

after due publication and circulation, it has been considered in the Legislatures of those parts and the Legislatures have decided that it should apply to them. That will at least remove this glaring fault, the glaring omission which stares us in the face today.

Shrimati Renuka Ray : And let us have the tyranny of the Brahmanical society for the next thousand years !

Pandit Malaviya : My esteemed sister says “Let us have the tyranny of the Brahmanical society for the next thousand years”. I can only wish and pray that not for a thousand years but for eternity, not only my good sister but the whole world might rise to the level and concept of the Brahmanic ideal—the ideal which has always stood for fairness and justice to all, which has stood for the performance of duties and actions due to others rather than insistence upon the rights and privileges of its own, which has enjoined not a life of aggrandizement, not a life of self-interest, not a life of low thinking and low living, but a life of noble and lofty idealism and practical selflessness where the Brahman more than anyone else in society but indeed not only the Brahman but every member of society abnegates himself, ignores himself, allows himself to suffer that others may grow, may prosper and may live. I know that the beauty and the sublimity of that concept is lost upon some of my hon. friends. (*Hear, hear*). I hope and pray that society and mankind will yet be able to rise morally, socially, ethically, spiritually and ideologically where the Brahmana will be the true Brahmana and all members of society will rise to the level of that age ! I am not ignoring the fact that the Brahmana has deteriorated as all others have.....

Shrimati Durgabai : In preaching and practice, both.

Shri R. K. Chaudhari : Why should the lady Member interrupt ?

Pandit Malaviya : My sister there, except that we are born of different parents is like a real sister to me because we have both been born of the same institution. That sister of mine tells me that the Brahmana should rise high and lofty both in precept and practice. I wholeheartedly and with every fibre in me pray with her that it may be so, and indeed that it may be so with all others as well.

Dr. Ambedkar : In the meantime, let us have the Hindu Code.

Pandit Malaviya : If we can rise again to that pure and noble Brahmanic ideal, then the Hindu society will have no more of all its troubles and ills but will once again become the leader of mankind

as it was at one time; not at the time when there was any injustice or tyranny by any section of society over any other but at a time when every member.....

Shrimati Renuka Ray : Remember it.

Pandit Malaviya : Of course I remember it, otherwise how should I say it. But it is Mrs. Renuka Ray who needs to know it and to remember it.

Shrimati Renuka Ray : You are talking about the Hindu society during the days of its decadence. Please remember the *Vedas* and the *Upanishadas*.

Mr. Chairman : May I request the hon. Member to proceed with his argument as he was proceeding before and not to answer these interruptions? Otherwise the main thread of his theme will be lost. I would request hon. Members not to interrupt the speaker.

Shrimati Durgabai : May I interrupt, Sir? Is not this Bill intended to bring the example of Rama to all men? Is not that a subject matter now?

Mr. Chairman : This is a very clear interruption.

Sardar B. S. Man : It is very dangerous nowadays to ignore interruptions from hon. lady Members.

Shrimati Durgabai : In the matter of interruption, there is no distinction between lady Members and others.

Pandit Malaviya : In the Brahman society the woman has been given the highest place. There is nothing higher than the mother.

Dr. M. M. Das : One man marrying 250 wives: Is that the dignity conferred on a woman?

Mr. Chairman : Order, order. Let the hon. Member proceed.

Pandit Maitra : Which man has married 250 wives?

Dr. M. M. Das : I am referring.....

Mr. Chairman : Order, order. No mutual wrangling; we must keep the decorum of the House.

Pandit Malaviya : To go back to where I was, I was therefore submitting that if nothing else could be done, we might at least have this measure made applicable to the areas which were previously called the Indian States. Only after that process has been gone through *viz.*, that it has been published and circularised there and the Legislatures concerned have decided that it should apply to them.

There is yet another difficulty which I have. And that is, that when the Hindu Code was first framed, according to the Constitution which

was in force in this country at that time, agricultural property was not a subject on which the Central legislature legislated. As a result, 90 per cent, or probably even more of the landed property in this country did not come under its jurisdiction.

[MR. DEPUTY SPEAKER *in the Chair*]

Now, agricultural property has also been put in the Concurrent List and this legislation, if passed, will apply to landed property also all over the country, The scope of this Bill, therefore, has been expanded almost 900 times over. As it stood before, it would have concerned only a very small fraction of the property in the nation.

Mr. Deputy Speaker : That is no longer the subject matter of this Bill, unless the hon. Member thinks that as a consequence of the marriage, the children will be entitled to that also.

Pandit Malaviya : I am at present talking of the application of the Bill and its import. I was pointing out.....

Mr. Deputy Speaker : The hon. Member evidently was not here. We have said that this Bill is confined to marriage and Divorce. Property, inheritance, succession are not gone into now, unless indirectly the hon. Member says that the consequence of marriage will be some offspring and they may be entitled to some landed property.

Pandit Malaviya : Sir, I have the same difficulty which I had once before. So many speakers are about that I could not hear you !

