then, in spite of the fact that a custom is a good one and observed by great numbers in the community, it will not grow if somebody is able to say that it is opposed to public policy.

Mr. Deputy Speaker : The Hon. Member is a good lawyer. My own interpretation is different. Wherever this Code specifically provides for a particular thing, unless an exception is made, to that extent a custom is abrogated whether it be opposed to public policy or not. What is the difficulty under which the hon. Member is labouring ? There are certain customs which have to be recognised, certain customs which are obnoxious and so opposed to public policy. Public policy is only a matter which can be judged by the foot of the judge. In regard to those matters we can say, why leave them to the court to decide; those customs are absolutely obnoxious. But with regard to other customs why say that they ought to be recognised by a court ? I think it is impossible to legislate for all the things.

Dr. Ambedkar : Perhaps you will allow me to intervene for a minute or two to clarify the point.

Pandit Thakur Das Bhargava : I am, Sir, of the same view as was expressed by you, but I am expressing it in a different way. I do not want to tamper with the customs which are growing which are good customs, but my fear is that any court may take upon itself to say that it is opposed to public policy. All the customs are not treated here because we have not the time and energy to go into all the customs throughout the country. Because we cannot say what customs will be saved, we should say that a custom to be recognised shall have to be judicially recognised as not opposed to public policy.

Dr. Ambedkar : The question which has been raised by my friend Pandit Bhargava is no doubt very important and so far as I know there is not the slightest difference between the view that I take and the view that he takes. The only thing is that he has applied his mind, if I may say so, to a wrong clause and that is why he has been rather confused as to what exactly is the position. Those Members of the House who are interested in the subject of custom *versus* the Code had better begin to apply their mind not to clause 3 but to clause 4 which is the main clause which deals with this matter of authority of custom as against the authority of the code and the law. And you will find, Sir, a very clear statement therein that unless a custom has been expressly saved that custom will not have any operation as against this law. Therefore, the question whether any particular custom has been expressly saved or not has to be gone into when we come

to discuss each of the clauses of this particular Bill whereon Members may raise the question whether the particular clause should stand in the absolute way in which it has been drafted or whether it should be made subject to any particular custom. If any particular clause in this Bill does not say "Save as otherwise provided by custom" or "unless there is a custom to the contrary" there is no custom which this Bill proposes to recognise. Therefore, on that point there ought to be no doubt. There is not the slightest intention to allow custom to override in a general way the provisions of this Code.

My. hon. Firend has, I know, a particular question or an occasion in mind when he feels that I have been going rather soft on this particular subject, but I can tell him that it is only in very very rare cases that I propose to yield on this subject, subject to the fact that anyone who presses upon me that the custom should override this particular Code in any particular way will carry upon him the burden of showing that that custom is more progressive than the provisons of this particular Bill.

Now, supposing that we do introduce a qualifying statement when we come to deal with different subjects, i.e. we say that that clause shall be subject to any existing custom or something like that, even then the question remains : What is the standard to which that particular custom must conform before it can have that over-riding effect ? It is that question which is dealt with in the definition clause, so that whenever any custom is saved it will nonetheless be open to find out whether the custom which is allowed by the particular clause to prevail upon a provision of this Bill conforms to the definition which is really a definition laying down the standard to which a custom must reach before it can be accepted by the court. That is the position.

So far as (ii) of clause 3 is concerned, there is nothing in this clause which is not bodily taken from the judicial pronouncements of the different High Courts in our country which have had to consider what is the custom to which they will give their sanction, and I think the ingredients of custom which the courts have laid down have been bodily and literally embodied in (ii) of clause 3. So, I do not think there is any ground for quarelling with the definition, because the definition is necessary. Even where we allow custom to prevail, we do not allow any kind of custom to prevail but only custom which conforms to the standards which have been laid down by the High Courts and hon. Members will see that the standards laid down in (ii) are the standards which have been sanctified and laid down by the various courts in our country.

Shri Naziruddin Ahmad : Even in foreign courts this is so.

Dr. Ambedkar : Everywhere this is the same. I have looked up even Stephen's Digest of English law and I find that the wording is almost the same as we have got here.

Pandit Thakur Das Bhargava : I am very much oblidged to my Hon. Friend the Law Minister for his having kindly explained.

Shri J. R. Kapoor : (Uttar Pradesh) **:** Has the hon. Member not finished ?

Mr. Deputy Speaker : No. He will continue. He is on his legs. Incidentally not only Members of Parliament but also outsiders are watching the progress of this Bill and there is some misunderstanding about my position. Once I sit here I have absolutely no colour, no caste, no creed. That is my honest position. To the best of my conscience I have tried to discharge my duties impartially. If any hon. Member feels rightly or wrongly that I am not doing it properly, I always welcome his coming and telling me privately that I must do this and that.

