

and it is very difficult to have one national dress. What applies to physical clothes applies equally to legal clothes—legal clothes which are sought to be tailored by Dr. Ambedkar. When a similar attempt was made before, considering the inadvisability of such a thing, it was given up. The Punjab Laws Act has almost been a Bible for us, incorporating the principle of customary laws : the present form of the law which rules and holds the field is section 5 of the Act. Mind you, for so long a time as from 1872 we had had this law in operation and now suddenly at the fag end of the session, when we have not even comprehended the exact consequences of this not very revolutionary, but a completely novel and retrograde law, we are called upon to accept it. I for one have failed to comprehend it because my structure of society has been built upon pretty good customs which have held the field for so long, in regard to succession, property of females, marriage, divorce, dowry and so on. It contains every conceivable item of legislation. It says:

“Any custom applicable to the parties concerned, which is not contrary to justice, equity or good conscience and has not been by this or any other enactment altered or abolished, and has not been declared to be void by any competent authority shall be the customary law.”

When on that occasion such an attempt was being made, another person as intelligent as Dr. Ambedkar, Sir George Campbell, who was then in charge of Law, made these observations which are applicable even today. The bill sought to lay down that Hindu Law and Muslim Law should be applicable to the parties concerned. The amendment was successfully introduced and hence the present law, that is section 5 of the 1872, Act based on that amendment, namely that the Hindu Law or the Muslim Law will be applied only in the absence of customs. Sir George Campbell said:

“If the Council would accept the amendment of which he had given notice, it was his impression that a great part of the objections to the Bill would be removed..... If enacted that the Muhammadan Law in cases, where the parties were Muhammadans and the Hindu Law in cases where the parties were Hindus, should form the rule of decision, except where the law had been altered, or abolished by legislative enactment, or was opposed to the provisions of the Act. He was quite willing to admit that certain simple rules, excepted from the Hindu and Muhammadan Law had

to a certain extent had force in the Punjab ; but it appeared to him that a section of this kind would import into the Punjab, not the simple law of the Province but the whole of the complications of the written Hindu and Muhammadan Laws and the whole of the voluminous case law comprehended in the decisions of the Courts all over the country. That he regarded with the gravest apprehension. He should so regard it, not only because it would open a wide door for lawyers, but because it was not the law of the Punjab. Not one out of ten—perhaps not one out of a hundred persons in the Punjab was governed by the strict provisions of the Hindu and Muhammadan Law.”

An attempt was made then also to codify but may I say that codification makes the law rigid whereas custom is not rigid ? Codification and legal enactments come from the top whereas customs represent the living conditions and the wisdom of the community. Customary law owes its development and its strength to the fact that it comes from the community down below and grows upwards ; it is not reactionary as enacted law is, which restricts growth. Whereas the enacted law restricts growth, the customary law imbibes the best points and the practicability of the situation.

I will finish by saying that those who believe in the present sort of codification should be alive to the dangers of such a thing, the effect of which is always to hinder the development, independence of judgment and independence of will of the communities, which vary according to the varying needs and the spirit of the people. I say, with all due respect to Dr. Ambedkar’s ability to fashion out clothes, legal clothes—a sort of *Amritdhara* which will suit every disease from the south to the north—with all due respect to him, I beg to say that the clothes that he is trying to fashion out and tailor will be either too loose for southerners or be too tight for the northerners. It is much better that he should look to my size—look at the size of the society and its needs—and fashion and tailor the clothes accordingly and not give me ready-made clothes, ready-made medicines, a sort of *Amritdhara* for every disease. I request that no attempt should be made upon me as a Sikh to foist any law which is alien and repugnant to my spirit. I for one will not accept it, will not at any rate respect it because I have not respected the ancient Brahmans and much less shall I respect any modern Brahmans.

***Pandit Malaviya :** I have not so far taken any time of this House at any stage with regard to the Hindu Code Bill. I had been hoping all this time that the evil day would never come when we would be faced with the need of seriously applying ourselves to a proposal of the nature that is before us. I had known, and many of us had known, the intense desire and keenness of some people in this House and outside, it to have the Code enacted, but we had somehow felt that the obvious could be seen, that the preponderating public opinion throughout the length and breadth of this land would not be ignored, and even while the idea was being toyed with, no serious attempt would be made to put on the statute book a Bill which should affect the very foundations and the entire fabric of the society of the people of this land, in the haphazard manner in which it has been proposed to be done. People have been agitating in this country either for one view or the other and many who have felt distressed over the prospect of such a law being enacted have been doing what they could to draw the Attention of the Government to the widespread resentment and dissatisfaction against it. But personally, I have not once stood up anywhere on a public platform, not once have I tried to take part in any such agitation, in the hope and faith that a thing so wrong in principle, so atrocious in details and so uncalled for in expediency would never come up seriously before the House. But one lives and learns and I am now faced with the spectacle that in Parliament which is now on the last lap of its journey, a controversial measure which is going to affect the lives of more than 300 million people is going to be taken up and an attempt is going to be made to enact, it and to put it on the statute book to the teeth of fierce opposition to it. I do not say that there is nobody in this country who supports the principle of this Bill (*Pandit Maitra* : Very few). I do not wish to say that there are not people who are honestly of the opinion that it is in the interests of society that such a law should be enacted. I have no quarrel with them. I am a Hindu and intolerance in any shape or form—intellectual or ideological—does not come to me. If, therefore, there are people in this country who feel that a measure of this nature or that a measure of even a more revolutionary nature should be applied to society, I may not agree with them—I may regret their opinion—but I can have no quarrel with them. I will, therefore, not take the position that there is no one in this country who wants this Bill. But it is obvious and it is something which only those can fail to see who would not see, that by far the largest majority of the people are not only not in favour of this Bill.....

