Mr. Deputy Speaker : Hon. Members are entitled to speak on both sides.

Dr. Deshmukh (Madhya Pradesh)**:** After all, clause 2 does not make any distinction between different portions of the Code as it has been placed before us. If my hon. friend does not say at the present stage all that he wants to say with respect to the other Chapters, he will be precluded from saying them later, because clause 2 is of general application to the whole Code and does not refer merely to marriage and divorce. Once clause 2 is accepted, it will apply to the whole Code and unless we have an amendment saying that it applies to marriage and divorce only—and no such amendment is before us from Government—I think the hon. Member cannot be stopped from bringing in other Chapters.

Shri J. R. Kapoor (Uttar Pradesh)**:** Even if clause 2 is passed in this form or an amended from, it will not preclude any one from saying at any subsequent stage that any particular portion or Chapter shall not be applicable to this section of the community or that. Take for instance the question of succession and inheritance. When that Chapter is taken up, it will certainly be open to us to add a clause to the effect that this part of the Code shall not be applicable to Sikhs or this or that community. The passing of clause 2 would leave the door open to discuss the matter later on and it may be advisable for all of us, if we are agreed on the marriage and divorce laws subject to such amendments as may be acceptable, to proceed with the Bill.

Mr. Deputy Speaker : I am in a fix. I thought I would be able to ask hon. Members to conclude the debate on this matter having regard to the statement by the Hon. the Prime Minister that the Chapter on marriage and divorce only will be taken up. He said so particularly. Now, if clause 2 is to apply to all the other Chapters I do not know how I can ask the hon. Members not to refer to them. That is my fear. I would like elucidation from the Hon. the Law Minister. Otherwise the scope will become wider and it would not be reasonable for me to say that the debate shall be concluded so early.

Dr. Ambedkar : The Hon. the Prime Minister stated the other day that the House will rise on the 6th.

Shri Naziruddin Ahmad : That is only provisional.

Dr. Ambedkar : Whatever it may be, it is there. I think I can say without giving away the position of the Government that it is quite clear that it would not be possible to proceed in this session beyond the

Chapter dealing with marriage and divorce. When we reach the end of that Chapter. I propose to move certain amendments to these two parts in order to make them self-contained and to attach to them certain Schedules which go with marriage and divorce. I think the House may well take it that that is the intention of Government so far as the present session is concerned. When, for instance, the other parts are taken up, no doubt any Law Minister who would be then piloting the Bill and the Draftsmen would see to it that those parts were also self contained and the same definition and rules as regards applicability will have to be repeated in the other parts when those parts are placed before the House. Obviously, the clauses dealing with applicability when they will be confined to this part would by no stretch of imagination be extended to the other parts unless they are repeated there. I think that any lawyer Member of this House should be able to understand that that would be the position, so that when the other parts come to be discussed it would be open to the House to see whether the same definition which is given now as to the territorial applicability of this part or the social applicability of this part should be the same as will be enacted so far as this part is concerned. It will be open to the House and also for the Government to see to it whether those parts should be made applicable universally in all parts of India, or whether they should be applicable to all communities, or whether any exception might be made. That is a matter which I think should be left to the future Government, the future Law Minister and the future Parliament.

10 A M

Shrimati Renuka Ray (West Bengal)**:** On a point of order, Sir, Clause 2 has been under discussion for three days in the previous session and three days now six days in all. Almost all the speeches on clause 2 have gone into the merits of the provisions of the whole Bill. I want to ask whether once the consideration stage is over, is it open on a discussion of a clause, to go into every detail of the Bill as it has been done during the debate on clause 2 ?

Shrimati Durgabai: May I seek a clarification. In the light of what the hon. the Law Minister has stated and also in the light of the fact that this House attaches considerable importance—the greatest importance—to the clauses relating to inheritence, because they are based on the principle of equality, is it the intention of Government to bring a separate Bill relating to those clauses in the next session of Parliament, if not during this session of Parliament ?

Dr. Ambedkar: I am afraid that is entirely outside my jurisdiction. It is a matter which I should leave to the Prime Minister to answer.

Shri Deshbandhu Gupta (Delhi)**:** In view of the statement that has been made by the Hon. the Law Minister, may I know whether it is also the intention of Government to change the title of the Bill, because it is no longer a Code ?

Dr. Ambedkar: When I reach clause 55, I shall move all the necessary amendments to make this an independent Bill and take it out of the Code.

The Prime Minister and Minister of External Affairs (Shri Jawaharlal Nehru): If I have gathered purport of the hon. Member's question, it was whether other parts of the Bill will be introduced in this session or in a subsequent session. So far as Government are concerned, we have often stated that we stand by the whole Bill. Our difficulty has been the difficulty of time, and we decided to proceed with Part II in this session and to pass it. That did not mean that we were giving up any other part and we would very much like to have the other parts passed too. But practically speaking, there is no chance of our doing that in the present session. Whenever we can avail of an opportunity we should like to take up the other parts.

