The motion was negatived.

Mr. Deputy Speaker : The question is :

Omit proviso to sub-clause (2) of clause 2.

The motion was negatived.

Mr. Deputy Speaker : The question is :

In the proviso to sub-clause (2) of clause 2, for "in respect of those matters" occurring at the end, substitute :

"In respect of matters which that person has not voluntarily chosen."

The motion was negatived.

Mr. Deputy Speaker : The question is :

After sub-clause (1) of clause 2, insert:

"(1A) This code shall not apply to the Scheduled Castes and Scheduled Tribes."

The motion was negatived.

Mr. Deputy Speaker : Amendment No. 281 is barred. I now come to amendments of a formal and verbal nature. First I shall put amendment No. 3 by Dr. Ambedkar. The question is:

In clause 2—

(1) in sub-clause (1),—

(i) in part (a) for "Hindus, that is to say, to all persons professing the Hindu religion" substitute "persons who are Hindus by religion" ;

(ii) in part (d), for "Hindu religion" substitute "Hindu, Buddhist, Jaina or Sikh religion";

(2) Omit sub-clause (4).

The motion was adopted.

Shri R. K. Chaudhari : Sir, I want to oppose the next amendment of Dr. Ambedkar. I think he is making one of the most colossal mistakes of his life.

Shri J. R. Kapoor : What is the subject matter ?

Mr. Deputy Speaker : Mr. Chaudhari is opposed because Dr. Ambedkar wants to substitute "tribe or community" for "community" Perhaps Dr. Ambedkar's fear is that "community" may not include a tribe; therefore, he wants to make it more specific.

The question is :

In the amendment proposed by the Hon. Dr. B. R. Ambedkar, printed as No. 3, after part (1) (i) insert:

"(ia) in part (c) (ii) for "community" substitute 'tribe or community',"

The motion was adopted,

Mr. Deputy Speaker : The question is :

In part (a) of sub-clause (1) of clause 2, for "Hindus, that is to say, all persons professing the Hindu religion" substitute "persons who are Hinuds by religion".

The motion was negatived.

Mr. Deputy Speaker : The question is :

For part (b) of sub-clause (1) of clause 2, substiute:

"(b) to all persons who are Buddhists, Jains or Sikhs by religion ;"

The motion was negatived.

Dr. Deshmukh (Madhya Pradesh) **:** May I point out that the hon. Doctor had suggested that he wants to hold over the final passing of the clause ?

Mr. Deputy Speaker : The hon. Member was perhaps not present when I later on modified that it is only a formal changes in the name—whether it should be called Hindu Code or Hindu Marriage and Divorce (Amendment) Code. That is only a formal matter.

Then, the question is :

In the amendment proposed by the Hon. Dr. B. R. Ambedkar, printed as No. 3, in the proposed amendments to sub-clause (1) of clause 2, after part (1) (ii), insert:

"(iii) insert a new part (e) as follows:

'(e) to a convert to any religion or faith after the commencement of this code.' "

The motion was negatived.

Mr. Deputy Speaker : What about amendment No. 91 moved by Pandit Thakur Das Bhargava ?

Pandit Thakur Das Bhargava : I beg leave to withdraw it.

The amendment was by leave, withdrawn.

Mr. Deputy Speaker : The question is ;

In the amendment proposed by the Hon. Dr. B. R. Ambedkar, printed as No. 3, in the proposed amendment to clause 2, after part (1), insert:

"(1A) in the proviso to sub-clause (2), insert at the end 'unless he has declared his consent in the manner prescribed by the Central Government in this behalf to be governed by this Code in respect of such matters also.' "

The motion was negatived.

Mr. Deputy Speaker : Amendment No. 93 is barred as it is similar to one already negatived.

Then, the question is:

Omit sub-clause (3) of clause 2.

The motion was negatived.

Mr. Deputy Speaker : Amendment No. 283, being the same, is barred. What about amendment No. 238 moved by Mr. Jaspat Roy Kapoor ? Hon. Members must be attentive.

An Hon. Member : Your amendments are being negatived.

Shri J. R, Kapoor : I am sorry, Sir but there is this talk going on here.

Mr. Deputy Speaker : The Hon. Member himself speaks and quarreles with other Members.

Shri J. R, Kapoor : Sir, I beg leave to withdraw it.

The amendment was, by leave, withdrawn.

Mr. Deputy Speaker : What about amendment No. 116 moved by Shri Gokulbhai Bhatt ?

Shri Bhatt : I beg leave to withdraw my amendment. It is not necessary.

The amendment was, by leave, withdrawn.