Some Hon. Members : Question.

Pandit Malaviya:but are feeling seriously disturbed over it. They are today nonplussed and do not know what they should do in the face of the danger of such an enactment being made. (*Interruption*). Some friends of mine, tamely and in a parrot-like manner, probably by the force of habit, go on saying 'question'. I challenge them in all humanity to come and question my statement anywhere in this country. I have expressed the opinion in a meeting of the congress Party Members of this Parliament at another place that in a matter of such universal importance, even if it be not legally wrong to make any enactment in this way, it is the height of moral injustice that we should take up such a matter without giving the amplest possible opportunity to those who are affected by it to express themselves upon the issue. I have said that in a matter of this nature, the very minimum that we can expect should be that the issue should be put before the electorate at a General Election or that indeed a referendum should be allowed to be taken upon it.

Shri Bharati: On monogamy ?

Pandit Malaviya : My esteemed friend Shri Bharati has obviously one and only one stale card to play on all occasions, right or wrong, relevant or irrelevant. I shall come to that card in due course and shall show what value that hand of his has. But the interruption by the word 'monogamy' is not going to take away from my argument that in this matter the only right course for us to follow is that we should have a referendum in this land to allow people to express themselves on this issue and then if we find that there is even a fair minority— I go to that length ; my challenge is not couched in any spirit of doubt or fear—I say that if as a result of a referendum even a substantial minority of the people are in favour of such a measure, by all means let us sit down seriously to the task of framing it. If that be not possible. I would ask my hon. friends who question my statement to persuade the Government of the day and the law Minister of the day to allow half a dozen people to resign their seats—I am prepared to be one of them—and let us have bye-elections in four weeks' time distinctly on the issue of this Code.....

Shri Bharati: On monogamy ?

Pandit Malaviya:and if out of those six even in a few constituencies in those bye-elections the protagonists of the Hindu Code Bill get returned...

An Hon. Member: In north India ?

Pandit Malaviya: Anywhere in the whole country—if they get returned, then I shall be prepared to withdraw my opposition.

Shri Munavalli (Bombay): Challenge accepted.

Mr. Deputy Speaker : There are two sides to the picture. Let him proceed.

Pandit Malaviya: I do not mind the interruption. Words are of two types. One is words which are mere sound; the other is words which have a meaning and when any Member says ‘Challenge accepted’ I would wish he meant that and not merely created the sound.

Shri Munavalli: I mean it.

Pandit Malaviya : My request is this. Let the government, let the Law Minister, put the Bill to that test and if they are willing to do that, then I am willing to propose—and I hope other Members also who feel like me will be willing to agree—that we should have a session even before the elections for a week, after the results of those bye-elections are known, to work in accordance with the results. But the Members who say that they accept this challenge say it, if I may say so without meaning any disrespect, knowing that they will have no occasion to be put to the test. The only way in which we could decide about this matter is by one of these courses. If we are not going to do that, then I do not know how to accept the questioning of my statement that by far the largest majority of the people in this land are entirely opposed to the provisions of this Bill. (*An Hon. Member:* Question.) And when I say this, I am not referring merely to those people who are called “orthodox”, but I am referring even to the most advanced of the advanced people of this country, people who find themselves weak and wanting in the strength to stick to the restrictions which time and experience of the elders of this nation have imposed upon us, who wish to have the easy way of life, who wish to have the good of both the worlds for themselves, who wish to remove restrictions and restraints which have descended through the ages, through the millennia that have gone before us reaching back into the dim unknown past of human history; the traditions, the culture, the life, the ideology, the principles of the one race which can claim with pride that it has had a continuity of that tradition from time immemorial. Those gentlemen today are impatient and I wish to submit that even from their point of view, from the point of view of

even those who are impatient of even the existing restrictions, who would rather liken our society to an aping of some other society somewhere else, irrespective of the suitability or otherwise of such application to our particular genius ; even to them this Bill cannot be acceptable. It is on that basis that I make the claim that by far the large majority of people in this country are opposed to it. The orthodox people, those who have their roots in the traditions of old, are upset over it. But those who have a certain amount of social liberty.....