I find that even hon. Members of this House are under the impression that when an hon. Member is on his legs I can ask him to sit down. I have been appealing to hon. Members that with respect to important matters, certainly sufficient lattitude and time is necessary and must be allowed but if they repeat matters which have been discussed at various stages that is not right. Barring that, I am not in a position to impose any time restriction. If the Hon. Minister of Law can tell me that I can impose any time restriction on speeches under the law, it will be only too glad to avail of it.

Dr. Ambedkar : It cannot be done. But we have agreed amongst ourselves to impose a self-abnegation ordinance.

Mr. Deputy Speaker : I am very glad of that, but the burden should not be cast on the Chair. In a Finance Bill, I can apply the guillotine. This has been newly introduced. Hitherto the guillotine was applied to only Budget Grants, but recently it has been introuced so far as Finance Bills are concerned. I can fix a time limit and all amendments will be lost unless they are moved and accepted or rejected before that time-limit. But with respect to other Bills, I have no right to fix a time-limit even with respect to the Bill as a whole. With this restriction, I feel very much embarrassed if any hon. Member thinks that I am allowing too much time. That is my position and the position of anybody who may be in the Chair.

Lastly, if any hon. Member feels that there has been sufficient discussion on a particular clause, he can kindly tell me. There of course, I have my discretion. If I too feel that the matter has been elaborately discussed or at any rate sufficiently discussed, I will agree to the closure motion. To that extent, there is discretion in me. hon. Members who make suggestions will kindly bear all these things in mind. I am making this statement because an impression is created out-side that notwithstanding the suggestions of hon. Members I am standing in the way and holding the pendulum back.

In this connection, may I also inform the House that I have received a letter from the Managing Editor of the *Indian News Chronicle* ? Yesterday, as the House will recall Shri Amolak Chand drew my attention to a cartoon appearing in this paper which described some Members as holding the minute hand and hour hand and withholding the progress of the clock, and the Deputy Speaker as catching hold of the pendulum firmly so that the clock cannot move this side or that side. The hon. Members are shown as looking up and not looking down and seeing as to who is the man that is really holding the clock back. That is the impression that was created by that cartoon. Since I made reference to this matter yesterday and it is practically a privilege of the House and I am only its spokesman, I would like to read this letter. It is written by Shri Deshbandhu Gupta, Managing Editor and runs thus :

"My dear Shri Ananthasayanam Ayyangar.

I am informed that you took exception to the cartoon which appeared in the Indian News Chronicle yesterday morning under the caption "putting the Clock Back". You are reported to have expressed the view that the cartoon was calculated to cast aspertions on the Chair. I am very sorry that the cartoon has given cause for offence to you personally or in the capacity of the Deputy Speaker. The cartoonist assures me that it was remotest from his intention to show any disrespect to the Chair or to the House and joins me in assuring you of the desire of the Indian News Chronicle to uphold the dignity of both.

The theme of the cartoon as you will kindly see is to illustrate the current situation in Parliament in which in spite of the Chairman's desire to regulate the debate so as to conform as nearly as possible to time schedule, some members participating in the debates have endeavoured to prolong the debate and thereby hold the progress of the Bill. I am assured by the cartoonist that in introducing the Deputy

Speaker in the cartoon in this role he had no other intention. While regretting that anything in the cartoon should have given cause to you for offence. I hope you will be good enough to accept this explanation and our sincere assurance that there was no intention whatsoever of showing disrespect to the Chair and the House."

I think this is sufficient.

Dr. Deshmukh : From the Chair, he has shifted to Members. He is accusing Members now. It is worse.

Shri Radhelal Vyas : (Madhya Bharat) : I think the matter should be referred to a Committee of Privileges.

Shri Bhatt : It should be made clear that it was not intended to cast aspersion on any Member either.

Dr. Deshmukh : Shri Deshbandhu Gupta should be made to appologise to the House.

Mr. Deputy Speaker : Evidently he feels that the speed which he expects of the progress of the Bill has not been made in this case. I shall later look into the matter as to whether any aspersion or insinuation has been cast on any hon. Members of this House.

Pandit Thakur Das Bhargava : So far as your observations are concerned, with your permission I would like to say a word. The Members of this House realise that the Chair is sacred. Here sat Vithalbhai Patel—whose portrait we see before us—who sanctified the Chair. After him was it adorned by men of great eminence and prominence. We all know that the Chair has been holding the scales even. It is idle for the outside world or any members here to think or feel that the Chair is not impartial or dealing fairly with any question.

But at the same time when passions are frayed, when persons take sides, they are apt to see from an unbalanced standpoint the conduct of the Chair or of the Members of this House. Now great exception was taken by some Members, and they even asked you to stop a Member during the course of his speech. I can fully understand the view-point of every Member who wants to make a long speech. Even Dr. Ambedkar made certain statements to which certain Members took exception, though I was not one of them. Every Member has a right to criticise. So far as we are concerned our skins are too thick now to get offended by such criticism. So far as the conduct of the Chair in this House is concerned, no member has for a moment even thought that it is conducting the business in a partial manner.