Mr. Deputy Speaker :

Then, the question is:

Omit sub-clause (4) of clause 2.

The motion was negatived.

Mr. Deputy Speaker : Amendment No. 284, being the same, is barred. The next amendment is No. 118 of Mr. Naziruddin Ahmad that after sub-clause (4) of clause 2, a new sub-clause be added, namely : "(5) Notwithstanding anything in this section this Code shall

apply only to such areas or to such persons or classes of persons in any State ... etc.". This has been held over to clause 1. Amendment Nos. 118 and 285 go together and they are held over. I would suggest to the hon. Member that if he wants to have these taken up in connection with clause 1 he may table a separate amendment.

Shri Naziruddin Ahmad : I shall table a separate amendment to suit the context of clause 1.

Mr. Deputy Speaker : The question is :

For part (d) of sub-clause (1) of clause 2, substitute :

"(d) to a convert to the Hindu religion, subject to his rights and liabilities before his conversion."

The motion was negatived.

Mr. Deputy Speaker : The question is:

To clause 2, add the proviso :

"Provided however, that notwithstanding anything contained in the above clauses, this Code shall not apply to such person as will get his or her name registered with such authority and in such manner, as may be hereafter prescribed by Parliament, within five years after this Code comes into force and in case of a minor within five years after such a minor attains majority, to the effect that he or she does not want to be governed by this Code."

The motion was negatived.

Mr. Deputy Speaker : The question is:

To clause 2, add the proviso :

"Provided however, that notwithstanding anything contained in this section this Code shall not apply to any person unless such person got his name registered, signifying his will to be governed by this Code, with such authority and in such manner as may be prescribed."

The motion was negatived.

Mr. Deputy Speaker : The question is ;

To clause 2, add the proviso :

"Provided further that notwithstanding anything to the contrary in this Act, no provision of this Act shall apply to any one unless a referendum thereupon has been taken in the State to which he belongs and the Legislature of the State thereafter has decided in accordance with the result of the referendum that the provisions of this Act shall apply to the residents of the State. Further, that, thereafter, it shall be open to anyone to declare that he shall not

be governed by this Act and the same shall then not apply to him."

The motion was negatived.

Mr. Deputy Speaker : The question is;

In part (a) of sub-clause (1) of clause 2, after "including' insert "Buddhists, Jains, Sikhs".

The motion was negatived.

Pandit Malaviya : I do not press my next amendment.

Mr. Deputy Speaker : Now, we have disposed of all the amendments. Is there any Hon. Member whose amendment I have not put to the House ? I take it that there is none.

The question is :

That clause 2, as amended, stand part of the Bill."

The motion was adopted.

Clause 2, as amended, was added to the Bill.

*HINDU *CODE—contd.*

Mr. Deputy Speaker : The House will now proceed with the further consideration of the Bill to amend and codify certain branches of the Hindu Law, as reported by the Select Committee. Yesterday we disposed of Clause 2 ; the major contentious clause is over. I hope the other clauses will be passed quickly.

Clause 3.—(*Definitions*)

The Minister of Law (Dr. Ambedkar) : I beg to move:

In clause 3,—

(i) for the words "unless there is anything repugnant in the subject or context" substitute "unless the context otherwise requires";

(ii) renumber the existing items (i), (ii), (iii) and (iv) as items (ii), (iii), (iv), (v) and insert the following as item (i), namely:

> '(i) "Aliyasantana law' means the system of law applicable to persons who, if this Code had not been passed, would have been governed by the Madras Aliyasantana Act, 1949 (Madras Act IX of 1949);';

(iii) in term (iii), as to renumbered, omit "except in sections 41 and 49";

(iv) in the *Explanation* to item (v), as so renumbered, for "this clause" substitute "clause (iv) and (v)" ;

(v) renumber the existing items (v), (vi), (vii) and (viii) as items (viii), (ix), (x) and (xi) and insert, the following as items (vi) and (vii) namely :

'(vi) "Marumakkattayam law" means the system of law applicable to persons—

> (a) who, if this Code had not been passed, would have been governed by the Madras Marumakkattayam Act, 1932 (Madras Act XXII of 1933), the Travancore Nair Act, H of 1100, the Travancore Ezhava Act, III of 1100, the Nanjindad Vellala Act, 1101, the Travancore Kshatriya Act, 1108, the Travancore Krishnavaka-Marumakkathayee Act, 1115, the Cochin Thiyya Act, VIII of 1107 ; the Cochin Nayar Act, XXIX of 1113, or the Cochin Marumakkathayam Act, XXXIII of 1113 or
>
> (b) who belong to any community, the members of which are largely domiciled in the State of Trvancore Cochin or Madras, and who, if this Code had not been passed, would have been governed

* P.D., Vol. XV, Part II, 21st September 1951, pp. 2974-3008,

by any system of inheritance in which descent is traced through the female line; but does not include the Aliyasantana law ;

(vii) "Nambudri law" means the law applicable to persons who, if this Code had not been passed, would have been governed by the Madras Nambudri Act, 1932 (Madras Act XXI of 1933), the Cochin Nambudri Act (XVII of 1114), or the Travancore Malayala Brahmin Act of 1106 (Regulation III of 1106);

(vi) in item (viii) as so renumbered, for "any" substitute "a".