Dr. M. M. Das : On a point of order. The hon. Member is only repeating what has been said *ad nauseam* in this House. He has no new argument; he is only repeating what other Members have said.

Pandit Malaviya : I had heard that in the case of a certain type of mankind, which is often under the influence of a certain intoxicating habit, even some of the best victuals placed before him bring him nausea ! I am not surprised at my hon. friend !

Shri Bharati : Will it not facilitate clarity of understanding if the hon. Member confines his remarks only to the subject under discussion, namely, marriage and divorce ?

Pandit Malaviya : I have probably not the clarity and the ability of my hon. friend Mr. Bharati.

Mr. Deputy Speaker : I myself wanted to suggest to the hon. Member that now that the scope is limited to marriage and divorce, his observations may be confined to those. The hon. Member may feel that the points made by him may not have been put as forcibly as he is doing at present. Anyhow some of them have been covered : he need not go into them at great length and may confine his observations to points which have not been touched.

Shri R. K. Chaudhari : I would respectfully like to point out that even if there are repetitions, we should like to know the opinion of a distinguished person like Pandit Malaviya.

Dr. M. M. Das : On a point of privilege—the hon. Member is making a distinction between one Member and another.

Pandit Malaviya : I lay no claim to that distinction : I do not think any hon. Member need be frightened by it.

Mr. Deputy Speaker : I expect this debate to conclude today ; let there not be any more interruptions.

Pandit Malaviya : I am grateful to you for your guidance. What I submit is that the Bill may have one clause in it relating to the social

structure of the Hindus or may have a hundred clauses in it relating to the social structure. But if it is going to affect the social structure of the Hindus, nobody can proceed with the matter unless he discusses that social structure and the way that clause is going to affect it. Social structure cannot be taken piecemeal in watertight compartments. It is not practicable.

After the discussion that has gone on before, I have a feeling that it will not be quite possible and correct to take a lop-sided attitude about one particular matter alone and leave the general aspect out. But I might assure you, Sir, that I shall throughout be guided by yourself and if at any stage you should think that I should not carry on with any particular argument that I may be making, I shall at once obey you.

It has been said that this Bill will now be confined to the two items of marriage and divorce. As the Hindu society stands, its entire structure rests upon the foundation of marriage. There is nothing in Hindu society which can be separated as unconnected with the marriage system of the Hindus. It is, therefore, not possible to discuss the marriage section of the Hindu society—without referring to the general aspect of the society as a whole. Whatever I was saying applies directly to the item of marriage and divorce also. What I was saying was that it is therefore as much the orthodox section of the people who will be opposed to this measure as the others—about whom so much has been said by some hon. Members in this House yesterday and the day before, as forming nearly eighty per cent of the population, among whom it was said the very provisions which have been proposed in this Bill exist today. I have my own doubts if that is so. For the large majority of those people who have today facilities of divorce and easy marriage, the provisions of this Bill are going to make a world of difference. I am not expressing any opinion of my own on the merits of these proposals. I am merely mentioning that to the simple men living in the villages today, who have not had the opportunity and benefit of the same growth, intellectually, morally, emotionally and spiritually, as some other members of society, like my esteemed friend the Hon. the Law Minister, have had—to them the habit of restraint, the habit of a discrimination between the finer shades of the good and the better, the bad and the worse, does not come so normally and spontaneously in some matters at least as it does to the others. Hindu society has been divided into groups not with any inhuman or malicious object of injuring any section or doing any

injustice to any section. I do not wish it to be misunderstood that I do not believe that injustice has been done to some sections of it. Injustice has been done, hardships have been inflicted, atrocious hardships have been inflicted, and there will be no reasonable man who will hold any brief for the same. But I am talking of the principles and the broad concept on which those divisions were based. They were not meant to injure, they were not meant to inflict any hardship.

Shri Munavalli: But what has been the effect ?

Pandit Malaviya : The effect will take me long to describe, because the effect has been varying from age to age and if my hon. friend will take the trouble of reading through the pages of history he will know them well enough for himself.

Mr. Deputy Speaker : But is a discussion on that point necessary for marriage and divorce ?

