

The motion was adopted.

Mr. Deputy Speaker : The question is :

In clause 3, 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).”

The motion was adopted.

Mr. Deputy Speaker : With the re-numbering of the parts as adopted by the previous amendment all the amendments relating to part (i) now relate to the present (ii). I shall put them to the House one by one.

The question is :

In part (i) renumbered as part (ii) of clause 3, for the words “among Hindus” substitute the words “among persons to whom this Code applies”.

The motion was negatived.

Mr. Deputy Speaker : The question is :

In part (i) renumbered as part (ii) omit the words “and uniformity”.

The motion was negatived.

Mr. Deputy Speaker : The question is :

In part (i) renumbered as part (ii) 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.

The motion was negatived.

Mr. Deputy Speaker : The question is :

In part (i) renumbered as part (ii) after the word “tribe” insert the word “*Varna*”.

The motion was negatived.

Mr. Deputy Speaker : in view of this amendment No. 413 having been negatived amendment No. 414 does not arise.

The question is :

Omit the provisions to part (i) re-numbered as part (ii) of clause 3.

The motion was negatived.

Mr. Deputy Speaker : The question is :

For part (i) renumbered as part (ii) of clause, substitute the following :

“(ii) 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.”

The motion was negatived.

Mr. Deputy Speaker : The question is :

“That part (i) renumbered as part (ii) of clause 3, stand part of the Bill.”

The motion was adopted.

Shri Naziruddin Ahmad : I have amendment No 377 to part (ii).

Dr. Ambedkar : I would very much like to make suggestion here because that will shorten the labour. As you will see, some of the definitions given in part (ii) not only apply to marriage and divorce but they also were intended to apply to the other parts of the Code. In view of what has transpired, it would be necessary for me at a subsequent stage to amend this definition and to narrow it down to the provisions relating to marriage and divorce. Therefore, what I was going to suggest to the House is to pass this in a formal manner without attaching any great importance to it, because I shall come back to it when I deal with consequential amendments and then the matter may be dealt with at great length if they want. For the moment I am not very particular about this definition because I see that I will have to amend it.

Mr. Deputy Speaker : Is there any objection to allowing this to stand over this part alone ?

Dr. Ambedkar : I have no objection.

Mr. Deputy Speaker : In view of what has transpired, some consequential amendments have to be made later. So, I will allow this part to stand over.

Shri Santhanam : It will mean the whole clause standing over. But after passing parts (viii) and (ix) the whole clause has to be put.

Mr. Deputy Speaker : It is in the discretion of the Chair to put the whole clause or put it part by part. As a matter of fact, I have placed it part by part and we have already adopted two parts.

Shri Bharati : Definitions may be added at any time.

Mr. Deputy Speaker : If the Bill is going to be restricted in scope then what is the harm in doing so ?

Shri Naziruddin Ahmad : My amendment is for this very purpose, Sir.

Mr. Deputy Speaker : The Hon. Member has thought much in advance and the Hon. Minister is only accepting what he is saying. So, this matter will stand over.

Shri Naziruddin Ahmad : I have no objection.

Shri Bharati : The words “full blood” and “half blood” do not occur in the part of the Code which we intend to pass. Originally we had intended to pass the whole Code and these words were necessary. Now that these words do not occur in this part we may as well drop them.

Dr. Ambedkar : They may arise in connection with prohibited degrees, *sapindaship* and so on. Therefore, my suggestion is that it might be desirable at this stage to pass the part and if at a later stage I find it is necessary to make some amendments I will do so.

Shri Bharati : After all, these are definitions of words which must have a reference to the words occurring in the subsequent chapters. If we do not see these words at all in the chapters on marriage and divorce I do not see any virtue in having the definition.

Shri Naziruddin Ahmad : This part is amended by amendment No. 360 which is the latest version of this part. But even there terms like “uterine blood” appear.