Mr. Deputy Speaker : The Hon. the Prime Minister was not here when this point was raised. When Sardar Man was on his legs, he was referring to the other parts of the Bill inasmuch as they will be applicable to the Sikhs. At that stage, a point was raised as to whether the Hon. the Prime Minister has not already stated that this measure will now be confined to marriage and divorce and as such discussion should be confined to those two subjects. Having regard to the number of days that have been spent on this clause, I wanted to conclude the discussion on this today. The Hon. the Law Minister then said that it was intended to confine this Bill only to marriage and divorce and suitable amendments would be moved even with respect to the title. In regard to the other parts of the Bill it was said that a fresh Bill would be introduced which would also cover the applicability of this Bill to the territories or communities. A further question was asked as to when that Bill would be introduced, to which the Hon. the Law Minister replied that the Prime Minister alone must answer that question. That is why I was a little doubtful if the Prime Minister has been apprised of the discussion that took place here.

Dr. Ambedkar: I perhaps forgot to say that after clause 55 is reached, I shall not only introduce suitable amendments with the object of making that particular part self-contained, but I shall also move a motion that this Bill, so to say as amended, be passed independently of the other parts.

With regard to the other question, I have looked into the Rules of Procedure. There will be two courses open. One course that will be open to me would be to move that the other clauses be put and negatived, so that Government will be free to bring them together in a separate code or separate part or separate Bill and move them whenever they want. The other course permissible—subject to your ruling—under the Rules of Procedure would be to let those parts stand. I find from the rules that there is nothing to prevent this Parliament from taking out a particular part or a particular portion from a whole Bill that has been before it and to treat it as an independent Bill and pass it. That is a matter which I am prepared to leave to you and to the House. Our present intention is to stop with clause 55 and certain relevant Schedules. I think that makes the position clear.

Shri Jawaharlal Nehru : My hon. colleague has made the position quite clear. I entirely agree with him. We are for the present going to confine ourselves to Part II and complete it as a whole, apart from the rest. Then it depends on various possibilities, as to how best to deal with the rest of the Bill. But this ought to be kept separate.

May I also qualify, or amend, a statement which I made about the length of this session. I said that we would like it to end on the 6th October. As I see the debate proceeding, there is no chance of its ending on the 6th October. So, it will have to go on till we finish important work.

Shri Deshbandhu Gupta : May I seek a clarification ? The Hon. the Law Minister has made it quite clear that this will be a self-contained Bill dealing with monogamy, marriage and divorce. If that is so and the subsequent Bills will also be self-contained Bills, then the question of Hindu Code as such does not arise. Therefore, there will be different Bills and codification will have to follow later on, if necessary. Therefore we are not proceeding with the Bill as it is. We are only proceeding with the different heads of the Bill and at the moment we are only concerned with these three things.

Shri Ramalingam Chettiar (Madras) **:** There are several provinces which have already got laws on monogamy and divorce.

Probably they are better, though the provisions that we are going to agree here is a compromise. We are having this compromise simply because we are going to have a Code. In case the present law is going to be confined to marriage and divorce, why not leave those laws which are passed by the different provinces alone and leave it to the people of those provinces to choose. This is an important issue which you have to consider.

Pandit Malaviya (Uttar Pradesh)**:** May I suggest to the Hon. the Law Minister whether it will not help if he did that at this stage rather than wait till the end ?

Dr. Ambedkar : I do not see any reason for doubting the motives of Government. I have said, and we propose to stand by what we have said.

Pandit Malaviya : I am surprised that he should think that there is any doubt of his motives in what I said. I asked, will it not help if he did it at this stage, because if that is the thing which we are considering, it might become a slightly different situation for some of us.

Dr. Ambedkar : Take it that it will be so.

Pandit Malaviya: When we are in Parliament legislating, it is difficult to take things unless they are done. I simply asked, will it therefore not help if it is done now.

Mr. Deputy Speaker : The Hon. the Law Minister has made the intention of the Government clear. My only difficulty is this—I am not asking him to do it immediately—but when once we pass clause 2 and take up clause 55 I have got a doubt technically as to whether we can modify clause 2 then, at that stage.

Dr. Ambedkar: At the time when you put this clause 2, I want to make a reservation that I reserve to myself the necessary liberty of making certain consequential amendments to clause 2.

Some Hon. Members : No, no. How can it be ?

Dr. Ambedkar: That is perfectly possible.

Pandit Malaviya : That is authoritarian and not parliamentary !