Pandit Malaviya : What I was wishing to point out was that in the very nature of things we can only expect one thing from one individual and another thing from another. If any abstruse point of law arises today, we can reasonably and legitimately request our learned Law Minister to put us wise on all aspects of it. You may not be able to get the same information and the same light from an ignoramus like myself. (*An Hon. Member:* No, no.) (*Another Hon. Member:* That is only humility.) There may be equally another thing about which another individual may be able to tell us many things but about which my esteemed and dear and learned friend Mr. Bharati might prove a complete ignoramus. In society there is a class of people to whom the real zest of life, the real zest of existence, the incidence of life from moment to moment, from hour to hour, from morning to evening and from evening to morning, is, if not the in-all and out-all, a very large portion of the totality of their existence. For them today's marriage and divorce laws have been framed with a view to simplicity and easy availability. A man can today, or a woman can today discard a marriage relation and take up another almost in the twinkling of an eye. Such people will have to wait for months, they will have to go through law courts, they will have to go through the entire gamut of procedure before they can do the same under the provisions in this bill. I am not expressing any opinion on the merits of the matter. I should personally feel happy at, and I should like to congratulate the Law Minister for having conceived that improvement, but I am talking of the practical effects. In the practical effect there will be murders in the villages.

Dr. Ambedkar: We have enough police.

Pandit Malaviya : For a man who is still in a large measure in the animal stage.....

Shrimati Renuka Ray : Question.

Pandit Malaviya : I do not say this in any sense of disrespect. I am only talking as a sociologist. If those men find new impediments put in their way, impediments to which they have not been used, to which they are not accustomed, and they find themselves thwarted in a tiresome manner, they may not have in themselves that much of restraint, they may not have in themselves that much of development and control that they should wait for the law, and society may be faced—among the eighty per cent of whom so much has been talked about—with an upheaval which is probably not even imagined today. Therefore, I said that this Bill is not only not welcome to those who, like me, would rather that the traditions which have come down from ages past should be respected and upheld, but even to those who are going to be affected by it in a much larger and more immediate measure. I may submit respectfully that some of the Members of this House who have been so loud and enthusiastic with regard to the provisions of the Bill have little in common with those people.

Dr. Ambedkar : Not even me.

Pandit Malaviya : Certainly not the Hon. Law Minister ! The Hon. Law Minister has been likened, even profanely, to no less a sage than Manu himself and I am reminded of a *shloka*. (*Interruption*) Somebody asks me why I am jealous. Unfortunately or fortunately I am not so built that I should have the privilege of being jealous towards the Hon. Law Minister.

Dr. Ambedkar: How can a Brahman be jealous of an untouchable ?

Pandit Malaviya: Better tell them ! I am reminded of a *shloka* where Kumbhakarna asks Ravana (*Interruption*). If hon. Members will just bear what that *shloka* says, probably they will feel slightly better human beings than before. Kumbhakarna asks Ravana why in his attempt to win over Sita's mind, with all his demoniac powers of changing his appearance, he does not take the shape of Rama when going to her, and Ravana says : "The trouble is, the moment I take the shape of Rama or think of him, the mere association with the thought of Rama makes it impossible for any evil thought to come

into my mind ! (*Hear, hear*). (*Hon. Members* : Repeat the *shloka*.) I will repeat many *shlokas* if my hon. friends will get me the time for it. Similarly, about Manu. I was saying that if we can expect a certain thing from members of this House—of course, there can be no possibility of their needing to go through divorce in matter of minutes—we may not hope that the same thing will be done by those 80 per cent of people also. Therefore, we should be cautious in our approach to this matter. If anybody can controvert that aspect of things. I would like to hear him do so.

I, therefore, repeat that this Bill is not only disapproved by the orthodox sections of the people but also by far the largest majority of the inhabitants of this land. (*Some hon. Members* : No. No.) Somebody says, “For other reasons than what you have stated”. May be, but the fact remains, that whatever the reasons it is not approved by the large majority of the people.

I shall come to the Bill itself. It has been said that as only Part II of the Bill is now to be proceeded with, it is not necessary now that this Bill should be called the Hindu Code Bill. Indeed, irrespective of the fact whether the other Parts were excluded from it or not, personally, I should have had a little less objection to the Bill if it had not been called the Hindu Code Bill. In our Constitution we have given the name “India, that is Bharat” to our country. Why was this Bill not called the Indian Code” ? I am not going into that question that it should apply to everybody. I am not concerning myself with that. I am not saying this on that basis. But this country being named “India”, if this code, had been called the “Indian Code”, it would have had a different meaning and import. Once we say the “Hindu Code” the entire picture of what that word denotes comes to the mind. We must, therefore, know and keep into view what the word “Hindu” means. It is a difficult word to explain in a sentence. But if there is one feature in Hinduism which one might mention as of outstanding pre-eminence, it is the practically limitless tolerance and catholicity of that system. Our Prime Minister, Pandit Jawaharlal Nehru, has himself talked of Hinduism and has said that it is probably best described by saying that it rests on the principle of live and let live. We have among the Hindus the most diametrically opposed viewpoints. We have in the highest caterie of sacred literature and philosophical schools the six *Darshanas*, one of which sparkles with the brilliance of the razor-sharp incision and acumen of the intellect

of supermen and giants like Jaimini. Shankar and Kumarila—I do not wish to use any adjectives of praise for them because it will be difficult to find suitable words—and on the other hand, it contains another system which is so obtuse, which is so crude, to say nothing worse, that it would refuse to see or understand anything which is not strictly before its physical eyes. The poor Charvaka, with the palm of his hand up before him, would refuse to understand that the back side of his hand also exists because it would not be *pratyaksha*. . . .