Shri Naziruddin Ahmad (West Bengal) **:** I think that it would be better to proceed seriatim, sub-clause by sub-clause, and subject by subject. Otherwise, the difficulty would be that the debate would be of too general a nature. In clause 2 the debate was much of a general nature because we did not consider individual items or groups.

Mr. Deputy Speaker : I agree, I shall proceed in the order in which they have been noted in the order Paper.

Dr. Ambedkar : My amendment is so to say in two parts. Item 1 of my amendment is merely a verbal change. It has been pointed out to me that the words that are used in the existing clause "unless mere is anything repugnant in the subject or context" are not in consonance with the language which we have been using since the passing of the Constitution, the Constitution uses the phraseology "unless the context otherwise requires" and in order to bring the language of this Bill in consonance with the language of the Constitution, I am making that particular amendment, it is merely a change of words.

With regard to the other amendments, they are necessary because it has now been proposed that the marriage and divorce law should also apply to persons who are governed by the Marmuakkattayam and Aliyasantana law. As the subsequent sections deal with that aspect; of the matter, it is necessary to enlarge the definition clause so that necessary definitions which relate to that matter may be brought in and the definition clause be made complete.

Mr. Deputy Speaker : amendment moved :

In clause 3,—

(i) for the words "unless there is anything repugnant in the subject or context" substitute "unless the context otherwise requires";

(ii) renumber the existing items (i), (ii), (iii) and (iv) as items (ii), (iii), (iv) and (v),and insert the following as item (i), namely :

(i) "Aliyasantana law", means the system of law applicable to persons who, if this Code had not been passed, would have been

governed by the Madras Aliyasantana Act, 1949 (Madras Act IX of 1949);

(iii) in item (iii), as so renumbered, omit "except in sections 44 and 49";

(iv) in the *Explanation* to item (v), as so renumbered, for "this clause" substitute "clauses (iv) and (v)";

(v) renumber the existing items (v), (vi), (vii) and (viii) as items (viii), (ix), (x) and (xi), and insert the following as items (vi) and (vii), namely :

(vi) "Marumakkattayam law" means the system of law applicable to persons—

(a) who, if this Code had not been passed, would have been governed by the Madras Marumakkattayam Act, 1932 (Madras Act, XXII of 1933), the Travancore Nair Act, II of 1100, the Nanjindad Vellala Act, 1101, the Travancore Kshatriya Act, 1108, the Travancore Krishnavaka-Marumakkathayee Act, 1115, the Cochin Thiyya Act, VIII of 1107, the Cochin Nayar Act, XXIX of 1113, or the Cochin Marurnakkathayam Act, XXXIII of 1113, or

(b) who belong to any community, the members of which are largely domiciled in the State of Travancore-Cochin or Madras, and who, if this code had not been passed, would have been governed by any system of inheritance in which descent is traced through the female line ;

but does not include the Aliyasantana law ;

(vii) 'Nambudri law' means the law applicable to persons who, if this Code had not been passed, would have been governed by the Madras Nambudri Act, 1932 (Madras Act XXI of 1933), the Cochin Nambudri Act (XVII of 1114), or the Travancore Malayala Brahmin Act of 1106 (Regulation III of 1106) ;' ;

(vi) in item (viii) as so renumbered, for "any" substitue "a".

Shri Naziruddin Ahmad : My amendment No. 410 comes in by way of priority according to the subject because this amendment is the real clause. My amendment seeks to delete 'Aliasantana law'.

Mr. Deputy Speaker : The Hon. Member may move it.

Shri Naziruddin Ahmad : I beg to move: In the amendment proposed by Dr. Ambedkar, in part (ii), omit the proposed part (i) of clause 3.

Before that I have certain verbal and formal amendments which I think, need not be pressed before the House, that is in the amendment proposed by the Hon. Minister of Law in item (ii) there is the renumbering amendment that runs all through the amendments. If we take up the renumberings at this stage it will create confussion, and we do not know where we would be. They should be done by the Secretary or the Draftsman and therefore I suggest that for the time being we should eliminate these renumbering amendments. I have a lot of amendments to cure these verbal irregularities, but I do not wish to move them because I want to leave them entirely to the Secretary.