Mr. Deputy Speaker : The property chapter and other parts are now excluded from the scope of the Bill. We confine ourselves to marriage and divorce alone. Therefore, the hon. Member need not dilate upon that matter now.

Pandit Malaviya : What I was submitting was not with regard to the nature of the provisions in respect of property. What I was submitting and another point which I had tried to make out before you came back was with regard to some of the vary objectionable features and circumstances relating to the situation in which this Bill, is now being put before this House. And I was, therefore, pointing out that a very grave and fundamental change in the circumstances has occurred, namely, that when the Bill was first framed. It did not have any applicability to 90 per cent, of the extent of this land. But it will now have, on account of the adoption in the Constitution of a Concurrent List on which agricultural lands and property have been placed.....

Mr. Deputy Speaker: The Bill is not pressed so far. It is now confined only to the part relating to marriage and divorce. There is enough time for hon. Members to consider when another Bill comes as to how it will affect agricultural land. Today we need not dilate upon that matter. Whatever might have been the change due to the agricultural lands being put in the Concurrent List, we are not concerned with that now.

Pandit Malaviya : Sir, I will obey your ruling or decision. But I wish to submit for your consideration what I have to say and I will do as you will direct me. If at any time any Bill including the clauses relating to agricultural property comes up, then of course, it will be time for us to discuss the details of the clauses of that Bill and to express our opinions upon them. But at this stage, as you have stated, Sir, I am not trying to express any opinion whatever upon the question of the landed property in this country, or the methods of its disposition. I am not speaking on that subject. But what I wish to bring out is about the scope of the bill itself. Whatever may be its provisions, whether it is marriage, whether it is death, or whether it is anything else, it will somehow apply itself to all. I am trying to show with whom the provisions will come into compact. For instance, just before you returned to the Chair, I was arguing that the States in which the Bill had not been published should not be put under this Bill straightway, and there should at least be a provision that only after it has been published in the respective States should the respective legislatures be asked to decide upon it. Similarly, I beg to submit that what I was arguing was not the question of any landed property or any other property as such, but the nature of the applicability, the nature of the thing, what this Bill or any Bill of this nature, can now comprehend as against what it could comprehend before. Therefore, I shall confine myself to that aspect of the matter and not go into the question of property at all.

Mr. Deputy Speaker : The hon. Member has taken two hours and we have some other work also to do. I thought the hon. Member was concluding and I was anxious to call upon the hon. Law Minister to speak. Now, may I know how long the hon. Member is likely to take? I may adjourn the half-an-hour discussion to some other day, if the hon. Member is likely to finish soon. We have another fifteen minutes left now.

Pandit Malaviya : Some of my hon. friends may laugh, Sir, but it is difficult for me to say how long I will take. I hope you will believe me,. Sir, that I have been trying not to dilate or to be expansive in my arguments. Some hon. friends have said that I was dilating. I can only say that if any one of them would do me the honour of meeting me outside the Chamber and letting me explain to him my view point about any one of the points which I am touching upon here, then he would know how much there is to be said on each one of these points, and how I am trying to confine myself only to the most essential things. Therefore.....

Mr. Deputy Speaker: May I know whether it is possible for the hon. Member to finish in another fifteen minutes ?

Pandit Malaviya : I do not think that will be possible. I may tell you, Sir, that I have got here a heap of notes and books which I have not yet even once touched. I am saying this in all sincerity and I am trying to confine myself to the most essential things. If I wanted to take up each one of the points in great detail, it would be different. I am trying to confine myself to the essentials. Yet I feel so deeply and so strongly on this matter and the subject is so important and vast that I am afraid it will not be possible for me to finish today. But I am in your hands, Sir.

Mr. Deputy Speaker : How long does the hon. Member propose to take ?

Dr. Ambedkar : Five days.

Pandit Malaviya : The Law Minister says five days : I would not mind five days.

Shri Sondhi (Punjab) : The challenge is accepted.

Shrimati Durgabai : May I suggest to my brother Member that his thesis may be printed and circulated and taken as read ?

Hon. Members : No. no.

Pandit Malaviya : When my hon. sister makes the Constitution of this country and also the rules of Parliament, then probably we shall have that procedure.

Sardar B. S. Man : That day is not far off.

Pandit Malaviya : I would not unnecessarily take too much time but I would not be able to finish today.

Mr. Deputy Speaker : Let me know how long he will take from now.

Dr. Ambedkar: If not five days five hours.

Pandit Malaviya : I have lots to say, I shall be entirely guided by you. If you will permit me I will leave the matter open to you. I am prepared to come to you and show you my material and leave it to you as the custodian of the privileges of all Members of the House to tell me how much time I should take.

Mr. Deputy Speaker : It is not my intention to curb or curtail the discussion on any point. Two hours have already been taken by the hon. Member and already we have discussed for six days. So far as the books and other references that the hon. Member has mentioned, they are for detailed consideration and he will not lose his opportunity. There are the other clauses on which he may bring to bear his knowledge of those tracts which he has. So far as the present occasion is concerned half an hour more should be sufficient to the hon. Member.