Dr. Ambedkar : My suggestion is that the better thing would be to allow these definitions going through ; if subsequently we find it necessary to change we shall change it, because, as I have already stated, I reserve the right of bringing appropriate amendments in view of what has happened with regard to this Code.

Mr. Deputy Speaker : In any way, without any doubt this is required for the chapters on marriage and divorce. And these terms are there both in the original part and in the amended one.

Now I will put part (iii) to vote.

The question is :

“That part (iii) renumbered as part (iv) of clause 3 stand part of the Bill.”

The motion was adopted.

Mr. Deputy Speaker : The question is :

In the explanation to item (iv) re-numbered as (v), *for* “this clause” *substitute* “clauses (iv) and (v)”.

The motion was adopted.

Mr. Deputy Speaker : The question is :

“That part (iv) renumbered as part (v), as amended, stand part of the Bill.”

The motion was adopted.

Mr. Deputy Speaker : The question is :

In clause 3 after part (iv) renumbered as part (v), add the following new part :

“(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 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 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 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 ;”

The motion was adopted.

Shri Naziruddin Ahmad : This is subject to reconsideration.

Mr. Deputy Speaker : No. We have passed the Aliyasantana law.

Dr. Ambedkar : The substance may be reconsidered.

Mr. Deputy Speaker : So far as the language is concerned, the Hon. Member is always at liberty to suggest any modifications.

The question is :

In clause 3, after the definition of “Marumakkattayam law” add the following new part :

“(vii) ‘Nambudri law’ means the law applicable to persons who, if this code had not 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);”

The motion was adopted.

Mr. Deputy Speaker : Now, we come to part (viii)—that is the original part (v). It says ‘ “Part” means any Part of this Code’— Does he want it to go in ?

Dr. Ambedkar : For the moment, it is very difficult for me to say what I want to amend or excise. I want time to consider. Later on I may change it to ‘Bill’ or ‘Chapter’

Mr. Deputy Speaker : Then I will leave the origin (v) [the present (viii)] to stand over.

Now, I come to definition of “prescribed”.

Capt. A. P. Singh (Vindya Pradesh) : I want to add the definition of “Kul” in the definition clause.

Mr. Deputy Speaker : Let us finish these first. The question is :

“That part (vi) renumbered as part (ix) of clause 3 stand part of the Bill.”

The motion was adopted.

Shri Bharati : Is it understood that the word ‘Code’ may be changed ?

Dr. Ambedkar : It will be appropriately changed.

Mr. Deputy Speaker : Part (vi) relating to definition of ‘prescribed’ as renumbered is accepted. Now, we come to part (vii) relating to definition of ‘related’. It is renumbered as (x). The question is :

“That part (vii), renumbered as part (x) of clause 3 stand part of the Bill.”

The motion was adopted.

Mr. Deputy Speaker : Now we come to part (vi) of amendment No. 5 by Dr. Ambedkar. It says—in item (viii) as renumbered, for ‘any’ substitute ‘a’.

Dr. Ambedkar : Originally it was ‘any part’. I now say ‘a part’. But you will remember that you have held over renumbered Part (viii). So, this will also stand over.

Mr. Deputy Speaker : Then we come to the definiton of ‘son’— part (viii) of the original clause.

Pandit Thakur Das Bhargava : I have got an amendment here. It is No. 127.

Dr. Ambedkar : It is a kind of power of attorney.

Shri Rajagopalachari : It is a kind of adoption in Punjab.

Sardar Hukam Singh : It is not power of attorney. It is made-easy.

Pandit Thakur Das Bhargava : I beg to move :

For part (viii) renumbered as part (xi) of clause 3, substitute the following :

“(xi) ‘son’ includes an appointed heir and an adopted son whether appointed or adopted before or after the commencement of this Code but does not include an illegitimate son.”

As the House probably knows, the appointment of an heir is a special custom in Punjab.

Mr. Deputy Speaker : We were considering the definition of ‘son’. So far as an heir or a person who is appointed as an heir is concerned, it may be that he may be appointed as an heir for the purpose of the property. In fact, it may be a person who may be fit enough to marry the daughter of the person appointing him as the heir.