Dr. M. M. Das : On a point of order, we have not come here to hear lectures on Hindu philosophy and ancient *rishis*.. . .

Mr. Deputy Speaker : Order, order. I find the hon. Member is very impatient. He must have consideration for the other side of the view. I never expected that the hon. Member would go on interrupting. I repeatedly say that this is a contentious matter and we are allowing sufficient time. I am also alive to the fact that a number of hon. Members have spoken. I am not concluding the debate now. The less the number of interruptions the greater the chance that he will finish it early. Otherwise, he will demand another day.

Pandit Malaviya : I was only pointing out the wide diversity and catholicity of philosophical and metaphysical thought prevalent among the Hindus. I wish there were no need at all for anybody to talk of the philosophical side of things. I wish one could feel that it was unnecessary. But, from such remarks it seems it is unfortunately necessary. What I was mentioning was that even in the *Darshanas*, while we have the pure *Vedant* on the one hand, we have the drunken reveller of a Charvaka philosopher, indulging in the five *makaras* ! I shall not go into those five *makaras*.....

Some Hon. Members : Go on. go on.

Pandit Malaviya :because apart from my own reasons of decency, probably I may take it that some of even those Members who may not be deeply interested in philosophical thought might be familiar with them !

Mr. Deputy Speaker : How are they useful for the discussion on this subject ?

Pandit Malaviya : What I was trying to point out was.....

Dr. Ambedkar : I submit the *makaras* are very useful.

Mr. Deputy Speaker : Will this in any way corrupt the *makaras* ?

Pandit Malaviya : We have that diversity even in the principal *Darshanas*. Among them, again, we have the *Astik Darshanas* and the *Nastik Darshanas*. We have *Darshanas* which have talked of the monotheistic principle of *Parabrahma* and *Brahma* and *Jiva* and also which have talked of the atheistic philosophy of *No-Brahma* and *No-Veda* and No-God. We have in other spheres also equally diverse opinions and diverse state of things existing. There are some people today who find it fashionable to remind us that there were certain *rishis* and other among the Hindus who were beef-eaters. Side by side with that, Hinduism is replete with a universal reverential regard for the cow. We have in the Hindu society youthful marriages; we have also in the Hindu society youthful *sanyasis*. We have in the Hindu society the most austere and difficult to imagine *tapas*; we have also in the Hindu society the most luxurious and lavish enjoyment of the senses. We have in the Hindu society the Brahman ; we have the *chandala* ; not the Chandala for whom we have only restrictions and impositions, but the *chandala* for whom rights and privileges have been prescribed, just as for the Brahmans (*Interruption*).

Mr. Deputy Speaker : It is an offence hereafter under the Constitution to call any person a *chandala* or an untouchable.

Pandit Malaviya : There are so many speakers around all at once, that I am unable to hear you, Sir.

Mr. Deputy Speaker : Apart from any constitutional aspect, reference to *chandala* is no longer advisable. It has been made an offence under the Constitution.

Dr. Deshmukh : He is only referring to history.

Mr. Deputy Speaker : There may be some history, but all history is not very good to mention. Let us forget some history.

Pandit Malaviya : I was referring to it not as to an individual, but as to a system in the past. However, I will abide by what you have said.

Dr. Ambedkar : Why should you ?

Pandit Malaviya : The hon. Law-Minister asks, why I should. Only because I am a law-abiding Member and not the other name that I had been mentioning.

I was saying that in Hindu society we have had that variety of things existing side by side in honour and in peace. That has been the great feature of Hinduism. But that catholicity and that tolerance was possible

only because there were some basic principles, fundamentals which went to form the root of all things which were first settled and ordained, and which have been maintained through the ages without question or dispute ; not narrow sectarian dogmas or rituals, nor any controversial things or rules, but certain basic fundamental principles which were considered as *sine qua non* of the continued, stable and smooth existence of society. These principles may be called by any name ; but they remain the eternal bedrock upon which any healthy society must rest. In this country, the name given to these principles was *sanatana : sanatoria* not meaning, unfortunately, as a learned speaker said yesterday, that which is always changing and *nitya nootana*, but as something which has always existed. Therefore, if we undertake the task of making any changes in the structure of Hindu society, we must be careful that, tamper as much as we might with the outward forms and paraphernalia, with the leaves and branches, we do not apply the axe to the root of the tree itself; that we do not disturb and that we do not uproot the fundamentals, the basic principles upon which society has been based, and which have carried it through the ravages of time as nothing else has carried any other society known to man in the world. Therefore, we must first understand what those basic principles are.