Pandit Malaviya : I fear that may not suffice. If you will permit me I will put it in another way; I shall try to be as brief as possible. If you would rather that I cut short as much as possible I will devote myself to two points, namely marriage and divorce tomorrow and finish as quickly as I can. It may be that I will need. . . .

Dr. Ambedkar : Five hours.

Pandit Malaviya : He has come down to five hours from five days. Do you think, Sir, that is unreasonable? I shall try to make it as much less as possible. I am not saying this lightly. I will earnestly endeavour to make it as short as possible, perhaps two to two and a half hours.

Shrimati Renuka Ray : I want to ask a question, Sir. This clause 2 deals with applicability. I want to ask you again whether we can bring up the whole subject of marriage and divorce when the consideration stage is over.

Mr. Deputy Speaker: The hon. Member wants my ruling again and again. I wish only to say, is it necessary at the end of the discussion to give a ruling? Anyhow this much is clear. The hon. Member will try to conclude as early as possible tomorrow. So far as this matter is concerned and after he concludes I will immediately take up the half-hour discussion now and we shall go on till 1-30. I thought the hon. Member, Pandit Malaviya might conclude if we sat for another half an hour today, but there does not appear to be any chance of that. Therefore, if he will take some more time tomorrow, immediately after him I propose calling the Hon. Law Minister.

Shri B. Das (Orissa): Sir, the reformists are keeping very quiet on the floor of this House. Two violent though very outstanding speeches have been made by my friends, Sardar Man and Pandit Malaviya. Therefore, you will permit us who are the majority in this House to have a say, apart from what Dr. Ambedkar will have to say in his final reply on behalf of Government.

Hon. Members : Yes, Sir.

Shri Syamnandan Sahaya : Yes, Sir, the father of the House should be given a chance.

Shri Shiv Charan Lal (Uttar Pradesh): Sir, we have amendments on which we want to speak.

Khwaja Inait Ullah (Bihar): Sir, so many amendments have been moved regarding this clause so as to bring within the scope all Indians, and so much has been said on that point. Therefore, I wish to throw some light on the Muslim point of view, as to whether they can accept it or not. So I must have some time.

Shri R. K. Chaudhuri: May I respectfully point out that yesterday when I raised this question of opposition to an amendment, you were pleased to say that such opposition would be allowed. And I particularly laid stress on the amendment by which the Hon. Dr. Ambedkar wants to introduce “tribe”, which is a very important matter. I want to speak on that—I am not going to speak on other subjects.

Mr. Deputy Speaker : Merely because an hon. Member tables an amendment he is not entitled to speak. I am allowing all elucidation on points to those who have tabled amendments, but when similar amendments have been tabled and one or two hon. Members have spoken, on account of the time which is already taken, if some hon. Members who have tabled amendments are not able to speak, I do not think I need wait so far as this matter is concerned. We are having a second reading on this clause 2. As regards the request of my hon. friend, Khwaja Inait Ullah, I am seriously considering whether that amendment which wants to apply this Bill to Muslims and Christians is not enlarging the scope of the Bill. I do not think any further discussion on this matter is necessary. Anyhow, I am going to call the hon. Minister immediately after Pandit Malaviya.

Shri R. K. Chaudhuri: I wanted to oppose Dr. Ambedkar's amendment relating to the introduction of the word “tribe”.

Shri J. R. Kapoor : With regard to what has fallen from you, Sir, about the admissibility of the amendment seeking to enlarge the applicability, may I submit that even at an earlier stage this point was taken up and then we were assured by the hon. Speaker that before any ruling was given on that point we would be given an opportunity to have our say on the matter. It might be the Chair's first impression that it may not perhaps be within the scope, but you will please permit us to have a say to convince you how easily it comes within the scope. If that be your ruling I may submit many of the amendments of my hon. friend, Dr. Ambedkar would also have to be declared out of scope.

Mr. Deputy Speaker : Dr. Ambedkar himself to be ruled out of this House?

Shri J. R. Kapoor : Not he, some of his amendments; because they are very much on the same lines as this amendment.

Mr. Deputy Speaker : One wrong amendment does not make another amendment good. If any of the hon. Law Minister's amendments also enlarges the scope it is out of order—we will consider that matter.

Pandit Malaviya : I have another amendment of which I have given notice—a short amendment which I shall move tomorrow at the end of my speech.

Mr. Deputy Speaker : Provided, it is an absolutely formal amendment.

Pandit Malaviya : I gave notice of it day before yesterday.

Khwaja Inait Ullah : I will not take more than a few minutes.

Mr. Deputy Speaker : No, Sir.

Shri R. K. Chaudhuri : What about my point, Sir?

Mr. Deputy Speaker : The hon. Member has got the 'Ayes' lobby and the 'Noes' lobby. He can vote against the clause if he likes.

It is now too late for us to embark upon the half-an-hour discussion. It will be taken up on some other day.