Pandit Thakur Das Bhargava : By custom, he is equivalent to a son. Therefore, he cannot marry his own sister. The person who is appointed as heir carries an intimate relationship. He is just like a son for all practical purposes.

Mr. Deputy Speaker : Even to the extent of coming into the prohibited degree ?

Pandit Thakur Das Bhargava : Yes. He comes into that family. There are several customs with regard to appointed heirs in the territory which is now under the Commissionership of Ambala. It is just like adoption. There is absolutely no difference between adoption and the appointment of an heir. The ceremonies even are sometimes the same. The person who is appointed as heir is treated more or less as the son. He cannot marry the daughter of the appointer, because the daughter of the appointer is his sister. No person in Punjab will ever believe that the daughter of the appointing father can possibly be married to that boy. He could not marry even a cousin. He is treated just like a son. The only difference is that, so far as the eligibility of an heir is concerned, he may be a married man with sons and daughters.

Dr. Ambedkar : He can also be a man with *dhadi*.

Shri Rajagopalachari : The hon. Member will perhaps educate us in the matter—is it open, according to that custom to appoint ones own son-in-law as his son ?

Pandit Thakur Das Bhargava : In that case he is called ‘*ghar-javai*’.

Mr. Deputy Speaker : Corresponding to this there is a custom in the south—it is called ‘illatom adoption’.

Pandit Thakur Das Bhargava : This custom is not only judicially recognised ; it is so widely prevalent that it is as good as law. It is a fully established custom, it has got more force, perhaps, than the ordinary law of the land. It is universally acknowledged among the Hindus, Sikhs as well as the Muslims. The relationship created thereby is not merely of gift, or mere appointment of an heir. The relationship is personal; the appointed heir is treated as a son and he lives with the father.

Dr. Ambedkar : For property purposes.

Pandit Thakur Das Bhargava : For property purposes as well as for relationship. He cannot marry the daughter, as an outsider does. Therefore it is not a question of merely property ; it is a question of personal relationship.

Mr. Deputy Speaker : Can the son be older than the father ?

Pandit Thakur Das Bhargava : He can be older, just as a nephew can be older than the person adopting. Supposing a brother adopts the son of a brother. The son of a brother may be older to him in age than the person appointing.

Mr. Deputy Speaker : Is there any ceremony attached to it ?

Pandit Thakur Das Bhargava : It is done in several ways. It must be made public ; so there is a registered deal in some cases. The entire family is collected and the boy is accepted as heir. In some places even the ceremony is gone through. Practically it is tantamount to adoption.

Mr. Deputy Speaker : In those parts where this custom is prevalent, is there regular adoption as well ? Or is it the contention that wherever this custom of having ‘appointed heir’ prevails, regular adoption does not take place ?

Pandit Thakur Das Bhargava : This is, as a matter of fact, in addition to that.

Mr. Deputy Speaker : Can a man have both, an adopted son as well as an appointed heir.

Pandit Thakur Das Bhargava : Even in a family, one brother may have an adopted son, while another brother may have an appointed heir. But there is no difference so far as relationship is concerned. This custom obtains among Muslims as well.

Khwaja Inait Ullah (Bihar) : In Muslim law there is no adoption.

Pandit Thakur Das Bhargava : I am not dealing with Muslim law ; I am speaking of Muslim customs. Almost every Punjabi Muslim follows custom.

Mr. Deputy Speaker : But it is so prevalent that it can be brought under this definition.

Pandit Thakur Das Bhargava : Nobody can doubt the validity of this custom. You can take any treatise on customary law and you will find that the appointment of a heir is a customary practice.

Shri Radhelal Vyas : Is a female appointed as an heir ?

Pandit Thakur Das Bhargava : But she cannot become a son.