I was slightly taken aback when I heard it said by no less than three august personages who go to form the Government of this country

12 NOON today, that the provisions contained in the proposed Hindu Code Bill are in accordance with what is found in the Hindu *Shastras*. I have also heard it said that a profound study has been made of those *Shastras* in order that this Bill might be put up in this form. One would naturally hesitate to cross swords with men of so learned a disposition. But the Hindu *Shastras* have been the property of the world for the ages. Many people have read them or can read them. With the very limited knowledge that I am privileged to have of them, it has not been possible for me to find justification for that statement so far. I would, therefore, suggest that if it is the claim of the Government that they are basing the Hindu Code Bill upon the sanctions contained in the Hindu *Shastras*, then we should proceed on that premise. It will be different, however, if a wider stand is taken and it is said that it is not the Hindu *Shastras*, it is not the sanctions contained in them, but it is the wisdom and the whim and fancy of the farmers of this Bill, it is the inclinations and the desires of those who are at

its back, which have been the determining factors in the preparation of its clauses and details. To the best of my knowledge, no such statement has been made so far. I will, therefore, proceed on the assumption that the claim remains that the Bill and its provisions are based on the Hindu *Shastras*. If that is so, I would like very much to get a clarification from the Law Minister as to how that point is to be determined, as to what is said on a particular point in the Hindu *Shastras* and what the meaning of that statement in the *Shastras* is. I know what I am saying must mean mere waste of time for a man like the learned Law Minister, because, I have no doubt, that he is familiar with the meaning of what I am saying. But we the Members of this Parliament are here to legislate on a vital issue, and if we are going to legislate on a matter of such universal importance, and if we are going to do it on the basis of a certain thesis, namely, that it is being done in accordance with the tenets of Hindu *Shastras*. I feel that it is our duty that we the Members of this House should then keep in mind the rules, the methods, and the recognised procedure by which the meanings of the *Shastras* and their words are interpreted. The *Mimansa* applies itself to that high purpose, because in a society like that of the Hindus, where the law came not from a Government or from a Minister, howsoever high and mighty.....

Shri Sidhva (Madhya Pradesh): Please address the Chair.

Pandit Malaviya : My hon. friend Shri Sidhva asks me to address the Chair. I have been doing nothing else. I wish Mr. Sidhva would not forget so easily.

The Members of this House should know that in a society like that of the Hindus where everything has been based—for, God only know how many millions and millions of years, or thousands and thousands of years—upon certain texts coming down through the ages; where we had not the printing presses or the printing paper, where everything had to be committed to memory and had to be passed down from the teacher to the pupil and from the sire to the son, where everything depend upon the correct pronunciation and intonation and upon the correct text and upon the correct interpretation of old and ancient words and *mantras*, where new codes and new treatises, not printed on paper, but in the minds and memories of men came up from time to time and had to be assigned their right importance and place; in such a society, disaster would have followed if the most minute, if the most exhaustive and positive rules had not been laid down for the

interpretation of those texts. And in the *Mimansa* we have it laid down how any text of the *Srutis* or the *Smritis* should be interpreted. It is also laid down that the meaning of the law cannot be known merely by looking at a sentence at one place. So many tests—proving tests—have to be applied to it.

[PANDIT THAKUR DAS BHARGAVA *in the Chair*]

If, therefore, it is the claim of the government that the Hindu Code Bill is based on principles and tenets contained in the Hindu *Shastras*, my earnest request is that we should carefully and according to the rules, examine the various provisions and then find out if they violate what is contained or laid down in the *Shastras* or not. My humble submission is that they are not only not in conformity with Hindu *Shastras*, but go diametrically against them. (*Interruption*) Somebody is saying at my back that I am now expanding. I wish my friend would understand that if I wished to expand these ideas it would take days to finish.

Shri Munavalli: That is your intention also.

Pandit Malaviya : We have known of the concept of omniscience. I find that there is a new phenomenon of it here, who knows the minds of others.

Shri Munavalli: Certainly.

Pandit Malaviya : I congratulate the hon. Member. I wish to submit that I am trying to confine myself as rigidly as possible to the shortest possible limit. I am saying this with a sense of responsibility. Let any Member of this House who would like to have an exhaustive and expanded exposition of the points I have made, let him do me the honour of coming to me after this sitting and I will then make him see how much there is to say, how much there is to study, and ponder over each one of the points that I am only briefly mentioning here.