Coming to my amendments, they are for the deletion of the definition of Aliyasanatana law and I have other amendments to delete the definitions of Marumakkattayam and Nambudri law. The reason for moving this amendment is this ; that this is as well as other amendments relate to these special laws, which I want to delete because this is the policy of the Bill, namely to make no reservation, no exceptions in any case. In the case of Sikhs we have decided to make no exception. In the case of others we have made no provision to exclude them from the operation of the Code. That being the accepted principle ...

Mr. Deputy Speaker : I understand the Hon. Minister to say that he now proposes to extend all the provisions of this Act to both these classes also.

Shri Naziruddin Ahmad : That means the marriage and divorce law laid down in the Bill will also apply to those Hindus who are now governed by Aliyasantana, Marumakkattayam and Nambudri law separately.

Mr. Deputy Speaker : Therefore, the objection is over.

Shri Naziruddin Ahmad : The objection is that if general provisions are to apply to all Hindus so far as marriage and divorce is concerned, the definition is absolutely unnecessary ! It is rather misleading.

Mr. Deputy Speaker : We have accepted this. We had included others as in the case of Sikhs. There is no need for separate definition. The Bill includes it and therefore it is not necessary. Exception is made for Aliyasantana and Marumakkattayam law. They are excluded from the operation of marriage and divorce laws as envisaged in the Bill.

Shri Naziruddin Ahmad : I do not think they should be excluded at all.

Mr. Deputy Speaker : That is exactly what the Hon. Law Minister is trying to do.

Dr. Ambedkar : That is what I am trying to do.

Shri Naziruddin Ahmad : By the inclusion of this definition ? If that is the specific purpose, then, my amendment is needless.

Mr. Deputy Speaker : Originally, those who were governed by the Aliyasantana Act and Marumakkattayam law were excluded and they were allowed to be regulated by those two laws. The Hon. Law Minister now feels that they must also be brought into the frame work of the Act so as to bring about uniformity. That is why he is adding this.

Shri Naziruddin Ahmad : My perplexity arises from the fact that even apart from this definition, they will ordinarily be included.

Mr. Deputy Speaker : The Bill specifically excludes them.

Shri Naziruddin Ahmad : That portion should be deleted. There is repetition.

Mr. Deputy Speaker : The hon. Member began under the wrong impression that originally they were included and the Law Minister wants to exclude them.

Shri Naziruddin Ahmad : The exclusion should be by amending the general clause; not in the definition.

Mr. Deputy Speaker : That is another matter. As a matter of substance, hon. Member's amendment has absolutely no force.

Shri Naziruddin Ahmad : I quite agree.

Mr. Deputy Speaker : Then, why should he look at formal affairs and verbal amendments. If it is necessary, let us have this definition for the purpose of clarification instead of relegating it to some General Clauses Act.

Shri Naziruddin Ahmad : Not the General Clauses Act, but the general definition of Hindus under this Act. It should apply to all Hindus. This Aliyasantana law governs the Hindus. This is special mention and then inclusion. The inclusion is already there.

Mr. Deputy Speaker : The backbone of his objection is broken. The hon. Member is trying to get at some formal affair. Is it necessary ?

The Minister of Home Affairs (Shri Rajagopalachari) : I think the hon. Member has not realised the actual position. There are two ways of excluding certain classes or groups; one by actually ignoring them in the whole Code and another by referring to them and providing for them as exception. If the Hon. Law Minister has chosen now to

provide for them by making exceptions in the body of the Code, it is necessary to deadline them.

Mr. Deputy Speaker : It is the other way about. He has already made exceptions in favour of these and he has povided for exclusion from the Bill.

Shri Rajagopalachari: That is what I have said.

Mr. Deputy Speaker : What he wants to do is to include them.

Shri Rajagopalchari: I think the hon. Member who has moved the amendment is thinking that we have applied the whole Code bodily to these people and therefore, since you have defined the Hindus, why should you define these people. The answer is, we do not propose to apply the provisions in the Code bodily to them but to provide exceptions and therefore it is necessary to define who they are.

Shri Naziruddin Ahmad : I fail to appreciate all this fineness. If the Code is to apply, it should straight forward be applied to them, instead of leaving any exceptions.

Shri Rajagopalachari: Suppose we applied it to them ; "they" should be defined here. That is what is being done.

Shri Naziruddin Ahmad : It should apply to all; they are already included in the definition of Hindus.