Mr. Deputy Speaker: There is nothing unparliamentary. The Hon. the Law Minister has been extremely reasonable. There is no good losing one's reason or making recriminations. It does not contribute to the coolness of the atmosphere that must prevail here. I understand the Law Minister. He has no mental reservations. He wanted to bring it by way of amendment to clause 55. Then I thought

within myself that at that stage it may be a bit too late. He has suggested an alternative that on clause 2 he will make a reservation to move the necessary consequential amendments. Even there I have a difficulty. I shall no doubt conclude the debate on this clause with that background that this clause, that is clause 2, will apply only to marriage and divorce. But I shall withhold putting it to the House. I shall conclude the entire debate and take it over after the Chapter is concluded. Now, in view of what has been said, hon. Members must be prepared to conclude the debate today.

Sardar B. S. Man : He need not dilate upon the other matters.

Shrimati Durgabai: Now that one hon. Member has stated that certain State Legislatures have passed monogamy Acts, may I point out that only three States—Madras, Bombay and Baroda—have passed such Acts. In view of the fact that there is a lot of confusion being resulted on account of all the State Legislatures not passing the laws and on account of differring High Court judgments, it is highly necessary that there should be a Central law on monogamy and divorce so that it will be applicable to all States whether they wish it or not. Therefore, hon. Members may facilitate the discussion and passing of the Bill upto clause 55.

Mr. Deputy Speaker : Now that the scope of the discussion has been narrowed down let us pass it as expeditiously as possible and avoid, if possible, even sitting during Dusehra.

Shri Jawaharlal Nehru: May I suggest, Sir, that we sit on next Saturday ?

Mr. Deputy Speaker: I was not referring to that.

Shri Jawaharlal Nehru : I know, Sir, I was merely suggesting about next Saturday.

Mr. Deputy Speaker: That can always be done. But let us pass this as early as possible and not sit beyond 6th October, if it is possible to avoid it.

Pandit Malaviya: Even if it is necessary to sit beyond 6th October, I hope we do not sit during Dusehra but sit afterwards.

Mr. Deputy Speaker: That is accepted. We will not sit on any public holiday.

Sardar B. S. Man : Frankly speaking I am not able to understand completely.....

Mr. Deputy Speaker: May I suggest that in discussing clause 2 the relevant merits of all the clauses that follow need not be referred

to. References here and there are enough. I therefore wish to draw the attention of the hon. Member who is on his legs and also other Members that while the applications of those other clauses may be generally indicated here and there, matters as to how they ought to be or ought not to be and how they ought to be modified and so on may all be taken up when we come to the other clauses.

Shri Sarwate (Madhya Bharat)**:** In case we are to postpone the final passing of this clause, would it not be better that all discussion on this clause be withheld to a later stage ?

Mr. Deputy Speaker: We have already spent a sufficient time over this clause, hon. Members may now take it definitely that it is the view of the Government as stated by the Hon. the Law Minister that the effect of this clause will be confined only to marriage and divorce. On that footing it is open to hon. Members to say where it should or should not apply—to Sikhs or Buddhists or Hindus or to certain territories etc. The discussion will be confined to that extent only and not extend to other things.

Pandit Malaviya : May I suggest for the consideration of the Hon. the Law Minister one procedure ? We may finish this discussion on clause 2 today. But after the discussion has taken place, instead of putting it to the House, we may leave it over. There may be no more discussion on it. I am only making a constructive suggestion.

Mr. Deputy Speaker : I have said so already. I will conclude the discussion and call upon the Law Minister at one o'clock.

Shri Syamnandan Sahaya (Bihar)**:** If clause 2 will apply only to marriage and divorce, what will apply to the other clauses ? What about the other clauses of the Code ? What will be the application clause ?

Mr. Deputy Speaker : All the other clauses also will be suitably modified. When they are taken up submissions may be made.

Shri Syamnandan Sahaya : Are there to be two application clauses in the same Bill?

Mr. Deputy Speaker : Hon. Members were either not here or were not hearing properly……

Shri Sarwate : I request one point to be made clear. We have tabled certain amendments. The amendments depend upon the scope of clause 2. So we may be allowed to move those amendments or take up those amendments later on.

Mr. Speaker : All the amendments are being discussed now. I am not going to allow any other amendments. Those amendments together with the clause, including the amendments moved by the Hon. the Law Minister, have been discussed. We have reached a stage. If in pursuance of all the other clauses that are taken up and adopted, we go back to clause 2 and any incidental amendments have to be made to clause 2, the discussion will be confined only to incidental, auxiliary and consequential amendments. Today we may take it that this must be over.

Shri R. K. Chaudhari: I want to have my doubts cleared on this point. I understand that clause 2 will apply only in cases of marriage and divorce. I want to know that when the inheritance chapter comes up will there be a saving clause in that and should it not apply to the rest ? This is not to apply to all but only to those who want to be governed. Will there be such a saving clause in that part ?

Mr. Deputy Speaker : For the time being the Hon Minister and that this Code was confined to marriage and divorce and all the other general clauses also would be suitably changed. As to what will happen when another Law Minister or this Law Minister will introduce at that time, it is a matter of conjecture and it is too early to predict what will happen.