Dr. Ambedkar : In view of the fact that it has been decided to confine this Bill to marriage and divorce, the point raised by my Hon. Friend may very well come when we are dealing with the matter of adoption. There we can discuss this question as to whether we can include what he calls an appointed son in the definition of adopted son. There, if he is able to satisfy that custom is a custom which this House should permit, in view of the definition which we have just now passed, we will consider that question. Here we are for the moment dealing with marriage and divorce.

Pandit Thakur Das Bhargava : But you have used the word “son” here ; otherwise there will be no need for any definition.

Dr. Ambedkar : As you know in the Chapter on Adoption, we have tried to introduce a uniform system, we are not recognising any of the variants of adoption. We say that adoption should be one common system throughout. We have also said there that so far as the ceremonies of adoption are concerned, they may be different. We do not bother about it. If the appointment of a son is satisfactory from the point of view of the definition of adoption, namely, the giving and the taking, the putting of the sugar in the mouth of the boy and the performance of some sacrifice, well the particular ceremonies by which they do it will not make the appointed son an adopted son.

Pandit Thakur Das Bhargava : Unfortunately, I have not been able to express myself in a way as to carry conviction to Dr. Ambedkar.

Mr. Deputy Speaker : The point raised by Pandit Bhargava has relevance to marriage as well.

Dr. Ambedkar : I am afraid, without a perfect understanding of the custom, I am not able to come to any decision—the circumstances,

the custom, the reasonableness or otherwise. Nor has my friend been able to give us any clear picture. I want to apply my mind to that subject and come to a conclusion as to whether it would be possible for Government to accept his proposal. All of a sudden it is not possible.

[12 NOON]

Pandit Thakur Das Bhargava : Let it be held over.

Dr. Ambedkar : We can add it afterwards.

Mr. Deputy Speaker : May I suggest one course ? As it is, there is no objection to passing this. The only attempt is to include some other category. Therefore this may be passed now, because we are not passing the entire clause 3. We can add one more category later. With that understanding I will put this part to the vote of the House, the question is :

“That part (viii) renumbered as part (xi) of clause 3 stand part of the Bill.”

The motion was adopted.

Mr. Deputy Speaker : Now we will proceed to clause 4.

Capt. A. P. Singh : I have already requested you that one definition should be added after part (viii). The amendment is No. 378, and is about the definition of *Kula* . It may surprise some hon. Members as to why I want that this word should be defined. But if you see amendment No. 387, there I have said that “the parties do not belong to the same *Kula* where by custom such marriages are prohibited.” I want this word to be defined here so that marriages may not take place within the same *Kula*.

Dr. Ambedkar : May I just explain the position. I am afraid that this amendment, although it is a definition, really relates to clause 7—Essentials for a valid Dharmik marriage—where certain conditions for a valid Dharmic marriage have been set out. My friend wants substantively to add one more condition that the parties to a marriage should not belong to the same *Kula*. If that amendment is accepted, then and then alone would a definition of ‘*Kula*’ be necessary, although it may be argued that ‘*Kula*’ is such a well known term that no definition is necessary. But suppose when we are dealing with clause 7 this matter is taken up and the House accepts the amendment, then and there we can introduce the definition of ‘*Kula*’. Therefore no definition of ‘*Kula*’ is necessary now.

Capt. A. P. Singh : My difficulty is this. Whenever any such thing comes it is generally said “The word has not been defined”. Therefore, I wanted that “Kula” should be defined now and let us be clear on this point. But if it can be done later I have no objection.

Mr. Deputy Speaker : If in clause 7 this is not going to be accepted, the definition here will become useless. But if on the other hand it is accepted and a definition is found necessary a consequential amendment will be made here. I am not closing the door.

Dr. Ambedkar : Or it can be done by an Explanation as to what is meant by ‘Kula’.

Mr. Deputy Speaker : Clause 3 is not completed, or, as the Hon. the Law Minister said, we can give it as an Explanation.

Capt. A. P. Singh : Then it may be held over.

Mr. Deputy Speaker : Now we shall take up clause 4.

Clause 4—(Overriding effect of Code).