The House then adjourned till Half Past Eight of the Clock on Thursday, the 20th September, 1951.

* HINDU CODE—*contd.*

Shri Amolakh Chand (Uttar Pradesh): May I draw your attention Sir, before Pandit Malaviya resumes his speech, about a cartoon which appeared in today's *Indian News Chronicle*, about which I have sent a note to you? May I know whether that will be taken up just now or on some other date?

Hon. Members: What is the subject matter of the cartoon?

Shri Amolakh Chand: May I, with the permission of the Chair, just satisfy the curiosity of hon. Members about this cartoon?

Mr. Deputy Speaker: I have received this cartoon published in the *Indian News Chronicle*. I think it shows my likeness. It is a cartoon of a clock where both the hands are being held up by some of the hon. Members who have spoken against this Bill, but underneath the very pendulum is said to be held intact, not moving forward or backward, by a representation of myself. So long as the speaker is here that is another matter. But casting aspersions on the Chair is not only unjustified and undignified but here it is also opposed to the facts. I do not know if any hon. Member will ever raise any point that whatever might be my differences I have done anything unjust in this House.

Hon. Members: No, no.

Mr. Deputy Speaker: Therefore, I will look into this matter. It is a very serious matter—it does not matter whosoever may be in the Chair—to cast aspersions on the Chair. The moment the House feels that the person who occupies the Chair for the time being is not doing justice, it knows what to do, so far as that person is concerned. But it is not for outsiders to caricature, and it is an aspersion on the whole House. I shall look into this matter leisurely and then find out what action should be taken. However, I do not want this to interrupt the progress of this Bill.

Shri T. N. Singh (Uttar Pradesh): At the same time, whatever the action about that particular cartoon be, we do feel that the Press should not come out with anything which casts aspersions on the Chair of this august House, and it should be prevented. I feel that the matter, since it has been raised, is rather important and it should not be postponed in this fashion, I would urge that once the matter has been raised, we should certainly take it up right now and the House should express its disapproval.

Mr. Deputy Speaker: I shall take time to consider it.

***Pandit Malaviya** (Uttar Pradesh): When I left off yesterday, you were good enough to ask me how much more time I would need. I respectfully expressed my inability to indicate any exact amount of time and requested you to let me proceed on the basis that I should try to take as little time as may be possible. You were good enough to more or less indicate a limit, that I should not take more than about $2\frac{1}{2}$ hours more.

Shri Sidhva (Madhya Pradesh): You said half an hour, Sir.

Pandit Malaviya: I have since heard.....

Mr. Deputy Speaker : I can only make one observation. The hon. Member yesterday was encouraged to ask for five days on the suggestion humorously made by the Hon. Law Minister.

The Minister of Law (Dr. Ambedkar): He wanted five days— I suggested five hours.

Mr. Deputy Speaker: When I was asking how long the hon. Member was likely to take, the Hon. Law Minister humorously said, five days. I was suggesting half an hour, the hon. Member was wanting more. Now what I propose doing is this.....

Pandit Malaviya: May I say.....

Mr. Deputy Speaker: I will do sufficient justice to the hon. Member. Now how long, may I know, is the Hon. Law Minister likely to take to reply ?

Dr. Ambedkar : It is my intention to be brief, but I would like to cover some of the points raised, and I feel an hour or an hour and a quarter might be more than enough for me.

Mr. Deputy Speaker: I propose calling the Hon. Law Minister as soon as the hon. Member who is on his legs finishes. Even if he takes $2\frac{1}{2}$ hours, there will be sufficient time if I call the Hon. Law Minister at 12 o'clock.

Shrimati Durgabai (Madras): The hon. Member who is on his legs after having mentioned five hours or five minutes or whatever it may be, said that he would submit himself to the ruling of the Chair and you very kindly said that he should not require more than half an hour. After having once submitted to the ruling of the Chair, would the hon. Member be now permitted to retract ?

Mr. Deputy Speaker: I leave it to hon. Members themselves.

Pandit Malaviya : I said about another matter yesterday that when my sister makes the rules, we will have to submit to many things from which fortunately we are free at the moment.

Shrimati Durgabai: This is already in the rules.

Pandit Malaviya: What I was intending to say was.....

Mr. Deputy Speaker: Under the rules, so far as Finance Bills are concerned, I can set a limit. With respect to other Bills there is no provision for setting a time-limit on speeches.

Shrimati Durgabai: My point is that once the Chair has given its ruling.....

Mr. Deputy Speaker : Not ruling.

Shrimati Durgabai:would the hon. Member be permitted to go against that ruling ?

Mr. Deputy Speaker: It is not to be interpreted to be a ruling. It is only a suggestion.

Incidentally, I forgot that I will have to put the amendments to the vote of the House. Therefore, if the hon. Member would restrict himself to two hours, thus making half an hour available for the Chair, I shall call upon the Hon. Law Minister at 11-30 so that we may finish this clause and all the amendments on it before we rise for the day. The hon. Member may take two hours.