Shri Rajagopalachari: There are exceptional provisions for these people.

Mr. Deputy Speaker: Let me understand first; without understanding, I cannot put it to me House. As the Bill stands at present, clause 51 says :

"(1) Nothing contained in this Part shall be deemed to affect any right conferred by the Madras Marumakkattayam Act, 1932 to obtain the dissolution of a sacramental marriage, whether solemnised before or after the commencement of this Code."

Therefore, under the Bill as it has emerged from the Select Committee, Marumakkattayam Law is allowed to apply so far as those persons who are governed by this law are concerned. What the Hon. Law Minister wants to do is not to create exceptions in favour of any particular class, but to bring them all under this Act.

Dr. Ambedkar: Yes.

Mr. Deputy Speaker : That is what Mr. Naziruddin Ahmad wants. Originally he was under the impression that an exception is sought to be made. He was under the impression that originally those governed by the Marumakkattayam law and Aliyasantana law were governed

by this Code and the Hon. Law Minister wanted to make exceptions and that is what he objects to. Now that he knows that the original Act made an exception and they are being brought under it, he withdraws his objection, but he clutches,—let me withdraw that word— he wants to raise a formal thing, regarding the definition of Marumakkattayam and Aliyasantana. The substance has gone. Why should he worry himself over these formal things ?

Shri Naziruddin Ahmad: Clause 51 should be deleted. That would be enough.

Mr. Deputy Speaker: That is a matter of procedure.

Dr. Ambedkar: We will come to that later on.

Mr. Deputy Speaker: We will come to that later on.

Shri Naziruddin Ahmad : There are special provisions in this Bill for all these people. That should be dropped. The definition should also be dropped.

Mr. Deputy Speaker: There is no harm in making it clear.

Shri Naziruddin Ahmad: It would only be showing one's nose in a round about way.

Mr. Deputy Speaker : Aliyasantana law is not a general law going into the customs and other things. This is a Code.

The Minister of State for Transport and Railways (Shri Santhanam): After we have finished the whole thing, if any substantial provision of Aliyasantana Act does not come in, then we can revert to this, if it is superfluous. It is better to start with a definition because some provisions as they stand has reference to it.

Mr. Deputy Speaker : I suppose the hon. Member Mr. Naziruddin does not see any necessity for this. As a matter of fact, his point has been put forward in the Hon. Law Ninister's amendment. Therefore, all the amendments standing in the name of Mr. Naziruddin Ahmad are not moved.

Shri Naziruddin Ahmad : No, no.

Deputy Speaker : Amendment No. 372 is a formal one, I shall take the responsibility for re-numbering.

Shri Naziruddin Ahmad : Amendment 410 is not pressed.

Mr. Deputy Speaker : Then, there are amendments 374 and 375.

Shri Naziruddin Ahmad : I press amendment No. 374. But, my amendment No. 377 comes earlier.

Mr. Deputy Speaker : The hon. Member may move it. So far as formal amendments are concerned with regard to brackets, etc., I shall instruct the office about them.

Shri Naziruddin Ahmad : I shall not move then any more at all. That is quite enough. I Move Amendment No. 377.

Pandit Thakur Das Bhargava (Punjab)**:** Am I to take it that you have exhausted sub-clause (i) ? I have got an amendment.

Mr. Deputy Speaker: Let me first finish the first clause.

Pandit Thakur Das Bhargaya: I have no objection if Mr. Naziruddin Ahmad claims to move all his amendments first.

Shri Naziruddin Ahmad: It is not a claim; it would be more convenient.

Mr. Deputy Speaker: Let me first dispose of sub-clause (i) of clause 3.

Pandit Thakur Das Bhargava : I beg to move; In part (i) of clause 3, for the words "among Hindus" substitute the words "among persons to whom this Code applies."

I do not want to make any speech as the thing is very apparent.

Mr. Deputy Speaker : Amendment moved :

In part (i) of clause 3, for the words "among Hindus" substitute the words "among persons to whom this Code applies."

Shri Santhanam : Clause 2, sub-clause (3) covers this point fully.; 'Hindus' means all people to whom this Code applies.

Mr. Deputy Speaker: This House has already adopted the definition.

Pandit Thakur Das Bhargava : I know that. But, nothing is lost if we use these words which are very expressive. Suppose a person reads any other section ; then, he has to know what me definition is. Unless he keeps the definition in mind, he would not be able to know to whom this Code applies. These words express the meaning fully.

Mr. Deputy Speaker : Even then, he has to revert back to the meaning of persons to whom this Code applies. We are only using and expanded definition.