Dr. Ambedkar : I beg to move :

For clause 4, substitute :

“4. *Overriding effect of Code*—Save as otherwise expressly provided in this Code : —

(a) any text, rule or interpretation of Hindu law or any custom or usage in force immediately before the commencement of this Code shall cease to have effect with respect to any of the matters dealt with in this Code ; and

(b) any other law in force immediately before the commencement of this Code shall cease to have effect, in so far as it is inconsistent with any of the provisions contained in this Code.”

The purpose of the amendment is this. As the House will see, we had originally one single clause with no sub-clauses and the provisions of the Code relating to custom and interpretation of law and those relating to other laws passed and in force were put together. It was felt that it was not the desire of this Bill to abrogate all law but only in so far as it is inconsistent with the provisions of the Bill. I therefore, felt that the best course was to split clause 4 into (a) and (b) leaving rule, interpretation and custom to be covered by (a) and any law in force to be dealt with by (b) with the limitation that no law shall be abrogated unless it was inconsistent with this Code. It is not our intention that all laws should be abrogated by this. That is the purpose of this amendment.

Mr. Deputy Speaker : Amendment moved :

For clause 4, substitute :

“4. *Overriding effect of Code.*—Save as otherwise expressly provided in this Code : —

(a) any text, rule or interpretation of Hindu Law or any custom or usage in force immediately before the commencement of this Code shall cease to have effect with respect to any of the matters dealt with in this Code ; and

(b) any other law in force immediately before the commencement of this Code shall cease to have effect, in so far as it is inconsistent with any of the provisions contained in this Code.”

Dr. Deshmukh : I beg to move :

In the amendment proposed by Dr. Ambedkar, in part (a) of the proposed clause 4, omit the words “or any custom or usage”.

Shall I speak on it now or afterwards ?

Mr. Deputy Speaker : I shall first have all the amendments that hon. Members intend moving and then allow the discussion. Amendment moved :

In the amendment proposed by Dr. Ambedkar, in part (a) of the proposed clause 4, omit the words “or any custom or usage”.

Dr. Ambedkar : I do not understand it.

Mr. Deputy Speaker : It is that if there is a custom it shall continue. I take it that the object of the amendment is that notwithstanding any of the provisions of this Code, any custom in force before the commencement of the Code will override what is now sought to be abrogated. Is that so ?

Dr. Deshmukh : Yes.

Mr. Deputy Speaker : We will assume two things. Wherever it is not provided for, the custom will prevail, there is no doubt about it. But wherever there is some provision here, the custom will be abrogated. Custom, where it is inconsistent, will be abrogated by the amendment. The hon. Member wants that custom, not only where it is provided for here but also where it is not provided for, must override the text of law. That is the position. I will ask to reply to this later on.

Sardar Hukam Singh : I beg to move :

In clause 4, omit the words “or any custom or usage”

Mr. Deputy Speaker : It is the same thing.

Sardar Hukam Singh : My suggestion is that custom would continue in spite of this Act.

Mr. Deputy Speaker : Amendment moved :

In clause 4, omit the words “or any custom or usage”.

Pandit Thakur Das Bhargava : I beg to move :

For clause 4, substitute the following :

“4. any text, rule or interpretation of Hindu Law or any customary usage in force immediately before the commencement of this Code shall have effect with respect to any of the matters not dealt with the Code.”

This is the positive side of the matter.

Mr. Deputy Speaker : Whatever is not provided in this Code shall have effect.

Dr. Ambedkar : That would be so, when we close with clause 55.

Pandit Thakur Das Bhargava : What I say is that these things will persist as a positive fact and there is not much difference between the two.

Mr. Deputy Speaker : Amendment moved :

“4. Any text, rule or interpretation of Hindu Law or any customary usage in force immediately before the commencement of this Code shall have effect with respect to any of the matters not dealt with in this Code.”

