Sochet Singh, people who are diametrically opposed to Congress party like Sardar Hukam Singh, who is an Akali leader and there is the Congressman Sardar Gurmukh Singh Musafir. I ask the Government on whose opinion you have derived the impression that the Sikhs want the Bill. I challenge that we are unanimously opposed to it. Do not force it on us just as you have not forced it down the throats of Christains. The Christians numerically are almost the same number as we in the Punjab. You have made an exception of the Christains but you are not prepared to make an exception of the Sikhs, As representatives in this House we do not want it. If you say that people outside want it, I ask the Law Minister and the Minister of State Mr. Tyagi, who is now a Government supporter, to produce a single opinion to show that we want it. (*Interruptions*)

The Minister of State for Finance (Shri Tyagi): *Indicated dissent.*

Sardar B. S. Man : I am sorry I reffered to Mr. Tyagi, as I thought that the interruption came from him, since I was opposing the Government and he was supporting it now.

Shri Tyagi: I am a widower and I have no interest either in marriage or divorce.

The Minister of States, Transport and Railways (Shri Gopalaswami) : Who knows ? You may yet improve !

Sardar B. S. Man : Many who are widowers here want the divorce system to be there because they hope to find their deliverance through it. However, Mr. Tyagi is an exception. In spite of the fact that he is a widower he is against divorce, rather an unusual phenomenon.

Sardar Sochet Singh (P.E.P.S.U.)**:** He may be interested in divorce in his neighbour's house.

Sardar B. S. Man : So, as I said, we were not consulted. Although, political opinions are very divergent on the Sikh community, the present Government is not listening either to the Congress Sikh, the Akali Sikh or the independent Sikh, nor even the Ministerialist Sikh. It is surprising how the Government has come to the wonderful conclusion that the Sikh opinion has been sufficiently agitated and consulted. After my speech yesterday, certain friends came to me and told me "Mr. Man, it is all right. We admit that your customs are different and that you were not consulted sufficiently. But why can we not legislate for you ? Because all along you have been a Hindu and you were governed by Hindu law," I shall come to that point of whether we have ever been governed by Hindu law, but as to the point whether we are Hindus, I should not like to repeat the argument here but I would like to mention something in that connection. I came across a pamphlet yesterday wherein it is said that if you go to a village and tell a Sikh, "You are a Hindu", the answer will be not in words but a slap on your face. I will not—I dare not— use that argument here.

Pandit Thakur Das Bhargava (Punjab)**:** How are the Sikh agriculturists differently placed from the Hindu agriculturists of Punjab ?

Sardar B. S. Man : I would have much liked to argue, and in fact I am actually basing all my arguments on that fact, that as an agriculturist I am in the company of Hindu agriculturists and the Musalman agriculturists. And my lawyer friend knows perfectly well that the Sikh agriculturist, along with the Hindu agriculturist and the Muslim agriculturist, is governed by a customary set of laws applicable uniformly to all. If I am using the word Sikh, it is due to the bane of this Bill. I would have liked to argue that the agriculturists of the Punjab

be absolved, but what shall I do when the Bill—in that respect a backward Bill, a communal Bill—legislates for Hindus, Sikhs, Jains etc. and talks in terms of communal groups and not in terms of secular groups ?

Pandit Thakur Das Bhargava : Is it not a fact that the Hindu non-agriculturists living in the villages follow the same customs as the Hindu agriculturists ?

Sardar B. S. Man : Yes. That is the beauty of our entire law in the Punjab. It is an advancement on other parts that we in the Punjab are governed by village communities and not by religious law. We are governed by land and we revolve round land laws, secular laws. Let me give a quotation to meet this interruption. I will quote from *Rattigan's Digest*. My whole point is that, so far as this law is concerned in its application to Punjab, it is not reformative : it is not progressive because it is too conservative, because it is too orthodox ; it is retrograde because it is communal—our law in the Punjab has gone much farther at least so far as secularism is concerned. In our village communities we have been governed by the same set and same pattern of laws ; Hindus, Muslims and Sikhs, agriculturists and non-agriculturists, were attached to the land all these ages ; they imbibed the wisdom of the ages and the spirit of the times and throughout they were governed by one set of laws. But Dr. Ambedkar comes out one fine morning with this Hindu Code Bill—perhaps he is jealous of us—and says, "I am going to cut across you and split you into two communal groups". Either you be a Hindu or you be a Mussalman ! That is the effect of it.

Shri Naziruddin Ahmad (West Bengal)**:** Rather, "give up all religions"!

Sardar B. S. Man : Now what does *Rattigan's Digest* say in this matter ? It says :

> "It had long been felt by those best acquired with the habits and customs of the rural population that neither the *Shara* nor the *Shastras* really exercised any direct influence among them."

Then:

> "The Hindu law extravagantly exalts the Brahman; it gives sacerdotal reasons for secular rules. In the Punjab, Hindus and Mussalmans converted from Hinduism may fear or feed the Brahman; but in civil affairs Punjab Customary Law ranks him with other men. It is essentially unsacerdotal, unsacramental, secular."

Mr. Deputy Speaker : Is not the *Shariat* now applicable to the Punjab ?

Sardar B. S. Man : I am splitting up the Punjab population into two distinct groups : one group comprises 95 per cent. of the population and the other remaining five per cent. The 95 per cent., and in fact even more, live in the villages and is attached to the land.....

Mr. Deputy Speaker : Was not *Shariat* passed in undivided India ?

Sardar B. S. Man : I shall come to the Punjab laws. There the custom is the primary rule of decision to the exclusion of *Shariat* as well as the Hindu Law,

Dr. Ambedkar : That has been overruled by the *Shariat* law.