Shri R. K. Chaudhari: How can you allow this clause to be passed ; possibly it will be like the Damocle's sword hanging over us.

Mr, Deputy Speaker : Another clause will be introduced, a similar clause with suitable amendments and then the hon. Member can continue to speak as vigorously if not more vigorously. Let us not spend any more time on this.

Shri J. R. Kapoor : May I therefore, submit that as you are anxious to close the discussion at one o'clock today, the discussion may now start on the amendments rather than on the general aspects ; otherwise, we shall have hardly any time to deal with specific amendments which really matter so far as clause 2 is concerned.

Mr. Deputy Speaker : There will be discussion both on the clause and the specific amendments. I am not going to allow any hon. Member merely because he has tabled an amendment just to go on speaking here.

Shri Bhatt (Bombay)**:** Sir, what has been decided today and what you have conveyed to the House, is that Clause 2 will not be put to

the vote of the House today. I would, therefore, like to know whether any hope is left for us to move our other amendments in view of the stand taken by the Hon. Minister of Law today. Now he wants to enact the Marriage and Divorce Law separately. Will it be in order in this connection to table any amendment, as suggested by me previously, to the effect that the Law should be made applicable to the whole of India and would you permit it to be moved ?

Dr. Ambedkar: You have already tabled an amendment to that effect.

Shri Bhatt: The amendment tabled by me is not on the lines of a similar amendment that was moved in connection with the Sarda Act.

Mr. Deputy Speaker : There is no good asking the Hon. Minister whether he wants it to be applied to every individual in this country and every part of this country. Amendments have already been tabled. Those amendments will be put to the vote of the House and if the vote decides against the Law Minister, he will gladly accept it. Therefore, there is no question of any further amendment regarding territorial restriction or restriction regarding communities. They are all before the House and I am not going to put them to vote today. I will put them later on. It is for the House to accept or reject so far as that matter is concerned.

Pandit Maitra (West Bengal)**:** The Hon. Law Minister says he has not agreed. He says "I will not gladly accept".

Dr. Ambedkar : I said gladly I will not accept.

Shri Radhelal Vyas (Madhya Bharat) **:** On a point of order. May I know, as the debate on clause 2 will conclude today and also the Hon. Law Minister is replying, whether later on any amendment would be allowed to be moved to clause 2 at that stage ?

Mr. Deputy Speaker: Hon. Members are unnecessarily raising points of order. It is not for the hon. Minister to accept or reject an amendment. Consequential amendments, if found in order, will certainly be moved and allowed by the House. Secondly, the discussion on the amendments on clause 2 tabled today will conclude. If any new amendments come in as consequential to the clause that we are now going to pass, they will be placed before the House.

Such consequential amendments to clause 2 will necessarily be made either by the Law Minister or by any hon. Member and then

discussion on the consequential amendments will follow and the original clause with the consequential amendments will all then be put to vote and ultimately accepted or rejected.

Shri Ramlingam Chettiar : I do not know what a consequential amendment is.

Pandit Thakur Das Bhargava : I ask whether it is fair to discuss only divorce and marriage. Is this procedure adopted in any House in the world that we should discuss only divorce and marriage, without knowing the implications and the rights and duties of the husband and wife or how they will succeed each other ? I think this will be extremely disingenuous and the real context of cognate matters will be missed.

Pandit Maitra : Sir, you just now ruled that only consequential amendments will be allowed to be moved but how could you know what is the consequence unless the amendments are put to vote and are either carried or rejected. Then we will be in a position to know what may be the consequential amendments. Therefore, this requires clarification. One cannot move a consequential amendment at a certain stage unless he knows the consequence after the amendments that have been tabled have been rejected or accepted. Unless one knows which particular amendment has been accepted or rejected, the question of a consequential change cannot arise. It is only when one knows the implications of a particular motion or amendment being accepted or rejected that the question of putting any consequential amendment would arise.

Shrimati Renuka Ray : Cannot the discussion, as to what is consequential and what is not, be allowed to be taken up afterwards ? That may take another six days.

Mr. Deputy Speaker: As I stated, subject to what the Hon. Law Minister may say—and I would like to have information—hon Members are anxious to know beforehand, whether any particular communities are going to be excluded and whether any particular territories are to be excluded—whether they have to be applied in part or wholly at one stretch etc. These are the subject matter of various amendments. This will apply not only to marriage and divorce but all the other things also. But there is nothing peculiar in this which cannot be applied as it is into marriage and divorce. As has been suggested by the Hon. Law Minister, he does not pursue the other matters. Only for the words "Hindu Code", he might say that this is an amendment to that extent.....

Dr. Ambedkar: I will say "an Act".

Mr. Deputy Speaker : "The marriage and divorce Act" instead of the word "Code". What I feel that this must be put to the vote of the House. As soon as the Hon. Law Minister finishes his speech, I shall put it straightway to the vote of the House.