The newpapers have a right to criticise anybody and everybody. I personally would not mind if any pressman criticises me. Let them criticise—they have their own point of view. Let us not be so thin-skinned,

So far as aspersions on the Chair are concerned, by any person either inside or outside the House, I would take strong exception and if you feel that the apology offered is not satisfactory, you should take action against the person concerned.

Mr. Deputy Speaker : So far as I am concerned, I am satisfied with what he has written. It is, therefore, unnecessary to pursue the matter. If, however, any hon. Member feels that this letter casts any aspersion on him, we shall look into it. At present I do not think any aspersion is cast on any hon. Member or on the House.

Shri Santhanam : Is it suggested that only Government is liable to criticism and not the Members ?

Dr. Deshmukh : While Mr. Gupta wrote the letter with the intention of clarifying his position so far as the cartoon was concerned, he has unnecessarily gone out of his way to criticise a section of the Members by alleging that they were obstructing this measure.

Mr. Deputy Speaker : This letter consists of two parts. So far as the Chair is concerned and the privilege of the House is concerned, the matter may be left to me. I am satisfied with what he has written. If, however, any hon. Member feels that it casts any aspersion on him, he may meet me in my chamber and we shall discuss the matter.

Pandit Thakur Das Bhargava : What objection could be taken to that ? Mr. Deshbandhu himself took four hours on the Press Bill; our friend Mr. Naziruddin Ahmad took seven hours on this Bill.

Dr. Deshmukh : It is a case of the pot calling the kettle black.

In regard to what you said about yourself and the conduct of business in the House. I want to say a word with your permission and that is this. Whereas I sincerely welcome all your interruptions and the help you give for the conduct of the business of the House, I would like to point out with all due respect, that if the debate is allowed to go on, probably we might spend lesser time. I have the utmost respect for the Chair and it intervenes only with the idea of helping the proceedings. But if it could be minimised and help given only when it is necessary, we will probably be able to advance better.

Shri Bharati (Madras) **:** It is a direction to the Chair which is uncalled for.

Dr. Deshmukh : The Chair has invited our opinion.

Shri Bharati : Not for giving directions to the Chair.

Pandit Thakur Das Bhargava : As a Member of this House I wish that this rule of free speech is stuck to. I do not want to put any obstacles in the progress of this Bill. All the same I feel very much offended if I feel an inner urge to speak more and more and yet the Chair pulls me up and does not allow me to speak fully. All Members are expected to put a self-restraint on themselves. Now, I come to the subject.

I am very much indebted to Dr. Ambedkar for having very kindly explained this point of law. I quite see that custom has been defined in many judicial pronouncements. But that was not my point. I wanted to suggest that one of the accepted canons for the validity of custom should be that it should be judicially recognised. I suggest this fact that customs have been judicially recognised may not be given a goby when custom is opposed to public policy. If a custom has been judicially recognised, it means that it has passed through the seam of courts and has received recognition at the hands of the judiciary.

Dr. Ambedkar : If I may intervene for a moment, that question will again arise, or may arise, or may be raised, when we are dealing with each particular clause. My hon. Friend suggested "any custom which is judicially recognised" ! It is perfectly open to him to say so. But as you very rightly observed, if we are to confine our recognition to a judicially recognised custom, it will create many dafficulties, because there are good customs which satisfy all the ingredients of the definition, yet have not come to the court for judicial recognition. I am only anticipating the difficulties.

Shri Santhanam : The word 'judicially recognised' may mean, recognition by a district court, or a High Court. We cannot say judicially recognised means recognised by the Supreme Court.

Pandit Thakur Das Bhargava : It must be judicially recognised and further it must be certain. It must be not unreasonable, it must be continuous and it must have the force of law. I only want custom which has been judicially recognised should not be given a go-by in the name of public policy. Therefore all these ingredients of a valid custom which are defined by the judicial courts may be accepted.

Mr. Deputy Speaker: The proviso requires that "the rule is certain".

Pandit Thakur Das Bhargava : It must be certain, not unreasonable and have the force of law, But the words "and uniformity" and "or opposed to public policy" may not be there. This is the difference I want to see carried out.

Mr. Deputy Speaker : Where a single custom applies to all classes of human beings, then it is only by nature.....

Pandit Thakur Das Bhargava : I beg to be excused. When it is said that a custom should apply to all human beings it must be almost a universal rule or law. It applies to a tribe, community, group or family, as has been defined here. If you say "uniformity" this would mean that the custom that applies to any family or caste or community or tribe will all go away. When the word "continuously" is there and when the word "law" is there I do not understand the necessity for the word "uniformity".

Mr. Deputy Speaker : I understand "uniformity" to mean without variation.

Dr. Ambedkar : That is the point. I was almost going to say that.

Pandit Thakur Das Bhargava : There are different customs between different families. How can they be uniform ?