I was submitting that if we have to go by the *Shastras* the whole matter simplifies itself, because there will then be no room for any difference or controversy. If the two parties to a case have agreed upon a measuring rod and there is no dispute about it, it should be easy then for any set of normal people to take up that yardstick and measure the cloth to the mutual satisfaction of both. If it is agreed that it is on the basis of the *Shastras* that we are going to enact this law, according to the rules of interpretation so clearly laid down, it should be easy for anybody and the hon. Law Minister to sit down, go through clause

by clause and determine. (*Interruption*) I see that the Hon. Law Minister has a very clear vision. The Law Minister or any other member or even myself may have any view of a matter. But when the hon. Law Minister and others agree that there is a yardstick by which a piece of cloth has to be measured, there can be no room for any difference or controversy. (*Interruption*). I have already mentioned but obviously it has not yet been sufficiently mentioned for my friend Mr. Bharati that there is a yardstick, which has come down to us from the ages, (*Shri Bharati*: The measurement differs so widely) according to which the interpretation of the sacred texts has to be made.

Shri Bharati: The difference in the yardstick is one inch to a mile.

Pandit Malaviya : My friend Mr. Bharati says that the difference between the yardsticks is one inch to a mile. I do not know if I can say anything about that remark, because it carries in itself the visible and the obvious, that my esteemed friend is altogether unaware of the nature of the yardstick I have mentioned. There would be no question of any difference, not even one in one millionth of a millimeter. Therefore, if that can be agreed upon, I think, all controversy on this matter would end and there would be no need for us to say anything more at this stage. We can then easily leave it to the hon. Minister. I can place the entire matter in his hands not only as the umpire or the judge for those who are in favour of the Code but also for those who, like me, want him to go through the clauses, item, by item according to the text of the *Shastras*, interpret them through the *Mimansa* and apply them to the provisions of this Code and say if they do not militate against them. If he says that I shall be satisfied and I will offer no further opposition. I do not think anything more fair or reasonable could be said. If however, that cannot be done, the least we could ask for is that the claim that the Hindu Code Bill contains provisions which are all based upon what is contained in the *Shastras*, should be completely given up and withdrawn, so that the millions of our people who may not have the opportunity of being critical enough to examine the basis of such statements may not be misled by such entirely wrong and misleading statements and they may not fall into that dangerous pit. Probably the Bill may have been prepared innocently, but it has within it the potentialities for untold and immeasurable mischief. If that also cannot be done there can be no other way for Members of this House or those of them who feel like me, but to examine all these proposals in extensive detail in the

light of what is said in the *Shastras* with regard to them. It will be a long process, because, if the claim is made that what is stated is according to what is laid down elsewhere, it can only be given up either by mutual agreement or by the weight of facts as distinct from opinions; and establishing those facts can only mean that on every clause and every sub-clause, on every subject and almost on every word, this House should have the opportunity and the benefit of having its attention drawn to the relevant texts in the wide range of *Shastras* and law books of the Hindus. I do not know if that will be considered possible: I have no doubt it must be permissible; but I do not know whether that will be considered possible and practicable. I would therefore beg the Government not merely in the interest of fairness and justice towards the subject which is before us and towards the people who are affected by it, but indeed in the interest of the progress of this Bill in this House, that they should re-examine their position on that point and either make up their minds to proclaim to the world that the Hindu Code is not based on the Hindu *Shastras* and does not care for what is laid down therein, and is the product of the wisdom and fancy of those who have prepared it; or, they should adopt the procedure which I have suggested, *viz.*, have a thorough and nonpartisan examination made of each of the clauses and then bring up before this Parliament only those which, it is incontrovertibly agreed, are in accordance with the *Shastras* that have prevailed since so long.

There are certain other difficulties also in this matter. This bill, it is now said, will confine itself only to the subjects of marriage and divorce. But my difficulty is that, that fact by itself does not make the slightest difference in the nature of this question. If there were any part of this Bill which was altogether uncontroversial and if that were taken up, I would understand that the same might have been allowed to go through this House without much difficulty or controversy. But can there be anything more fundamental, more controversial than the question of changing the laws of marriage among the Hindus? I submit it is not possible to think of anything more contentious. Somebody may say that the other parts of the Bill are more contentious—I am quite sure somebody else will equally emphatically say that the part relating to marriage and divorce is the most controversial. Therefore, the fact that it has been decided that the progress of this Bill will remain confined to these parts, does not make any change in the fundamental aspect of this question. We have therefore to be very cautious in

proceeding with it. I mentioned that the vast bulk of the people are against it, but there is something even more fundamentally wrong in the situation. The Hon. Law Minister himself at one stage, when on a previous occasion this matter was before this House, said in reply to an inquiry by an hon. Member that it was not intended at that time that his Bill should apply to the people of what was then called the Indian States. And in his usual, careful and accurate manner he said that if at any time the States came into the picture, the matter would have to be gone into entirety before it was taken up—or something to that effect; I am not quoting his words. Everyone knows that this Bill was not published in any Gazette of those States. It was published in the Gazette of the Government of India, it was published in the Gazettes of some of the Provinces, but because there was not thought to be any occasion for it, it was not published in the Gazettes of any of the States. And the people of the States did not therefore find themselves called upon to consider the matter; in fact, they had no concern with it whatsoever. What has been the result? Today, by the fact of our new Constitution, all that territory forms part of the land and whatever is passed today is going to apply to the people of all those areas. Does anybody pause to consider the preposterous nature of the situation? One-third of this country—not a little portion here or a little portion there—but whole one-third of this vast country.....