Pandit Thakur Das Bhargava : There is another amendment in my name No. 449. I beg to move :

For clause 4, substitute the following :

“4. any custom or usage in force immediately before the commencement of this Code shall be binding and shall override all texts, rule or interpretation of the Hindu Law or any provision of any other law and shall have precedence in all matters relating to marriage and divorce.”

This is an antithesis of section 4 and this is only to bring out into ironical relief the place what my Hon. friend Dr. Ambedkar wants to give to ‘custom’ which I personally do not approve.

Mr. Deputy Speaker : I am trying to put down categories so that I may insert all the amendments under a particular group. Amendment No. 128 relates to custom wherever there is no provision of law in this Bill. Then amendment No. 449 says that notwithstanding any provisions in this Bill all the previous custom shall stand.

Shri Santhanam : It is a direct negation of clause 4.

Mr. Deputy Speaker : Amendment moved : For clause 4, substitute the following :

“4. any custom or usage in force immediately before the commencement of this Code shall be binding and shall override all texts, rule or interpretation of the Hindu Law or any provision of any other law and shall have precedence in all matters relating to marriage and divorce.”

Shri Naziruddin Ahmad : I beg to move :

For clause 4, substitute the following :

“4. All the texts, rules or interpretations of Hindu Law or all customs and usages and all other laws in force immediately before the commencement of this Act, in so far as they may be inconsistent with this Act, shall, to the extent of the inconsistency, cease to have effect.”

I have another amendment, Sir.

Mr. Deputy Speaker : Is it necessary ?

Shri Naziruddin Ahmad : That is more elaborate. I beg to move :

For clause 4, substitutes the following :

“4. All texts relating to and all rules of interpretation of Hindu Law in the sacred books or in judicial pronouncement or superior courts in India or of the Judicial committee of the Privy Council or in the text books and commentaries of learned writers and authors or otherwise, and all customs and usages in force immediately before the commencement of this Code, in so far as they are inconsistent with this Code, shall, to the extent of the inconsistency, cease to have effect.”

Mr. Deputy Speaker : This is in another form.

Shri Naziruddin Ahmad : It is in a more elaborate form, containing more elements.

Mr. Deputy Speaker : It is different in substance.

Shri Naziruddin Ahmad : Though in minor details.

Mr. Deputy Speaker : Amendments moved :

For clause 4, substitute the following :

“4. All texts, rules or interpretations of Hindu Law or all customs and usages and all other laws in force immediately before the commencement of this Act, in so far as they may be inconsistent

with this Act, shall, to the extent of the inconsistency, cease to have effect.”

For clause 4, substitute the following :

“4. all texts, rules or interpretations of Hindu Law in the sacred books or in judicial pronouncement of superior courts in India or of the Judicial Committee of the Privy Council or in the text books and commentaries of learned writers and authors or otherwise, and all customs and usages in force immediately before the commencement of this code, in so far as they are inconsistent with this Code, shall, to the extent of the inconsistency, cease to have effect.”

Shri Jhunjhunwala : I beg to move :

To clause 4, add the following proviso :

“Provided, however, that this Code shall not override any text, rule or interpretation of Hindu Law, or any custom or usage or any other law in force, immediately prior to the commencement of this Code which has the sanction of Hindu religion or any other religion to the followers of which religion or religions this Code will apply :

Provided further that this Code shall not override such existing text, rule or interpretation of Hindu Law, or any custom or usage or any other law in force which has sanction of morality behind it.”

Sir, then I have another amendment, No. 418.

Mr. Deputy Speaker : Is it a repetition of No. 130?

Shri Jhunjhunwala : This is not a repetition but slightly different.
I beg to move :

In the amendment proposed by Dr. Ambedkar, to the proposed clause 4, add the following Proviso :

“Provided that this Code shall not override such existing usage, custom and law as form part of the distinct culture of any section of the people to whom this Code applies.”

Mr. Deputy Speaker : Who is to decide what the distinct culture is ? Whatever may be the substance so far as any Code is concerned, before I put it to the House, there must be some definite thing which is enforceable in a Court of Law.