Pandit Thakur Das Bhargava : 'Persons to whom this Code applies': he has to take this definition everywhere. This is more particular. I leave it to the House.

Mr. Deputy Speaker : I am only trying to know whether it is a matter of substance on which greater emphasis should be laid or a formal thing. Anyhow, I take it as moved.

Pandit Thakur Das Bhargava: I beg to move:

In part (i) omit the words "and uniformity".

Shri Santhanam : I want to get one point clear. Does the hon. Member suggest that if there was a custom one thousand years ago in a particular…….

Pandit Thakur Das Bhargava: I have not yet spoken on my amendment, and my hon. Friend there is already opposing it.

Mr. Deputy Speaker : No, the mover only means that uniformity is a difficult matter for the whole of India. Amendment moved:

In part (i) omit the words "and uniformity".

Pandit Thakur Das Bhargava : With your permission I shall move my other amdendment also :

In part (i) of clause 3,—

(a) after the words "group or family" occurring in line 4, add the following;

"or any rule which is certain not unreasonable and has been judicially recognised as valid and binding in any local area, tribe, community, group or family" ; and

(b) Omit the first proviso.

If you will allow me, I shall argue out my point in moving these amendments.

Mr. Deputy Speaker: Not now, I shall come back to the hon. Member. Amendment moved :

In part (i) of clause 3,—

(a) after the words "group or family "occurring in line 4, add the following :

"or any rule, which is certain not unreasonable and has been judicially recognised as valid and binding in any local area, tribe, community, group or family"; and

(b) Omit the first proviso.

Shri Jhunjhunwala (Bihar)**:** I want to move my amendment No. 413 in a slightly modified form, using the word "*varna"* for the word "caste" occurring there.

Dr. Ambedkar : It rather confuses me if the word "sub-clause" is used when referring to these parts or items of the clauses. In matters of this sort, we speak of items. They are referred to as item 1 and item 2 and so on. There are no sub-clause to these clauses. They may please be referred to as entries or items.

Mr. Deputy Speaker : There are these clauses and then these sub-clauses and so I.....

Shri Santhanam : No, Sir, Sub-clauses are numbered as usual.

Dr. Ambedkar: Whatever word may be adopted, it is better to avoid the word "sub-clause".

Mr. Deputy Speaker: All right. I shall use the word "entry" or "part". Here Mr. Jhunjhunwala wants to modify his amendment by changing the word "caste" into "*varna*"—as was suggested by the Law Minister yesterday.

Shri Jhunjhunwala: I beg to move :

In part (i) after the word "tribe" insert the word "*varna*".

I would, also like to move my amendment No. 414 with a slight modification, omitting the words coming after the words "principle castes", I beg to move :

After part (i) insert the following new part:

"(ia) the word "vama" means according to the context in each case four principle "*vamas*".

Mr. Deputy Speaker: Amendment moved:

After part (i) insert the following new part:

"(ia) the word" "*Varna*" means according to the context in each case four principle "*varnas*".

Shri R. K. Chaudhari (Assam)**:** I beg to move:

Omit the Provisions to part (i) of clause 3.

Mr. Deputy Speaker : Amendment moved :

Omit the provisions to part (i) of clause 3.

Shri Syamnandan Sahaya (Bihar)**:** I also want to move the amendment. We both of us have given notice of the amendment jointly.

Mr. Deputy Speaker: I do not attach much importance to the moving of the amendment by all the Members. But if the hon. Member wants to withdraw any amendment, then I will see that the other hon. Member has his say or if the hon. Member is absent, then the other hon. Member will be able to withdraw it.

Captain A. P. Singh (Vindhya Pradesh)**:** I want to move my amendment No. 378, dealing with part (viii).

Mr. Deputy Speaker: We have not come up to that part.

Shri Syamnandan Sahaya: You were pleased to say that you would first deal with all amendments belonging to one category or group. I suggest that only the amendments dealing with the definition of one thing be taken up now, discussed and disposed of and then we go to another set of amendments dealing with another point. Otherwise it will lead to difficulties.

Mr. Deputy Speaker: That is exactly what I am doing. We are now dealing with amendments to only part (i)—"Custom" and "usage."

Shri Bhatt (Bombay)**:** I have tabled an amendment which must have reached you. It is about custom and usage.

Mr. Deputy Speaker: Well, what is it ?

Shri Bhatt: It is about part (i).

Mr. Deputy Speaker: But I have not got a copy. I would not like the House to be taken by surprise. At least the mover of the Bill should be given a copy of the amendment sufficiently in advance and also a copy sent to me. That is the minimum I expect. We should not be taken by surprise.