Pandit Malaviya : I am very grateful to you, Sir, for what you have said, but what I was going to say in the beginning was that whatever might have been the arrangement that we had more or less thought we had arrived at.....

Mr. Deputy Speaker: He need not labour that point.

Pandit Malaviya:since then some esteemed friends, for whose views and opinions most of us in this House have respect and regard, have taken the view that Members of the House should take as little time as possible. As I came into the House just now, it was conveyed to me that I should finish within a matter of minutes. I know that according to the rules one should have the time which he wishes to have and it is very good of you to say that you will stick to that. It is also true that I feel very earnestly that in a matter of such vital importance where things which have come down from millennia are going to be demolished, minutes and hours should not be counted and if somebody has something to say on this issue which

is obviously not utter nonsense and irrelevance, then the question of time should not arise, whether he takes one day or two days or twenty days. But I respect the wishes of elders and of our leader and what I wished to say to you was that even though you have been good enough according to the rules to give me the longer opportunity. I shall try to leave out almost all that I had to say and shall try to confine myself to a few minutes only. I say this with a deep sense of pain and injustice to me and to this cause, but I am a man, as I said, who believes in the Hindu methods of tolerance and even if an unreasonable thing is thrust on me.....

Mr. Deputy Speaker: The hon. Member will kindly resume his seat. I have been trying to avoid any impression being created that we are either hustling the Bill or unnecessarily dragging it on. I am bound to see to it that neither the one impression nor the other impression is created. We have spent sufficient time over this matter and just when we are concluding the debate and when, if a closure motion is moved. I am prepared to accept it because I am satisfied that there has been sufficient discussion on this matter and although individual Members might not have spoken, collectively all of them have spoken on all the points arising—just at this time, if the hon. Member feels aggrieved and then makes a point that for want of time and on account of some kind of limitation and pressure he is not putting forth all his points, he would not be doing justice to any of the persons here. I would like to avoid an impression being created that we are hustling this measure. It may be that there may not be sufficient support for the one or the other opinion. After all, we have to go by the rule of the majority in this House and it is open to all persons to express and press their point of view, but let it not be said that we are hustling the measure. The hon. Member has taken two hours. If he wants, he may have two more hours and if for any reason he is not prepared to proceed further, he need not make a point out of it, lest it should create an impression that we are hustling through this matter, though really we have been going on leisurely with it. Therefore, that kind of impression ought not to be created. It is open to him to speak or not to speak for various other reasons, which are extraneous. I am only concerned with the procedure in this House and the right impression both in this House and outside that we are not hustling such an important matter as this nor are we unnecessarily trying to stretch the discussion by any kind of filibustering. Therefore,

in between these two impressions, I am trying to carry through this bill. The hon. Member need not refer to all those matters. It is his sweet will and pleasure to say what he wants to say or to refer to the further clauses or not to refer to any of them at all, or to make any comments for various reasons which he may consider fit and proper.

Pandit Malaviya : I entirely agree with the remarks that have fallen from your lips and I was not making a complaint. I was only mentioning the fact that for reasons other than those that you have stated I shall not allow myself to take all the time that I need and that I should have liked to take. That is all that I wished to submit. Incidentally, it will also probably enable several other Members of this House, who, I saw yesterday, were very keen to have an opportunity to say something, to have an opportunity to do so. I am not saying this by way of any complaint, but I was submitting to you as a matter of fact that I have to leave out practically all that I wished to say and must now come straight to one or two points.

I will leave the point I was making when we dispersed yesterday, regarding the scope of the Bill having been extended, so to say, overnight by the new Constitution having included agricultural lands in the Current List. I shall leave that also there.

I will only touch in passing on another very important aspect, namely, that the bill which is before us now is so largely changed that it is almost unrecognisable compared to what it was when it was first introduced. There is a rule that Select Committees at the end of their reports should state that they have amended the Bill only in such measure, as they think, has not changed it materially and that the amended Bill does not need re-circulation or re-publication. That proves the principle that if a Bill is substantially changed in a Select Committee it should be republished and re-circulated. I submit that in matters of legislation we should observe the sanctity of the rules, because rules are framed in moments of calm and dispassionate consideration ; not *vis-a-vis* any particular item or any particular point of view, but with regard to the basic fundamental needs of ensuring that legislation is passed only with due care, thought and circumspection. Such rules, therefore, have very great value and it must be an ill day for the growth of healthy parliamentary traditions and institutions in any country if we begin to make light of them to suit the conveniences of our opinions on particular issues and particular

occasions. I, therefore, feel, now that the Bill is so entirely changed to as it is, that constitutionally there can be no justification at all for proceeding with it, or any part of it now as it stands without that procedure being brought into force. I will leave that point also there.