Shri Ramalingam Chettiar : *Rose*—

Mr. Deputy Speaker : The hon. Member's issue has already been answered. Any hon. Member, who thinks that there are more progressive laws in the States, can table certain amendments to this clause when we come to the clause by clause stage and thus bring it into line with those State laws. The hon. Member has stated that there are such pieces of legislation in three States and for the sake of uniformity, there must be a central legislation, particularly in view of the fact that this is a Concurrent subject. It is not a difficulty which is insurmountable.

Shri Ramalingam Chettiar: It is insurmountable.

Mr. Deputy Speaker : The Hon. Law Minister does not yield on that point.

Shri Ramalingam Chettiar: I ought to be allowed to move an amendment.

Mr. Deputy Speaker: He has had an opportunity to move it. I am not going to allow any further amendments to be moved. What prevented him from moving this particular amendment before ? When the time comes, let me decide upon this amendment. We will assume that the clauses, inheritance etc. were before the House and we went on from day to day. This House may not wait until he chooses to bring this Bill in line with the State Legislatures. It is an unreasonable demand on the part of the hon. Member. Now so far as clause 2 is concerned this clause will apply to any part. With regard to the other parts, we will confine them only to those parts and not proceed with the other parts. For the purpose of clarification. I will not allow discussion to go on at length and on certain imaginary things which may not be placed before this House. We want to cut short the discussion and the Hon. Minister made that statement and has explained that the consequential amendment will only relate to the nomenclature of this Code. I will put it when we come to clause 55 and even if that is passed in the third reading, we can have it. At one stretch I will allow the discussion and then the Hon. Law Minister

will reply. Then I will put all the amendments to the vote of the House so that there may be no difficulty as to whom it applies or whether they should take any further proceedings etc.

Dr. Ambedkar : I just heard that you would call upon me at one o'clock. But I thought that there is some other business at one o'clock. Perhaps you might give me a minute to start.

Shri R. K. Chaudhari : We must know the consequences of marriage and divorce; that is one thing. Then, Sir, you are willing to allow us discuss, about marriage and divorce and all that without knowing what the effect of the marriage would be, whether the issues of the marriage will get inheritance in this way or that way. That will put at a great disadvantage. I am going to contract a marriage and yet I do not know what the consequences are.....

Shri Syamnandan Sahaya : We are opposed to it.

Shri Deshbandhu Gupta : Are we to take it that the hon. Member is unaware of the consequences of marriage and divorce at this age ?

Shri R. K. Chaudhari : I take exception to this. Sir, I was pointing out.....

Mr. Deputy Speaker : In all serious matters, the hon. Member has got a knack of introducing a good feeling of humour. To that extent he has relieved the tension. The hon. Member knows too well that he is directly responsible for all the acts that he commits whether on account of conjugal felicity or otherwise. Now, Sardar Man.

***Sardar B. S. Man :** You will sympathise with me, Sir, being a junior Member, for this interruption for so long a time.

Mr. Deputy Speaker : The hon. Member may confine himself to the amendment whether this Bill ought to apply or not. He has already said enough.

Sardar B. S. Man : A little allowance due to a junior Member may be allowed to me, Sir. I am exactly in doubt as to what the intention of the Government is. There have been threats of certain reservations, mental reservations regarding moving certain amendments; then there was the explanation by the Prime Minister that they are not proceeding with the Bill except for these two parts because of lack of time. If, incidentally, the House is in a mood to finish it tomorrow, the same position will be there because there will be time to proceed with the

* P.D., Vol. XV, Part II, 19th September 1951, pp. 2861-72.

rest of the Bill. It was a categorical question whether the Government proposed to drop the rest of the Bill, not in this session ; but whether the present Government is dropping the other portions, now or hereafter. These assurances are of little comfort to me that up to the 6th of October this will not be taken, or that it may not be taken in the present session or it may not be taken for lack of time. This sort of argument is no good.

Mr. Deputy Speaker : I may clear the ground. I take the statement of the Hon. Law Minister, the sponsor of the Bill, as the authoritative opinion of the Government. On the footing that they will confine this Bill to marriage and divorce, the hon. Members may go on. That is how I have understood. If there is anything wrong. I may be corrected.

Sardar B. S. Man : I was attaching equal importance to the Prime Minister's statement also. I shall confine myself to my amendment that the Sikhs should be absolved from the operation of this Bill.

The fact is that a certain erroneous impression has gained ground that the Sikhs are firstly, Hindus, and secondly, that they have been governed for a very long time by the Hindu Law. My case is that if I proved that the Sikhs were not Hindus and they were not governed to any appreciable extent by the Hindu Law, then, the Sikhs may be permitted to be out of the orbit of this Bill. In that point, I was interrupted again and again and asked how their law differed from the main body of the law. That was my difficulty. I had to prove that the entire mental structure of a Sikh agriculturist in the Punjab, in company with the Hindus and Muslims, was entirely different and the pattern of the present law is entirely different.