Mr. Deputy Speaker : The hon. Member has not appreciated the point. We shall assume that there is a custom and it has been continuous, but it has been followed with variations. Suppose somebody is collecting Rs. 10 in a certain period and it was Rs. 15 in the next period and Rs. 20 in a third period, is it suggested that the application should be not only with respect to custom but to laws and grants also ? Suppose it is held by judicial decisions that this was not uniform. Therefore, you cannot presume. Similarly, uniformity means not uniformity with respect to the caste or family etc. but in the family itself it must have been not only continuous but uniform also, that is without variation.

Dr. Ambedkar : That is what it means—without variation.

Pandit Thakur Das Bhargava : As if the changed custom will not be recognized by law, If there is a custom which has gone out of use.....

Mr. Deputy Speaker : Wherever there is a change, that change must have been so continuous, so long and so certain ,..

Pandit Thakur Das Bhargava : The word "continuous" is there and I do not object to it. I object to the word "uniformity".

Mr. Deputy Speaker : Has Mr. Naziruddin Ahmad got any substantial amendment ? I do not think so.

Shri Naziruddin Ahmad : I want to speak on 'custom'.

Mr. Deputy Speaker : First I will deal with those who have got amendments. Does Mr. Jhunjhunwala want to speak on his amendment ? I am not inviting him to do so !

Shri Jhunjhunwala : Yes, Sir, I want to speak on it.

In my amendment I want to add the word "*varna*" after "tribe".

Mr. Deputy Speaker : He wants caste custom also to be recognised there. He wants to introduce among the various categories "caste" also, after the word "tribe". He has already tabled an amendment to that effect. Now he wants to change the nomenclature of the word from "caste" to "*varna*".

Shri Jhunjhunwala : I want that the word "*varna*" should occur after the word "tribe" in clause 3(i). The object of my putting in this amendment is that while customs and usages will be recognised according to the area, tribe, community, group or family, the reasons for recognising such usages and customs have not been explained by the Honourable Doctor. But if the principle is accepted that certain customs and usages will be recognised, if as he has said these are proved to be progressive, in that case the customs which are prevalent in different *varnas* according to *Varnashrama Dharma* should be recognised if the conditions laid down by the Hon. Doctor are satisfied.

This *Varnashrama Dharma* is of no recent origin. People say that it is only in the puranic time that these *varnas,* castes and all these things have come into existence. But that is not a fact. These things were in existence long before, say 3,000 years back. They have got a great deal to do with our life and social structure as well as our economic structure. All the four *varnas* have got different usages and different customs, and they have meaning behind them. Every usage and custom has got meaning behind it, and duties are allotted to different *varnas* according to their ability. The other day when a question was put to him whether he has got the sacred thread, the Hon. Mr. Gadgil said, "Yes, I had a sacred thread", then he took off his coat and said, "See, I have taken it away".

Mr. Deputy Speaker : He did not take off his coat.

Shri Jhunjhunwala : I stand corrected. He did not take off his whole coat and the reason which he gave, to which I attach importance, was that he is not capable of following the *Dharma* of a Brahmin for which the sacred thread is worn, and he said, "Therefore, as an honest man I thought it my duty to throw it away". Sir, this shows that even the hon. Mr. Gadgil recognizes that there is something very great and sanctifying in the usage and of putting on the sacred thread before a Brahmin is married. In the same way there are similar customs in other *varnas* also. Therefore, it is very necessary that all the customs

which are prevalent in different *varnas* should be recognised if they satisfy the conditions laid down by the Hon. the Law Minister. I have therefore put in this amendment only with this object that if any such clauses come subsequently regarding marriage, divorce or any other thing, we may be in a position to show that these customs, though they may not be prevalent in any tribe or community or group of family, are prevalent in differently *varnas* and these are very essential. These are the reasons for which I want to add the word "*varnas*" there.

Shri B. K. P. Sinha (Bihar) **:** May I know one thing from the hon. Member ? Is it his contention that while abrogating the *smritis* and *shrutis* we should not abrogate custom and usage ?

Mr. Deputy Speaker : *Shrutis* and *smritis* have not been abrogated; they have been incorporated.

Shri Jhunjhunwala : He will find that the Law Minister recognizes them.

Shri Syamnandan Sahaya : My amendment, as you will see suggests the omission of the two provisions in the sub-clause or item dealing with the expression 'custom and usage'. The purpose of suggesting this amendment is exactly what has been mentioned by the Hon. Law Minister. The Hon. Law minister has said that the definition given here is more or less based on judicial findings on the point and judicial decisions have all been that the words 'customs and usage' should signify what he has laid down in the definition. The words 'custom and usage' must have been and have been the subject of various judicial findings and I therefore thought that if that is the legal or judicial meaning which has been given to the words 'custom and usage', it would not be desirable to encumber or burden this definition by making the provisions here, because that is exactly what they will mean. The reason for my making the submission is .....