Shri Bhatt: I thought you would probably have got a copy of it from the office as I got one just half an hour ago.

Mr. Deputy Speaker: When was it delivered ?

Shri Bhatt: This morning.

Mr. Deputy Speaker: I do realise that some amendments may have to be allowed either from the Government side or the other side at the last moment. But I would suggest to hon. Members that at least the Law Minister must be given previous intimation of such amendments and a copy also sent to me. I will rigorously adopt this rule so far as new amendments are concerned. They should be agreed to by all sections of the House.

10 A.M.

Shri Bhatt: For part (i) of it I have proposed I beg to move: For part (i) of Clause 3, substitute the following :

"(i) the expressions 'custom' and 'usage' signify any rule which having been in vogue for a long time, has obtained the force of law among Hindus in any local area, caste, sub-caste, tribe, community, group or family :

Provided that the rule is certain and not unreasonable; and Provided further that in the case of a rule applicable only to a family it has not been discontinued by the family,".

Mr. Deputy Speaker: What is the difference between this and that?

Shri Bhatt: That I have taken out of it. A portion of it has been retained. That is why I have drafted this amendment in this way.

Mr. Deputy Speaker : Amendment moved :

For part (i) of Clause 3, substitute the following :

"(i) the expressions "custom' and 'usage' signify any rule which having been in vogue for a long time, has obtained the force of law among Hindus in any local area, caste, sub-caste, tribe, community, group or family :

Provided that the rule is certain and not unreasonable; and

Provided further that in the case of a rule applicable only to a family it has not been discontinued by the family.".

Shri Syamnandan Sahaya: The amendment moved by Shri R. K. Chaudhari relates to part 2 and not one.

Dr. Ambedkar: It refers to the clause as it stand now.

Pandit Thakur Das Bhargava : In connection with my amendment Nos. 444 and 446 I would like to make some general observations regarding custom. The sole basis for the present Code is that such customs and laws as are opposed to the principle to be enacted in the Code will be abrogated for all time. I take it that the central principle of this codification is that all various customs in all parts of the country will, as a matter of fact, be so unified by the provisions of the Act that one law shall be applicable to the whole of India for the communities concerned. I have accepted that basis as good and I am in favour of the codification, because our laws will then become certain and they will become applicable to all Hindus all over India.

Apart from the unification of the customs sought to be done by the Code, there are many customs and laws which .we want to see changed. It is not only an attempt at codification. It is certainly a code in which we want all our bad customs and laws to be modified and hence in that respect it is a reform Bill also. I am in favour of the provisions of the Bill because I think they are a great advance upon the present practices and they imply reforms of a very great degree among the laws and customs now obtaining among the Hindus.

But when I find Dr. Ambedkar agreeing to this or that custom coming into the Bill I feel that the essential principle on which the Code is based is being sacrificed to opportunism. I know that he is. in a great fix and I have nothing but sympathy for him. Left to himself I am sure he will not accept these customs. Left to myself I would behave in the same way and there is no difference so far as this attitude is concerned between him and myself.....

Mr. Deputy Speaker : We are now on the definitions only. Such matters as *sapinda, sagotra* or degrees, in regard to which whether custom ought to be allowed to prevail, we will deal with them, we come to individual cases. Is it the hon. Member's intention that the definition of Customs should go ?

Pandit Thakur Das Bhargava: The definition of the word "custom" will govern the word wherever it appears in the subsequent clauses. That word will have the meaning which we assign here.

Therefore it is very necessary to understand the significance of the word "custom" and see how it affects our principles. For us to know the full meaning of the word it is neccessary that we realise how we are altering the entire provisions of the Code, when we define "customs" in the manner proposed.

Mr. Deputy Speaker : The hon. Member is sufficiently an elderly Parliamentarian to know things but I want to understand things for myself. When individual items such as marriage or divorce come up we shall see what further changes have to be made in respect of that particular portion. We might say "Notwithstanding this, this shall not be allowed, etc." We are now on the definition and let us not enlarge the scope and discuss every one of the entries and see how such and such custom will work hardship. That would mean another general discussion.

Pandit Thakur Das Bhargava : I understood you Sir, even without the exposition which you have been kind enough to make. I quite see the force of the point you have made. You are here only defining customs but whatever definition is given here will apply to all those customs which are allowed in respect to certain matters.

Mr. Deputy Speaker : Not necessarily. With regard to the Sikhs or some others we might say "Notwithstading, this custom shall not prevail".

Pandit Thakur Das Bhargava : What is the meaning of our saying that customs in regard to the incidents of marriage will prevail ? It means that a certain kind of rule shall prevail and that rule or principle we are defining here, whether it should be such as is opposed to public policy but all the same one which has got the force of law.