Shri Bharati: So far as marriage is concerned ?

Sardar B. S. Man : Even so far as marriage is concerned. Just wait.

Shri Bharati: That is more important.

Sardar B. S. Man : Let me quote Sir Charles Roe from his *Tribal Laws in the Punjab*. This has been cited with approbation by Sir William Clarke, Chief Justice in 55 *Punjab Record* 1903 Full Bench.

He says :

"The Hindu agriculturist of the Punjab..."

The Hindu agriculturist follows the same law as the Sikh agriculturists.

"...knows nothing of caste except as represented..."

Now, Sir, certain prohibited degrees are being introduced in the marriage laws. I have to point out that my law as regards marriage's

is different and more liberal than the present Hindu Code Bill. In fact, I do not know, after all the present assurances that only 55 clauses will be finished whether it will be a Hindu Code or not, or what Code it will be. You are asking me to speak upon a Bill even whose name I do not know or whose operation I do not know. Anyway, I shall be guessing that it will be a Civil Code or it will be a Marriage Act or some such thing and the word "Hindu" shall drop out. He says :

> "The Hindu agriculturist of the Punjab knows nothing of caste except as represented by his tribe. No doubt, he respects the Brahman and calls him and feeds him on occasions of rejoicing or sorrow, but he would never dream of referring to him or to the Hindu Law for guidance in his daily life. If he has ever heared of the Dharmashastra at all, which is very improbable, he has only done so as a Spanish peasant may have heard of the Bible, he knows nothing whatever of its contents or principles, nor could the Brahman himself enlighten him...The Hindu law cannot be applied to the Hindu tribes, because they have never in fact followed or even heard of it and it is framed for a different state of society."

Mr. Deputy Speaker: Extracts from books should be small ; it ought not to be reading whole books, chapter and verse.

Sardar B. S. Man : The quotation was very long ; I have cut it short.

I have read it only from the beginning and from the end. My difficulty is this. While I am forced to cite the law...

Mr. Deputy Speaker: What is the book ?

Sardar B. S. Man : The book I am quoting from is Rustomji's *Customary law of the Punjab*. This quotation relates to a decided case law in 55 *Punjab Record* 1903 Full Bench.

I have to cite this law because in his previous speech the Hon. Dr. Ambedkar himself quoted a Privy Council decision showing that for a long time Sikhs have been governed by the Hindu Law. I am perfectly entitled today to remove that erroneous impression and show that we are not governed by the Hindu Law. As the position stands today, we are governed by a different set of laws. He relies upon his decisions. I rely upon my decisions. Hence the necessity to take some time of the House. I do realise your anxiety to finish this earlier. But Sir, this is the first time that an amendment has been moved that the Sikhs be absolved from the operation of this Bill and in view of the vital importance of this matter to the Sikh community, I may be permitted to digress a little.

Mr. Deputy Speaker : Now that this Bill is confined to marriage and divorce, the hon. Member may show how far this is retrograde or inconsistent with his law and what is the harm in adopting this.

Sardar B. S. Man : I am quoting exactly those laws which relate to marriage and divorce here. By the present law, certain prohibited degrees are sought to be introduced. I am proving that the prohibited degrees now sought to be introduced have never applied during the history of the Sikhs.

Mr. Deputy Speaker : Cannot that be an exception ? As in the case of customs in the south allowing the marriage of maternal uncle's daughter, which have been validated, any deviation from the generally prohibited degrees will also be put in as an exception.

Sardar B. S. Man: Exactly, Sir, you are coming to my rescue. If the Hon. Law Minister says that so far as marriage customs are concerned, they will respect the customs of the Punjab or the customs of the Sikhs, I will have no quarrel ; I shall sit down.

Shri Bharati: May I draw his attention to part (5) of cause 7 where it is provided, "unless the custom or usage governing each of them permits of a sacramental marriage between the two". Custom is a local thing and that has overriding effect. We have already provided for all that, not only for south India. Where the custom provides for such a thing, it is straightway concerned.

Pandit Thakur Das Bhargava : But what he wants is that all the things incidental to marriage should also be governed by custom. That is what he is pointing out.

Shri Bharati : But he was speaking about prohibitive degrees and I pointed out that the necessary provisions are already there for these exceptions.

Mr. Deputy Speaker: No law says that a sister can marry a brother. There are prohibitive degrees accepted by courts and if there are other cases or other degrees, whether they come under clause 5 or clause 7 or any other clause, suitable amendments can be suggested and the matter discussed.

Sardar B. S. Man : My point is, since exceptions are made in the case of Muslims and Christians because their personal law is entirely different, why should we, though we are numerically small, not have the same...

Mr. Deputy Speaker : The hon. Member need not repeat his arguments over and over again. He has already stated that just like the Muslims, the Sikhs too should be excluded.