Mr. Deputy Speaker : I can understand. When there is no definition at all he can rely upon judicial decisions.

Dr. Ambedkar : The court will also be open .....

Mr. Deputy Speaker : Custom is continuous and uniform.

Shri Syamnandan Sahaya : When a certain word is used in a legislation which has been the subject of judicial interpretation, then that word whenever submitted to judicial interpretation will be liable

to the interpretation that judicial decisions have given on it. On the other hand my feeling is that this law makes such revolutionary changes that the normal course of the manner in which the Hindu law has been interpreted will also undergo unthought of changes and my submission is that with the existence of the provisos, the judiciary may feel that the interpretations and rulings have to be considered afresh and the words 'custom and usage' may now have to be dealt with not only, for instance, on the ground that it has been continuous, that the rule is certain and not unreasonable or been opposed to public policy. You will see the difficulty, Sir, in this as you know that 'public policy' is a matter which is an ever-changing process.

Mr. Deputy Speaker : Nobody denies that. What is the public policy under particular circumstances is the matter that will be decided. . . .

Shri Syamnandan Sahaya : Not only under particular circumstances but in the changing conditions of Government. One Government may have one public policy and another Government tomorrow may have another public policy.

Dr. Ambedkar : The word 'public policy' also occurs in the Law of Contracts.

Mr. Deputy Speaker : Under the Transfer of Property Act, no transfer is valid which is opposed to 'public policy'.

Shri Syamnandan Sahaya : I also support the amendment of Pandit Thakur Das Bhargava with regard to the word 'uniform'. The words 'custom and usage' in my opinion are liable to lead to difficulties and also further litigation. It is not necessary that a certain rule or usage or custom should have been uniformly followed in a particular family and I shall refer to a Privy Council Case, if the Hon. Law Minister will have no objection. I refer to a very important case which was taken to the Privy Council by the successors of the Moghul Emperors. Now the case was as to who was to be the recipient of the pension paid by the Government of India to the successors of the Moghul Emperors and several people were disputing rights. One said, "I am the successor of the Moghul Emperor" and another said, "I am the successor". The matter went up to the Privy Council and the point arose as to which of them was circumcized, because one of them was not .....

Dr. Ambedkar : I know that case.

Shri Syamnandan Sahaya : And the Privy Council held in this particular case that although normally the rule and custom of circumcision obtained in the Muslim families, in the case of the Moghul

Emperors, when there was a child from the Hindu wife, circumcision was not necessary and they were entitled to the pension or something like that. Therefore the Hon. Law Minister will appreciate that this uniformity with regard to customs even in a particular family has not been a necessary factor and I think that he will do well to adopt this amendment of Pandit Thakur Das Bhargava, suggesting that the word 'uniformity' be dropped.

Dr. Ambedkar : This has no judicial value. The distinction there was made between custom and practice. Practice has no judicial value.

Shri Naziruddin Ahmad : I want to speak with regard to the definition of the word 'custom' to begin with and I must say that I am in entire agreement with the official draftsman.

Shri Syamnandan Sahaya : For once.

Shri Naziruddin Ahmad : I am in general agreement with the Hon. Minister except on occasions when he cannot be made reasonable. With regard to this definition of the word 'custom' it is not merely the Indian law but it is also the law throughout the world. I have a copy of Holland's Jurisprudence which also lays down that a custom in order to be followed must be reasonable, must be continuous, must not be broken and it must be of ancient standing. This is all that is laid down there. The question of uniformity is regarded in Jurisprudence as absolutely essential. If once a custom is broken, it ceases to bear the character of custom at all. This has always been regarded so. So the mere fact that a custom is broken is enough to break the custom. Therefore, I think the definition as it stands should be supported. So far as judicial decision is concerned, the judicial decisions in all cases must have been or are supposed to have been given in view of these considerations but these are considerations which are essential, which are to be found in books of Jurisprudence and therefore, it is far better to rely upon these essential elements rather than rely upon judicial definitions because judicial definitions might be coloured with regard to the difficulties of a particular case and it is far better to rely upon well-known expressions rather than rely upon judicial decisions. Therefore, I think that the definition in the Bill should remain.