Sardar B. S. Man : *Shariat* will fill in the gap when there is no customary law prevalent. It is quite distinct. I must refer to that later since I do not want my argument interrupted now. We have legislation—the Punjab Laws Act of 1872, clause 5—where it is distinctly laid down that in Punjab the first rule of decision will be the customary law and where there is no custom and a gap arises only then the Hindu law or the *Shariat* law will come in.

Shri R. C. Upadhyaya (Rajasthan) **:** Are the customs reduced to writing ?

Sardar B. S. Man : Not only, reduced to writing but compiled, listened to and decided—not for ten or fifteen years but for ages.

An Hon. Member : Is not your custom the same as Hindu custom ?

Sardar B. S. Man : What innocence ! If I were to prove to my friend here that my custom is entirely and fundamentally different from Hindu law, will he be prepared to make an exception ?

Pandit Thakur Das Bhargava : If a custom is reasonable. Dr. Ambedkar is bound to accept it (*Interruption*).

Sardar B. S. Man : The interruptions are many. Interruptor says that if I convince him he is bound to accept it. I do not know whether I can convince a person who is not willing to be convinced : Dr. Ambedkar says, even if he is convinced he will not accept it.

Now, let me give a quotation from *Mayne's Hindu Law* ; it has held the field for a fairly long time and is a fairly authoritative commentary. It says:

> "As regards the Village Communities, the Punjab and the adjoining districts are the region in which alone they flourish in their primitive rigour. This is the tract which the Aryans must have

first traversed on entering India. Yet it seems to have been there that Brahmanism most completely failed to take root ..... and the religious element has never entered into their secular law:"

If I have enjoyed emancipation from Manu for so long a time, will it not be a tyranny of the times if I have to submit now to a modern Manu ? If I have not been governed by Brahmanical rule and I have had secular law for a long time in Punjab, if I have not accepted Manu's religion, then let me assure the House that Punjab is not going to accept Ambedkarian religion henceforward, (*interruption*). Let me give credit to Manu that at least he was original in many respects, but my modern Manu—oh, what a fall has he had ! He is neither original nor progressive. (*Interruption*). You ask who is the modern Manu ? Well, I need not say.

Dr. Ambedkar : I am not a modern Manu.

Sardar B. S. Man : In Punjab we do not recognise communal groupst and the application of this law will, for the first time introduce the communal element there. I shall read to you from *Mayne's Hindu Law,* 9th Edition, Page 48, where it is said:

"The special interest of Punjab Customs arises from the fact that Brahmanism seems never to have succeeded in the Punjab. Accordingly, when we find a particular usage common to the Punjab and to Sanskrit law, we may infer that there is nothing necessarily Brahmanical in its origin. The Brahmans are not, in the Punjab, the depositaries of Customary law. To ascertain it, we must go to the Jirga, or Tribal Council, if there be one, or to the elders of the tribe.

Shri R. K. Chaudhari (Assam)**:** I am sorry to interrupt, but let us come straight to the point. Does the Hon. Member want monogamy or not ? That is the question.

Shri Tyagi: Why beat about the bush ?

Sardar B. S. Man : A false sense of security is being created in the House through the Press that Government want to proceed with only marriage and divorce. Has Dr. Ambedkar declared here difinitely that he is leaving out the other portions and he is only concerned with marriage and divorce ? I am discussing the applicability of this Code in its entirety. I proceed on the assumption that the other portions are not going to be dropped. I caution my friends. Once Government lull you into a sense of indifference and false feeling of security, they will proceed with the other portions.

Shri R. K. Chaudhari: Please answer my question. According to the customary law monogamy is allowed in Punjab. Are you in favour of continuing the monogamy law ?

Sardar B. S. Man : I shall discuss that threadbare, law by law.

Mr. Deputy Speaker : We are not going to take up other matters. I think, it was made suficiently clear by the Hon. the Prime Minister who stated that they would proceed only with marriage and divorce. If this is accepted, I hope the hon. Member will resume his seat.

Sardar Hukam Singh (Punjab)**:** If this clause is accepted at this stage, would it be again taken into consideration when the other Chapters come up ? Once it is made applicable, certainly the whole thing has to be thrashed out at this stage.

Mr. Deputy Speaker: If the Bill is confined to marriage and divorce and the other parts are brought in by a separate Bill, does the Hon. Member think that this clause will apply to everyone ?

Shrimati Durgabai (Madras)**:** What is the basis for the Hon. Member's statement that the most important Chapters relating to inheritance will be dropped ? What is the source of his information ?

Sardar B. S. Man : The hon. lady Member comes to my rescue for the first time. It is exactly because the other portions have not been dropped, I say that I am perfectly entitled to discuss the whole body of it.

Shri Bharati (Madras)**:** The Prime Minister and the Law Minister have already stated that due to factors of time etc. it is more than unlikely that the other Chapters would be taken up. Although it may not be a categorical assurance, for all practical purposes we may take it as the official decision. If we take the practical aspects of the matter, in all probability, I may even say 99 per cent. the other Chapters would not be taken up during the current session. It is just possible that we may take them up during February or March next, but during the current session it is absolutely impossible to take up other Chapters. It will be great fortune if we finish Chapter II. Therefore, I would request other members to co-operate. At least, let us pass this portion. I think it will be in the interests of the discussion if Dr. Ambedkar makes some kind of statement and gives, if not a categorical assurance at least some indication, that only the provisions relating to marriage and divorce would be passed during the current session.

Pandit M. B. Bhargava (Ajmer)**:** Has the hon. Member been briefed by the Government of India to take up this position ?