I will touch only upon one or two things more and will resume my seat. Several friends who are supporters of this Bill said that this Bill has been drawn up in accordance with the tenets of the *Smritis* and *Dharma Shastras*. If I had the time I would have quoted extracts from the various *Smritis* and *Dharma Shastras* to prove the hollowness of that claim. I cannot do that now. I will, therefore, come straight to the two vital principles which are involved in the measure that is to be taken up—one the question of the degree of *sapinda* prohibition and second the question as to whether among the Hindus a remarriage of and married woman can take place.

Texts have been quoted from some of the *Smritis* on both these points. With regard to the *sapinda* question it has been argued that the *Smritis* have from time to time laid down different principles, that while one *Smriti* has said one thing another *Smriti* has said another thing and an attempt has been made to draw the inference therefrom that it was a matter not of such vital importance that it could not change, but that from time to time, reflecting the opinion and the practice of the age, the different *Smritis* have laid down different texts. I was mentioning yesterday that in the matter of these *Dharma Shastras* there are rules of interpretation which have laid down cut and clear principles and methods of approach. It is laid down that the *Dharma Shashtra* can be interpreted only by the utilisation of the rules of *Mimamsa*. Fourteen sources for determining them have to be utilized. They are all mentioned and therefore if anybody wants honestly to understand these things he must go into the depth of that matter.

Almost every one of the *Smritis* and the *Dharma Shastras* have laid down that in the *sapinda* degree of prohibition we should have seven degrees on the paternal side and five degrees on the maternal side or more. Nobody has disputed that. It has been said that it is stated only in some of the *Smritis* as five and three instead of seven and five. I believe the *Paithinasi Smriti* text is relied upon for this purpose. In the belief that Members of this House wish seriously to take the matter into consideration as to whether it is laid down in the *Smriti* that it should be five and three, I shall try to clear up that point. The *Paithinasi Smriti*.....

Mr. Deputy Speaker: I do not think the Hon. Law Minister is dogmatic about this matter.

Dr. Ambedkar: When the time comes we shall consider it. ...

Pandit Malaviya : I am taking this only as an instance to show how the entire provisions of the Bill are based upon a complete misconception. The text in the *Paithinasi Smriti* is :

पंचमीं मातृतः परिहरेत् सप्तमीं पितृतः

So far it is clear—five degrees from the mother and seven degrees from the father. So, the *Paithinasi Smriti* also says the same so far. Then, it goes on to say:

त्रीन् मातृतः पंचपितृतो वा ।

It gives another view and says three from the mother's side and five from the father's side. If I had the time I would have gone into all the other *Smritis* to disprove the statement of some friends that the *Smritis* lay down different rules—in one case seven and five and in another case five and three and it is for us to select.

The *Mimamsa* lays down the method of interpretation of these texts. The whole basis of Hindu law rests upon the fact that the law comes for the *Shruti*. *Shrutis* are *Swatah Pramana* (स्वतः प्रमाणः). Whatever is in the *Shruti* stands proved by itself and does not need any further argument. The *Smritis* are *Partah Parmana* परतः प्रमाणः They do not by themselves carry that authority because they are *Shrutimula*. श्रुति मूल. They belong to the class where authority is derived from *Shrutis*. Now, it is obvious then that if the same source is to be drawn upon by all the *Smritis* the obvious objection would be—and I suppose it would be a natural objection also—that if you claim that they all emanate from one and the same source, then how can there be conflicting versions in them. We can anticipate that objection.

Mimamsa goes on to say that there may be cases where in the *Shruti* itself there is *auvikalp*, that is, where the *Shruti* itself lays down two alternatives that a thing may be of one or another.

There are instances of that nature in the *Shrutis* themselves !

[10 A.M.]

उदिते जुहोति। अनुदिते जुहोति।

That is from the *Smritis*. It says a certain *Yajnya* may be performed before sunrise, and it also says it may be performed after sunrise. But there is no conflict, because both are mentioned in the *Shruti*. And then according to the tenets of the *Mimamsa Shastra* other

considerations come into play. Technically it is called *Atma tushti*, and according to the principle of *Atma tushti* each one has to decide— not for the pleasure of it; *Atma tushti* does not mean pleasure, it does not mean one's whim of taking one thing today and taking another thing tomorrow, taking rice today and taking *chapati* tomorrow. But *atma tushti* has a fundamental religious place. According to *Atma tushti* the *Dharma* has to be selected, and once it is selected it remains permanently there, for all time. But that is so only when both the things are mentioned in the *Shruti*. The *vikalp* comes only when both the things are thus mentioned in the *Shruti*. For instance you find :

अतिरात्रे षोडशिनं गृह्णाति। नातिरात्रे षोडशिनं गृह्णाति।

(Late at night takes one of sixteen, takes not late at night.)

Two directly conflicting things in the *Shruti*. But both being there, the *vikalp* is possible. If the *Smritis* say two different things, then if we found that there is mention of the two things in the *Shrutis*, the *vikalp* would be possible, and the claim which has been made by my Hon. Friend the Law Minister and others that these provisions are based upon what the *Shrutis* say, would become correct. But the available *Shrutis* are silent on the point. There is no direction about the matter. The question then arises, how then do the *Smritis* contain different rules if they have derived them from the *Shruti* sources ?