Shri J. R. Kapoor : I have not been able to appreciate the necessity of the two amendments that have been moved by my hon. Friend, Pandit Thakur Das Bhargava, particularly in view of his own view. His view I understand, is that the definition of 'custom' should be

a restricted one and that various sorts of customs in various parts of the country in different forms, in different methods should not be allowed to prevail. That being his view, with which I am in entire agreement, I think that if the amendments suggested by Pandit Thakur Das Bhargava are accepted, the scope, the denotation of the word 'custom' would be considerably extended and expanded which should not be. The one useful thing about this Bill is that it is going to unify and consolidate the Hindu society in some measure and therefore the less the variations in manners and customs and in the rules applicable to Hindu society, the better it is. The essential basis of this Code is uniformity which it will bring about and we should not get away from that mooring and in the consideration of every clause in this Bill, we should never lose sight of this thing. Once we lose sight of this thing. Once we lose sight of that we shall be virtually giving away the basis of this new enactment. What does Pandit Thakur Das Bhargava suggest? Firstly, he suggests that the word 'uniformly' should be done away with. That would mean that a custom even if it has not been uniformly observed should be a custom under this definition, Obviously, that extends the scope of the definition of custom. Secondly, he suggests that the words 'opposed to public policy' should be deleted. That, again, means that a custom even though it may be opposed to public policy, according to the prevalent notions of public policy at any particular time, should have the sanctity of a custom as defined here. That, again, would be extending the scope of custom and not restricting it. I submit these suggestions should not be accepted. To me, it appears that the words 'opposed to public policy' are very necessary and essential. Because, our society, or any society is an ever-growing society and notions about morality, propriety and advisability of a thing change from time to time. We should not put a stop to that desirable change. A custom which has even been judicially recognised at any particular time, may, 10 or 20 years thereafter appear to the society to be not a proper or desirable custom. At that time, it should be open to society and even to the law courts to declare that this custom, though it has had recognition in judicial pronouncements, according to the changed conditions of society and the changed economic and social theories which have been adopted by society, should not be recognised as a valid custom. I therefore submit that this part, as it stands, should be accepted.

11-00 A M

I submit the amendment suggested by my hon. Friend Mr. Jhunjhunwala may be accepted because that appears to be a harmless thing. I beg to suggest, Sir, at this stage, if it may not be considered

a late stage, to the Hon. Law Minister that the words 'or family' in the, substantive clause may be deleted. Because, to me, it appears .....

Mr. Deputy Speaker : Where is the amendment ?

Shri J. R. Kapoor : ..... that a custom which has been in force only in a particular family should not be given the sanctity of a valid and recognised custom.

Dr. Deshmukh : It has already been given by the Hindu Law.

Shri J. R. Kapoor : We have in the sub-clause the words :

> "signifies a rule which, having been continuously and uniformly observed for a long time, has obtained the force of law among Hindus in any local area, tribe, community, group or family."

Mr. Deputy Speaker : The House is aware of that expression. The hon. Member has tabled a number of amendments, he never thought at any particular stage that these words should be dropped. I do not want ot allow any time to be spent on this matter.

Shri J. R. Kapoor : I am not moving any amendment. I am opposing this particular part of the clause. I do not think I will have any further opportunity to suggest this. As for my not moving an amendment. I may be permitted to confess that having been very much disappointed in finding that none of my amendments are acceptable to the Hon. Law Minister, I thought, rather than moving an amendment formally, I may informally suggest the thing to him so that he may himself move an amendment to that effect. In that case, it would be more easily acceptable to the House. Anyway, I have nothing further to submit on this point.

Shri Shiv Charan Lal (Uttar Pradesh) **:** I think all the amendments should be negatived and the clause as it is should be accepted. Pandit Thakur Das Bhargava, being a lawyer—I am surprised to see—says that the words 'opposed to public policy' should be deleted. That is a very necessary thing . As society advances, the opinion of society carries more weight. Anything that is against that opinion should not be acceptable even though it may be an old custom. Pandit Thakur Das Bhargava also wants that the word 'uniformly' should be deleted. By the word 'uniformly' he seems to understand uniformly for all the people. It is not so. It may be the custom of one family. By 'uniformly', it is meant that it is followed continuously or uniformly and not changed. Therefore, the word 'uniformly' is also necessary.

He says that only those customs for which there are judicial pronouncements should be accepted. This is also wrong. There are

certain judicial pronouncements which are now not good law because public opinion has changed. The people do not want that custom to continue. There are certain customs which are very well-recognised, but which have never gone to the courts and on which there are no judicial pronouncements. Therefore, I submit, all the amendments of Pandit Thakur Das Bhargava do not stand anywhere.

In the amendment of Mr. Jhunjhunwala, he wants to add the word *varna*. There are no customs connected with any *varna*. All customs are connected with caste, families, certain areas. I do not know of any custom or any decision of any court where a custom has been recognised as a custom of a *varna*. That has never come before any court. As to the amendment of Mr. Syamnandan Sahaya, he wants to delete the two provisos. These provisos are the life and soul of the whole definition. Therefore, they cannot be deleted. Therefore, Sir, I am in support of clause (i) as it is.