Shri Munavalli: It is not so, because many States have already been merged in the provinces.

Pandit Malaviya : My friend says “It is not so, because many States have been merged in the provinces”. I dare not controvert so wise a statement, but I thought that even before they were merged and surely since after their merger no publication of the Bill has been effected anywhere.

Shri Munavalli: Question.

Pandit Malaviya : My friend questions that statement. I think he is beyond me. One-third. I said and I repeat of this great sub-continent is going to be subjected to a law which is going to affect fundamentally the very foundations of their life and existence without their having had an opportunity to see what it is.

Shri Lakshmanan : (Travancore-Cochin.): May I point out that in some part of States the Bill was published—in Travancore-Cochin, for instance?

Shri Bharati : I wonder if the hon. Member knows about any of the other States also.

Pandit Malaviya : I do not belong to that school which refuses to see anything except the palm of its hand. I do not mind the interruptions because I know what I mean and I know what I am saying. I am not saying it merely because I wish to say something or because I should say things which would please anybody, but because I believe in what I say. No amount of interruption, no amount of cries of 'Question' can dislodge the truth. If a thing is true and correct, then whatever anybody may say and these 'Questions' only help to clarify matters.

Shri J. R. Kapoor : Interruptions are helpful.

Pandit Malaviya : Whether they are meant in a spirit of helpfulness or otherwise, I do not in the least degree mind them. If on a matter of such importance and gravity there are indeed any doubts in anyone's mind and if any questions suggest themselves to any Member, I feel, on the contrary, that the object, the very ideal, of a parliamentary system of legislation would be defeated if that Member did not have the opportunity to raise his doubt and to ask his question, and if anybody who is on his legs, does not attempt to reply to his best ability to the question that is asked. I therefore do not object to interruptions.

Shri Radhelal Vyas : May I ask the hon. Member to enlighten us as to how the law of mongamy and divorce which is in force in Madras and Bombay has affected the Hindu society ?

Mr. Chairman : May I ask the hon. Member not to lose the thread of his argument and not to be misled by the interruptions ?

Pandit Malaviya : I am very grateful to you, Sir, and I assure you that I stand to no fear of being misled. I was saying that in all these States people have had no opportunity at all of knowing what this Bill is. It is possible for me to go into this point at great length, to go into the well known and universally accepted principles and methods of legislation and to point out the monstrous impropriety of such a state of things. But I believe that instead of doing that I should merely draw attention to that fact and hope that Government will still see how grave an injustice is being proposed to be done in that manner and would find out if they can yet undo it to some extent atleast, if not wholly. It cannot be possible now, if the Bill is to be proceeded with immediately—as the Government have declared—for it to be circulated or published for the information of those people. I will, therefore, not waste time in suggesting that procedure.

I happen to have the privilege of having by my side a sister who is all the time helping me by murmuring something or the other into my ears.

Shrimati Renuka Ray : I was pointing out that this was the best speech in favour of bringing in the reforms contemplated in this Bill.

Shri Munavalli: I want to enlighten my friend over this matter because...

Sardar B. S. Man : It is now the time of the hon. Member who is already on his legs to enlighten the House.

Pandit Maitra: The hon. Member has raised a very important point that the Bill was not published in the States...

Mr. Chairman: I do not know why the hon. Member should advocate his cause.

Pandit Malaviya : In view of the fact that the Bill has not been published in the States and is now going to be applicable to them also in all probability, something should be done to redress that glaring injustice. How it can be done would probably be best devised by the hon. the Law Minister. As I said, it is no use making an impracticable, theoretical suggestion at a stage when it is not feasible. I, therefore, do not say that this Bill should now be published or circulated for their information. But, probably, we can devise some other way by which that difficulty might yet be overcome, at least to a degree. And I would suggest for the consideration of the Law Minister—not as one who is opposed to the Bill necessarily, but as one with whom, I think, he may find himself at one on this issue—that the people of such a vast portion of the country should not have a clear and legitimate grievance of that nature. I would suggest to him to consider this proposition at least with respect to those States, if not for the rest. The amendment of which I have given notice and which I have moved says that this Bill should apply to anyone only after a referendum has been taken in the State to which he belongs and, in accordance with the result of that referendum, the Legislature of that State has decided that the Bill should apply thereto. I shall come to that in due course. But may I suggest now—whether that amendment of mine is accepted in its entirety or not—that the hon. the Law Minister might consider the propriety of providing in the Bill that at least with regard to the parts of the country which were then called the Indian States, where this Bill had not been published, this Bill should not come into force unless,