Sardar B. S. Man : Sir, may I seek the help of and invoke the good convention that is here in the House that whenever a law concerning the religious institutions of personal law of persons is concerned, the members of that community should be consulted and that their opinion should weigh ? I am invoking that convention. Will not that convention be made applicable to us here ? If that is made applicable, then the whole trouble will cease and I shall sit down. My argument is, if today you pass this law with the help of the majority in the House—may I be permitted to add—the Hindu majority of the House, because for the first time such terms as communities—Hindus and Sikhs—are being used in this debate and that is the primary bane of this law...

Dr. M. M. Das (West Bengal)**:** On a point of information, Sir.....

Sardar B. S. Man : Is it a point of order, Sir ? Otherwise I am not yielding.

Dr. M. M. Das: Is the hon. Member speaking on behalf of the Sikhs of the Punjab or on behalf of everyone in the Punjab ?

Mr. Deputy Speaker : The Member is not yielding. I will not permit any more interruptions.

Sardar B. S. Man : The difficulty is, hon. Members who are not .well acquainted with the law go on interrupting without understanding my point. As I was saying, that was a good convention and.....

Mr. Deputy Speaker : That point has already been stressed by the hon. Member, that against the will of the community no personal law should be touched. That point will be considered by the House. The hon. Member may go to his next point.

Sardar B. S. Man: Then coming to the marriage laws, here the present set of laws are very rigid. I may be permitted to quote here from no less an authority than my colleague here, Dr. Tek Chand, who has been a distinguished Judge. He has dealt with this point in his own lucid and clear fashion. And let me also add, that this quotation is from one who is not a Sikh himself, nor an agriculturist—a non-agriculturist—but one who is well acquainted with laws and with the Sikh laws and the customs and practices in the Punjab. Well, this is what he says :

> "It is well-known that *Jats,* specially Sikh *Jats* hold very liberal views on questions relating to marriage, and even at the height of the Brahmanical supremacy, they did not show much inclination to

be bound by the cast-iron rules laid down in the later Hindu *Smritis* interdicting marriage outside the caste, and prescribing elaborate ritual for the performance of the marriage ceremony. Among them *(Jats),* the re-marriage of widows has all along existed commonly, and *chadar-andazi* in which the ceremonial has been reduced to the very minimum is one of the recognised forms of marriage."

And this is the view held by a learned Judge who was also a member of the Select Committee, and he has attached a minute of dissent on exactly this same point and on these same lines, that if you were to agree to only prescribed forms of marriages which are not sought to be introduced in this Hindu Code Bill, then you will be taking away from its orbit many forms of marriages which are customary and prevalent among the Sikhs in the Punjab. There is the *Kareva* marriage which is not a sacramental marriage. That is common in the Punjab.

Dr. Ambedkar : What marriage ?

Sardar B. S. Man : *Kareva* marriage, where the man and the woman, without calling anyone, with no priest, learned or otherwise, without going through any ritual, without going round the *Granth Saheb* or the fire, simply sit together and have a *chadar* thrown over them and that constitutes the marriage. *Chadar-andazi* also means the same thing.

Shri Amolakh Chand (Uttar Pradesh)**:** Is it a *dharmic* marriage ?

Sardar B. S. Man : No, for the definition of *dharma* changes from time to time. Manu had his definition of *dharma* and there is another definition of *dharma* by Dr. Ambedkar. In this rapidly changing definition of *dharma,* I would rather not seek protection under such a *dharma,* but stick to my secular law which is quite clear to me and which I have been practising for long.

Shri Amolakh Chand : Are the children legitimate ?

Sardar B. S. Man : Quite.

I am conscious of the retort of Dr. Ambedkar that he made in his speech last time. He says that when the people of the Punjab talk of marriage, they talk of many other things which……

Mr. Deputy Speaker : I may point out that clause 8 and other clauses or forms of marriage are not necessarily applicable to the hon. Member. The Sikh community may have customs that bring about the relationship of marriage and these alone will be necessary. Why should we labour that point any further ?

Sardar B. S. Man : My difficulty is, reading his last speech. I find that Dr. Ambedkar has said that *Kareva* marriages will not be permitted.

Then there is clause 8 about other rituals. I may give yet another case where there is neither this *Kareva* marriage nor a sacramental one, but which is still in practice.

Mr. Deputy Speaker : Whatever may be the form of the marriage—may be the covering by a cloth and all that, that is not prevented here.

Sardar B. S. Man : If you will kindly permit me. Sir, I will make my point clear. In this form of marriage, they do not go through any ritual, nor even the flimsy ceremony of putting a *chadar*. If the man and woman have lived long enough in the village as to lead the village community to believe that they are husband and wife, irrespective of the fact that there was no ceremony, they should be taken as married husband and wife. There have been judicial decisions to this effect.

Mr. Deputy Speaker : Even for that there is a presumption under the Evidence Act.