Mr. Deputy Speaker : I understand the Bill to go according to the *Shrutis* if possible and without the *Smritis* if necessary. That is what, I think, the Law Minister has in view. Therefore, notwithstanding the doubt as to whether it is three and five according to strict rules of interpretation—and they have to be made consistent; I do not think he disputes the proposition that everywhere they are trying to make it consistent so as to avoid any inconsistency—he chooses the latter view. Even if it is not borne out by the strict rules of interpretation he says that it is the correct one and should be adopted, subject of course to the approval of the House. I think that is the view of the Law Minister.

Dr. Ambedkar : Yes.

Mr. Deputy Speaker : Therefore, there is no good labouring the point as to what the interpretation is.

Pandit Malaviya : As I said, I am not doing this necessarily to go into the interpretation of this thing. I am taking this as an example to show the approach to the matter. What I wish to say is that according to the *Mimamsa Shastra* the two texts, one saying that it should be

five and seven and the second saying that it may be three and five, must be reconciled and an interpretation—an infallible, unquestionable interpretation must be there. An interpretation has to be found which is unquestionable and incontrovertible. Otherwise the *Smriti* does not remain a *Smriti*. *Paithinisi* is among the *Smritis*. If we will only look for it we will find that we have in the *Smriti Sangrah*, we have in the *Nibandhakaras* a clear interpretation of this difference which lays down, and not only lays down but proves—it will take me time if I went into it, therefore I will not—but it is proved that this provision in the *Paithinisi* is not applicable to all people, it is not applicable to the *aurasa* and the others. In their case the seven and the five apply, and this variant of five and three can only apply to *Dattaka putras* or to *Sapatni matas*. That is how the *Mimamsa Shastra* reconciles these two.

I took this instance to show that there is a clear way of interpreting the *Shastras*. If we want to go according to the *Shastras* we must go accordingly and we will find no sanction for deviating from the seven and the five degrees of *Sapinda* prohibition for marriage.

Similarly, I will take another question. A member read out with a certain amount of righteous satisfaction and vehemence that in the *Smritis* themselves we have provisions for the marriage of once-married women. The well-known *Narada Smriti* and *Parashara* text was read out by an hon. friend of mine—here he is—and he said that the *Smritis* themselves have said that a woman may be married a second time. I can see some friends feeling satisfied about it. This is a tragic matter, for this reason that the meaning of that *sloka* becomes perverted if it is interpreted to mean that it relates to a married couple. I hope Members will not think that I am talking in the air. (*An Hon. Member: No, no*). The line is very simple:

नष्टे मृते प्रव्रजिने, क्लीबे च पतिते पतौ।

पत्र्यस्वापत्सु नारीणां, पतिरन्यो विधीयते।

It is allowed at disappearance, demise, reclusion, impotency and sinfulness of the husband.

As it looks it is very simple. In the case of these and these and these 'husbands', these friends think, another husband is provided. But I wish Members of the House kindly to devote their mind to this. The simple rules of *Vyakarana* come into this question.

An hon. friend says *Vyakarna Padhao* and one may feel tempted to play the pedagogue to so distinguished a class, but I shall resist

the temptation and I will only briefly explain the matter because it is a point upon which the whole edifice of the Hindu Code rests. It is that one sentence upon which everyone seems to be taking his stand. It is a very simple matter. According to the rules of grammar *Eka Vachana* in *Saptami* of *Pati* is *Patyau*. That is formed according to definite *Sutras*. I do not know if you will let me go into details to show how the words *Patyau* and *Patau* are each formed. I am quite sure it will be interesting, but it will take time. But every thing will become clear if we understand that.

Mr. Deputy Speaker: What will happen to *Hari*? It is a masculine ?

Pandit Malaviya: I see, Sir, you are interested and if you will permit me...

Mr. Deputy Speaker: Then *Hari* is *Ikaranta Pullingam* and *Saptami* is *Harau* and *Pati* should be *patau*. That is my difficulty. I do not know if it is different.

Pandit Malaviya: Sir, your question is quite valid. That is it. From *Hari* it is *Harau*. So from *Pati*, it should be *Patau*. But we all know it is *Patyau*. Why? The difference is in this way. When it is *Saptami Ek Vachan Gni* comes in. Then the *Sutra Patih Samasa Eva* comes into play and the *Ghi Sangya* gets ruled out and another *Sutra aut*, comes into play and it becomes *pati* plus *au*. Then by the *Sutra Ikoyanachi* the 'i' gets transformed into *ya* and *Patyau* is formed. That is in the case of the ordinary meaning of the word *Pati*, that is husband. The rule is quite clearly laid down *Patih Samasa Eva*. Now, Sir, the question arises why instead of *Patyau* the word *Patau* has been used. It is such an obvious thing that even a blind man can see, that there is some difference, there is some purpose. The Hon. Law Minister will bear me out that the normal form (*rup*) of *Pati* in *Saptami* is *Patyau*. But in this text *Patau* is used. (*Interruption*) An hon. Member says that he is extremely doubtful. I do not claim for myself his wisdom in this. But, *Panini's Ashta Dhyayi* is there and if any hon. Member can point out anything to the contrary. I will do whatever he will say.