Shri B. K. P. Sinha : I think there is no force in the amendments moved to this clause. This clause, as put in by the Hon. Law Minister is simple and embodies the law as it is. The critics have objected to the words "uniformity" and "public policy". But, it has been laid down by so many decisions and judgements of the various High Courts that a custom to be valid must be uniformly practised. Mr. Syamnandan Sahaya referred to some Privy Council Case in support. This contention that uniformity was not an essential of valid custom. I could not catch him; therefore, I speak subject to correction. There is a distinction between social and religious customs and customs that prevail in the agriculture and trade field. So far as society and religion are concerned, custom and usage are rather inter-changeable terms and there is very little distinction between the two. But, in the case of trade and agriculture, a distinction has been made between custom and usage. Custom is noted for its antiquity; it must come down from time immemorial. Usage is something which is in the process of growth ; it is something new. The Privy Council case of which I know, makes a distinction only so far as trade and agriculture are concerned. But, that is not germane or very relevant to this question, which is a social and semi-religious question. I have found in so many decisions uniformity is prescribed as a test of the validity of a custom. As regards public policy, I do not know why people have fears on this ground because I find that it has been laid down by the Privy Council, by the Patna, Calcutta and several other High Courts that a custom which

is opposed to public policy shall not be valid. In this respect also, I find that the Hon. Law Minister has, in his clause, embodied the law as it is. Moreover, it we go on making an exception in favour of all sorts of customs, what would be the basis and justification for this codification. Codification is mainly done to introduce uniformity and certainty. If we make exceptions in favour of customs prevailing in families, in different territories, etc., there would be no uniform law for the whole country, and the whole object of codification would be defeated. The second object of codification is that there will be something handy to which everybody can refer, with certainty. If we make exceptions in favour of customs, etc., this certainity would have gone. Therefore from any point of view, I see no reason why this clause should not be passed as it is, and why any amendment should be accepted.

Mr. Deputy Speaker : I will now call upon the Hon. Law Minister.

Babu Ramnarayan Singh (Bihar) **:** Sir, I have also to say something.

Mr. Deputy Speaker : But has not enough been said already ?

***Shri Bhatt :** (English translation of the Hindi Speech). I have got an amendment.

Mr. Deputy Speaker : Which is your amendment ? I have disallowed it.

Shri Bhatt : You have allowed it.

Mr. Deputy Speaker : But there is no particular charm about it. It is only a matter of recasting the word slightly.

Shri Bhatt : That I am to explain as to why I was putting it. I am not moving it simply for recasting of the words.

Babu Ramnarayan Singh : I kept standing for long.

Mr. Deputy Speaker : What should I do ?

Shri V. J. Gupta (Madras) **:** Sir, I do not want to make a speech, but I want to get a doubt cleared.

Babu Ramnarayan Singh : Your eye should have caught me.

Mr. Deputy Speaker : It does not mean that just because an hon. Member stands a number of times he catches my eye. I must have some discretion in regulating the debate, and I might call upon certain Members and not certain others. But if there is yet time, we shall see.

* P.D., Vol. XV, Part II, 21st September 1951, pp. 3014-54.

Dr. Ambedkar : There is only one point to be explained and .....

Shri Bhatt : You have given me time.

Mr. Deputy Speaker : All right. I will call the Law Minister later. But after all it is a very formal and verbal matter that is dealt with in this amendment.

Babu Ramnarayan Singh : No, Sir, it is important too.

Shri Bhatt : The amendment moved by me is not verbal. The thing which I want to stress in it may possibly not be acceptable to the Hon. Minister and he may not be inclined to change his attitude. As a matter of fact, as a Lawyer I am not so competent as to convince him. But I want to tell him and draw his attention to certain things lacking in the measure that is being sponsored by him.

The first point is about the definition of 'custom and usage' which he has put here in an insufficient form. On reconsideration he will himself feel inclined to reduce or add a few words to convey the complete sense.

By 'custom and usage' we mean traditions, conventions and routine practices, The definition being propounded by him for it limits the sense to four essential attributes, *viz*., continuity, uniformity, certainity and its not being opposed to public policy. In its place I am thinking of a simplier definition which may precisely convey the same sense. But he has talked of uniformity. What does this uniformity mean? Different castes have their different customs. Even a single caste, spread roughly over a thousand villages, allows various concessions and different usages to the separate circles, and therefore even in a single caste there is a separate sort of uniformity for separate places. There are variations. Therefore the word uniformity would give rise to a lot of litigation and benefit the lawyers It may therefore be dropped as variation is inevitable.

If a community made certain variations, it being its usage, it was likely to pay a fine of Rs. 50. But now-a-days Rs. 50 mean nothing and cannot have affect to the desired extent and therefore if one suggests to increase the fine to Rs. 100 you would say that uniformity is not there. Today you change a thing which was good till yesterday, then where is uniformity ? Therefore, as regards uniformity we should agree that variations are bound to be.

I shall quote here from Article 13 of the Constitution to explain how the word 'law' has been defined there :

> "law includes any ordinance, order, bye-law, rule, regulation, notification, custom or usage having in the territory of India the force of law."

Here 'territory of India' does not mean that there is going to be only one custom throughout India. There is not going to be any one order or notification applicable throughout India. The Government of India decides its policy for each State according to circumstances prevailing there.