Sardar B. S. Man : No, Sir. I beg to differ from you. Sir, on that legal point. They will not recognise it, if such a marriage does not come either under the definition of sacramental marriage or any other rites and rituals. The emphasis there is upon customary rites. One must have certain rites.

Mr. Deputy Speaker : How long should they live together?

Sardar B. S. Man : There is a decided case. Again, Dr. Tek Chand says :

> "Indeed, the *Rivaj-e-ams* of the districts and the records of the cases decided judicially are full of instances in which mere cohabitation as man and wife for a long period without any strict matrimonial ceremony, has been considered sufficient to validate the marriage."

That is the state of the law in the Punjab. As regards these marriages where the man and woman have lived together for a long time…….

Mr. Deputy Speaker: What is the length of the time ?

Sardar B. S. Man : In cases it was decided as seven years, in certain others as 20 and there are cases where it was decided as four or five years also. The validity of the marriage is judged by their day-to-day conduct in village community and not by certain ceremonies. But this form of marriage is not recognised by Dr. Ambedkar. He says "I will not permit this sort of immorality". He calls it "marriages

made easy". It may be easy for me but I am not going to respect certain empty rituals. The sanctity of a marriage must be the attachment of the parties to it and their mutual conduct. It is immaterial whether certain rituals have been performed or not.

Rev. D'Souza (Madras)**:** On a point of information, may I know whether in those cases the conditions requisite to validate the marriage were there or whether the mere fact of cohabitation was recognised, even if there was a previous marriage of one of the parties ?

Sardar B. S. Man : I shall come to that later. I am only talking about forms of marriage.

Mr. Deputy Speaker : The hon. Member has not appreciated the position. The point is when a marriage is presumed, there must be conditions regarding propinquity or that it does not contravene prohibited degrees or that the woman is not already a married woman. Is it an instance of a married woman living with another man who becomes her husband ? All the pre-requisities of marriage must be there : mere cohabitation is not enough.

Sardar B. S. Man : Under the general law, if the other conditions are not there the courts will interfere. That is not within the scope of this Bill.

Mr. Deputy Speaker : This refers to forms of marriage. Even the simple marriage where the bride and bridegroom sit together and a cloth is thrown over them is covered by this Bill and it is allowed. Even if that cloth is thrown away in the ceremony it is allowed. I do not know whether the hon. Member wants to press the proposition that a marriage should be valid whatever might be the degree of prohibition.

Sardar B. S. Man : If a certain custom is barbaric or against public conscience or public morality, I will not for one moment accept that custom. You are giving two forms of marriage, *dharmic* and civil. I am giving you instances of other forms of marriage. You have been kind enough in your interpretation to say that *Kareva* marriages will be included. But undoubtedly certain rituals or rites are involved. I consulted others about marriages where there is no ceremony at all and where the man and woman merely live together long as husband and wife. The question was whether she was already a married woman and her husband was alive. Even if the husband was alive, the fact of seperation was there and if she was still the wife of another man, then it would be an offence punishable under the ordinary law. The

question is about marriages which are presumed to be valid even when there are no ceremonies nor rituals but a prohibition is sought to be introduced in that regard here. In the Punjab people do marry cousins.

Mr. Deputy Speaker: This does not abrogate the provisions of the Evidence Act and this is not inconsistent with that clause of the Act, namely that a man and woman living together was sufficient proof of marriage.

Sardar B. S. Man : After the promulgation of this law, doubts will be expressed by the courts about the validity of such marriges and the only relief given is that the marriage shall be registered. If the Law Minister says that even such marriages, which were not performed strictly but by virtue of the parties living together for a long period and their mutual conduct, they will be considered as husband and wife and will not be forced to go to a registrar to register their marriage, then my apprehensions will be removed.

Shri Tyagi: Both the parties must be willing.

Sardar B. S. Man : Of course, you must have a willing wife and husband. *(Interruption*) My friend Prof. Yashwant Rai asks whether such cases are very common among the *Jat* sikhs. They are common among them along with the Scheduled Castes and specially his own particular caste in the Punjab.

The idea of the present Bill is codification. Codification presupposes the existence of certain laws. If we are honest and want to proceed with the codification, the existing laws should be included there. But this codification under the present Bill is not only a codification of existing laws but so far as the Sikhs and the agriculturists of the Punjab are concerned it is an exclusion of their laws (*An Hon. Member:* Modification) or modification to such an extent that the original is completely lost that it is altogether alien and in many respects obnoxious to us and is thrust down our throats.

Voltaire said :

> "That the more vast a State is in size and composed of different peoples, the more difficult it becomes to unite all together by one and the same jurisprudence."

Only two days ago, the Prime Minister replying to a question why there was no national dress in India said that in a vast country which stretches from the borders of Central Asia to Kanya Kumari in the south, different people are used to different customs

11 A.M.