Shri Amolakh Chand: Will the hon. Member quote the *shloka* also?

Pandit Malaviya: I am coming to that. Therefore, the word used is different from the normal word *Patyau*. Here the word is *Patau*. Now according to the rules of Sanskrit grammar...

Mr. Deputy Speaker : It is not necessary. The hon. Member means that it is incorrect.

Pandit Malaviya : No, no. It is not incorrect. What I was going to point out was that in this case the word *Pati* is used not in the sense of *Pati* meaning husband but according to the rules of grammar— I am not saying it on my own but according to the rules of grammar पति can only be used where the *Achararthe* sense comes in. Then, not being in the sense of पति i.e. husband, the *sutra* ‘पतिः समास एव’ which applies normally and results in पत्यौ does not apply and ‘Ghi’ *Sangya* (‘घि संज्ञा’) takes place etc. and when ‘Ghi’ *Sangya* (घि संज्ञा) comes in then the *sutra* *Accha Gheh* (अच्च घेः!) applies and the word *Pati* plus ‘i’ becomes *Pata* plus ‘Au’; and by the rule *Vriddhi* it becomes *Patau* (पतौ). It is a recognized word in the Sanskrit Grammar of *Panini*; it is not mistake that it has been used here in that form; it is not by thoughtlessness that it has come in. But the word *Patau* (पतौ) instead of *Patyau* पत्यौ has a meaning and the meaning of that word पतौ is one who is going to be a *Pati* and not one who is a *Pati*. That is the meaning of that word. Let anybody challenge what I am stating. For thousands of years that grammar has been there and nobody has questioned it; the word *Patau* means not a husband but who is on the point of becoming a husband. This correct meaning of this *shloka* completely changes...

Prof. K. T. Shah (Bihar): *Anayu* comes in there.

Mr. Deputy Speaker : *Patranyo Vidheeyate* comes in. It must have been a husband.

Pandit Malaviya : I am coming to that. I am very glad you raised that question. In the *Prathama* there are only one set of *sutras* but in *Saptami* there are these two sets of *sutras* mentioned by me, one forming *patyau* and another forming *Patau* and secondly the difference had to be shown at the first place only, to clearly indicate that only where there had been a talk of marriage but no marriage in fact, that this question arose, while in the second place, it is a husband who is to be indicated. It is not merely a candidate for husbandship which has to be provided. Therefore, the second *Patiranyo Vidheeyate* is perfectly correct.

Mr. Deputy Speaker: *Anyo* must mean what preceded also.

Pandit Malaviya : *Anyo* is again *Prathama*.

Mr. Deputy Speaker : *Prathamanyah* also must be the husband.

Pandit Malaviya: If it had been both the same then in the first place it would have *Patyau*.

Mr. Deputy Speaker : Whatever is intended by the provisions one must correspond with the other one.

Pandit Malaviya : How can it, Sir, when the very purpose is different. The beauty of Sanskrit language is that it expresses in a word what it takes a sentence to say in another language. That is the beauty of Sanskrit language. If a sentence says "If mango is not available, then guavas may be taken" we cannot say that mango and guava must be one and the same.

Mr. Deputy Speaker : There cannot be a comparison between two absolutely uncorrelated matters. If *Anyo* is used that word or the other must relate to the same category. If in the one case it is not marriage, in the other case also it is not marriage. If it is marriage in one case, it is marriage in another case. Both of them are understood to be the marriage of the husband.

Pandit Malaviya : We cannot change the meaning of words

Shri B. K. P. Sinha (Bihar): On a point of order, Sir, I find that all these discussions are academic. The words *Pati* and *Patyau* are used in this *shloka* and not *Patau*.

Pandit Malaviya: That must be a wrong print. I am not saying it lightheartedly. The original text is *Patau*. The very chanda

Mr. Deputy Speaker : *Patite Patyau* must be wrong because it should be *guru*. The prosody will come in the way of this *Pati* and *Patau* are different. Apparently it is wrong.

Pandit Malaviya: It is obvious that it cannot be *Patyau*. What I wished to submit was that this rock upon which that edifice stands does not exist at all and the meaning of the word used is not husband ; it is not *Patyau* but it is only one who is on the point of becoming a husband, *Patau*. There is thus nothing in the *Shastras* to suggest that a married Hindu woman could marry again.

I do not want to take much time of the House. I had many things to say. But, in view of what I referred to, I do not wish to go against the wishes of those whose wishes and words are law for us. I, therefore, do not wish to take much more time, much though I would have liked to say many things. By these two examples I have tried to show how completely fallacious are the grounds on which the Hindu Code is proceeding.

I will conclude by mentioning one thing more. In Hindu society from time immemorial, laws have prevailed without the authority of