Mr. Deputy Speaker : As to how custom ought to be recognised, if hon. Members want to impose restrictions it is certainly within the scope without going into the details of the various customs prevailing.

Pandit Thakur Das Bhargava : I am not on details at the moment. When the occasion arises we shall see whether the custom should be allowed to prevail in respect to those matters. Here I am making only general observations and submitting to Dr. Ambedkar…..

Mr. Deputy Speaker : The general observation that there shall be no customs and so forth could come at the first and second stage.

Pandit Thakur Das Bhargava: I am not saying that no custom should be allowed. I am only saying that he should not be very liberal

and allow many kinds of customs which will take away from the effect of the Bill. Then it would mean that there would be no use having this Code if in respect of every matter you allow a custom to prevail.

Mr. Deputy Speaker : We are once again going into the details. It is one thing to say that hereafter no custom at all will prevail, only the law will prevail. But it is another thing to say that we have to allow certain customs. In that case when we go into the details we will find out what ought to be allowed and what customs ought not to be allowed.

Pandit Thakur Das Bhargava: I am restricting the scope of customs by this definition. Supposing only those customs as have been judicially recognised are to be allowed, that would certianly restrict the scope of custom. Otherwise if we leave custom undefined when a man is faced with difficulty and produce any amount of evidence ; custom can be proved not only by instances but by opinions, by reference to texts. Therefore, I want that so far as custom is concerned its scope may be restricted. It is not that I have only taken one case and put it for the consideration of Dr. Ambedkar. I have gone further and just to show the absurdity of how he is allowing so much liberalisation of customs, I have given certain amendments to show to him and to impress upon him that he should proceed cautiously. Therefore, my amendment No. 446 says:

> "or any rule which is certain not unreasonable and has been judicially recognised as valid and binding in any local area, tribe, community, group or family".

I can understand that there are some customs which are growing, some which have been crystallised. As regards those which are growing, we want that they may not grow because that is the only way of having a statutory rule effective. In regard to customs which have not been judicially recognised, my own view is that we should not bring them within the scope. Either we accept that the society should accept custom as the sole rule of conduct and there should be no other rule among the Hindu community as was the case before—in that case also we will reach a stage when custom will become so stereotyped that we will attain what we want to—or, in the other case when we want to impose the rule of thumb, when we want to lay down by statute that such-and-such shall be the rule. Anyhow we will be well advised if we recognise customs which have been judicially recognised. In the definition given, it would appear there is no mention of any judicial recognition of any customs. On the contrary, the words in the first proviso are :

"that the rule is certain and not unreasonable or opposed to public policy".

I am opposed to the wording, "opposed to public policy". I do not know what the "public policy" is. So far as monogamy is concerned, I understand the public policy to be that the Government seems to be of the view the monogamy is a good thing for Hindus but then for rest of the community it does not apply ; as regards my Mussalman friends, many of whom I know do not like polygamy still the government is undecided and has taken shelter under the specious plea that they have not been consulted. If a thing is opposed to public policy, it is so for all. I know of a custom in the Punjab where *kharva* marriages are allowed. They cannot be called absolutely bigamous, but at the same time they are a different edition of bigamy because after the man dies the *devar* of the woman, that is the younger brother of the deceased husband, though his spouse may be living, is allowed to marry that widow ; the property remains with the family, and the lady also remains with the family. So, opposed to public policy might mean anything. It is so flexible a term that it shall vary with the length of the foot of the Law Minister, I am therefore opposed to these words. I would rather like mat any custom which has been judicially recognised, which has stood the test of time should be recognised.

Mr. Deputy Speaker: Hereafter there will not be any custom.

Pandit Thakur Das Bhargava : My submission is that in regard to this matter in which the Hindu Code seeks to provide, there should be no custom ; otherwise the whole purpose of the Code will disappear. You are perfectly right, Sir, when you say that in future there will be no custom on matters on which the Hindu Code provides, but in regard to other matters, so far as the Hindu Code does not relate to those matters at all .....

Mr. Deputy Speaker: What will happen if there is a particular custom which is undisputed ? It need not come to court. Only a disputed custom comes to court and is recognised or not. Any custom which is not obnoxious to public policy is recognised by the community. Merely on account of not having been recognised by a court does it lose its stand ?

Pandit Thakur Das Bhargava: My submission is that if there is provision for it in the Code then it does not grow. If there is no provision then it will remain and grow, and even if you took away these words "opposed to public policy" still it will remain because it is a rule of law. If you put the words "opposed to public policy"