I also want to tell you what is meant by 'law in force', and this will explain what I understand from the words 'variations' and 'uniformity' :

> "laws in force' include laws passed or made by a Legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed, notwithstanding that any such law or any part thereof may not be then in operation either at all or in particular areas."

So, I want to suggest that the word 'uniformity' used here will make complications and nothing will be lost if it is dropped. After all what does this 'custom' mean ? We are educated enough to understand that 'custom' is an usage prevalent from the time of our forefathers. You might quote certain thing prevalent upto yesterday, in which you have made a change today, but, for that reason, shall we not take it as custom and will it not affect us ? It may not affect economists, but it is not proper. Therefore, if you want to bring the word 'custom' and allow some concession according to it, it may be put in a way that people may get something through it.

'Custom' has been defined in the Law Dictionary as follows :

> "It must have been continued, peaceable, reasonably certain man runs not to the contrary.
>
> "It must have been continued, peaceable, reasonably certain, compulsory and not left to the option of every person whether he will use it or not, and consistent with other customs, for one custom cannot be said to be in opposition to another."

These things should be taken into consideration. I have suggested that the word "continuous" was equivalent to 'having been in vogue' This is not a wrong word, 'in vogue' being a comprehensive word of the English language meaning a thing prevalent and in practice. That is why I have proposed ; 'having been in vogue for a long time', 'it has been in practice for a long time'.

The second thing which I have put is : 'which has obtained the force of law'. This is a simple thing and if accepted will become a recognised convention.

The third point I have taken is about 'public policy' or 'public morality'. I fail to understand that if conventions find place in the proposed measure, where was the necessity for the word 'public policy' ? You might say that only accepted customs will be allowed at a place and not others, then which customs will be against public policy ? What does 'public policy' mean ? The word might have dropped from some lawyer or judge and we are now using it, but we should be clear about the meaning of 'public policy'. I think there is no necessity for any such expression as 'public policy' or 'public morality'. After all where there will be a place in law for conventions, only there the conventions will be followed. So I do not find any necessity for these words.

Now I want to say something about caste and sub-caste. The words are not my own ; they have been used in Articles 15 and 16 of our Constitution. We used the word 'community' in Clause 2 yesterday. We have not used the word 'community' but the word 'caste' in the Constitution. In my opinion the words 'castes and sub-castes' will be more proper here in place of the word 'community'. I do not mean that the word 'community' may be dropped as we have included it only yesterday, but there is no harm if these two words are also added.

With these words I move my amendment. There is very little likelihood of its being carried, but the Hon. Minister will please think over it.

Babu Ramnarayan Singh : (English translation of the Hindi speech). Sir, I submit that the decision arrived at by you is very nice and acceptable to all. But sometimes you make decisions in such a haste that it pinches us. Therefore, I entreat you not to decide in haste on the ground that there has been sufficient debate upon the measure. I submit that I also stood up so many times, your eye should have caught me and I should also have been allowed to speak.

Shri V. J. Gupta : I have a doubt to be clarified. In the definition it is said :

> "The expressions 'custom' and 'usage' signify a rule which, having been continuously and uniformly observed for a long time, has obtained the force of law among Hindus in any local area, tribe, community, group or family."

As you know in our parts marriage between a young man and his maternal uncle's daughter is allowed in many communities. It is a common custom though it is not uniformly or continuously observed.

Mr. Deputy Speaker : You must read the entire chapter. There is a special exception made.

Shri V. J. Gupta : Further, it is said "opposed to public policy". A practice is called a custom when observed by all the people of a locality. When it is observed by all people uniformly how can it be opposed to public policy ?

Dr. Deshmukh : I want to oppose this.

Mr. Deputy Speaker : You can vote against it.

Babu Ramnarayan Singh : We would like to speak also on it.

Mr. Deputy Speaker : I know Hon. Members have a right to speak but I have looked round and I am satisfied that there has been a sufficient debate. If the Hon. Member wants that the formality of a question being put should be observed, let someone move it and I shall put it to the House.

Shri Santhanam : Sir, the question be now put.

Mr. Deputy Speaker : The question is :

"That the question be now put."

The motion was adopted.

Babu Ramnarayan Singh : My voice was louder than their voice !

Dr. Ambedkar : In my previous intervention I had explained already both the position of this sub-clause in relation to clause 4 and how the question of custom has been dealt with generally *vis-a-vis* the Code.

With regard to the exact terms which have been used to define the expression 'custom' I am sorry to say that it is not possible for me to accept any of the amendments suggested. This definition, as I have said, has been copied verbatim from judicial decisions of the highest tribunal in our country as well as in all other countries, where custom has been judicially defined. I do not think therefore that any ground has been made out for me to depart from the definition proposed in the sub-clause.

Mr. Deputy Speaker : The question is :

In clause 3, for the words "unless there is anything repugnant in the subject or context" substitute "unless the context otherwise requires".