Shri Jhunjhunwala : That is found in Article 29 of the Constitution that different sections of society have got different culture and that should be conserved.

Mr. Deputy Speaker : The hon. Member wants distinct culture to be established in a court of law.

Shri Jhunjhunwala : It is in the Constitution itself.

Mr. Deputy Speaker : There is no definition of culture as there is a definition of custom as it is provided for here. I am not aware if there is any judicial interpretation of what distinct culture is up till now.

Shri Jhunjhunwala : That is already in the Constitution.

Shri Santhanam : It must be in the directive principles.

Dr. Ambedkar : It must be somewhere in the directive principles or it might be in the provisions relating to religion and so on.

Mr. Deputy Speaker : amendments moved :

To clause 4, add the following Proviso :

“Provided, however, that this Code shall not override any text, rule or interpretation of Hindu Law, or any custom or usage or any other law in force, immediately prior to the commencement of this Code which has the sanction of Hindu religion or any other religion or any other religion to the followers of which religion or religions this Code will apply ;

Provided further that this Code shall not override such existing text, rule or interpretation of Hindu Law, or any custom or usage or any other law in force which has sanction of morality behind it.

In the amendment proposed by Dr. Ambedkar, to the proposed clause 4, add the following Proviso :

Provided that this Code shall not override such existing usage, custom and law as form part of the distinct culture of any section of the people to whom this Code applies.”

Shri Sarwate (Madhya Bharat) : I beg to move :

To clause 4, add the following Proviso :

“Provided that the Legislature of a State may, by legislation passed by a majority of the total number of its or their members, provide that any of the provisions of this Act shall not apply to that State, or shall apply to that State with such modifications, as may be included in the legislation.”

Mr. Deputy Speaker : How does it arise in this clause ? Any amendment must be relevant to the clause that is on hand.

Shri Sarwate : Because this would supersede all laws which are inconsistent. As the clause stands at present, it has the effect of superseding all the laws which the State might have passed before.

By this amendment I wish to give them the power, if they so wish, in future to restore them. There may be certain provisions which may not be applicable to the State. That State, if otherwise it has the power under the Constitution to legislate, should have the power and it should not be precluded from further legislating on this matter owing to the effect of this clause.

Mr. Deputy Speaker : I do not understand what this amendment means. This amendment at any rate, must have relation to clause 1. Then, I think we have disposed of a similar amendment with reference to clause 2.

Dr. Ambedkar : Pandit Malaviya's amendment was more or less to the same effect.

Mr. Deputy Speaker : Apart from this, this is a concurrent subject. If the local conditions and circumstances require a State Legislature to make any law, that law has to receive the assent of the President. If it receives the assent of the President, to that extent, the provincial law will override or modify this law. That provision is there in the Constitution. I do not know how far we can make a law here which will override or remove the need for the President's assent in a concurrent subject. A provincial legislation cannot have overriding effect unless the President's consent is there. Indirectly, we are now trying to say that notwithstanding the need for the President's consent under the Constitution, a provincial legislature can pass a law even in a concurrent subject. How can you do away, with the right of the President. I think it seems to be unconstitutional.

Shri Sarwate : The provisions of the Constitution are not superseded ; they also go along with this. If for a provincial legislation that pre-condition is necessary, that pre-condition is attached. It does not mean that that is taken away.

Mr. Deputy Speaker : It does away with the wholesome provision that there ought not to be any inconsistency between the laws passed by the Central legislature and by the State legislature. The state legislature could not be clothed with power, except in exceptional circumstances, to make such laws. The President must give his consent. I do not know how we can pass provision overriding all this. On these grounds it has already been voted upon by the House under clause 2 ; it also militates against the provisions in the Constitution. Is it necessary that we should take up this amendment ? Any other amendment ?

Dr. C. D. Pande (Uttar Pradesh) : I have an amendment, sir.

Mr. Deputy Speaker : Already tabled ?

Dr. C. D. Pande : Already tabled, but not listed so far. I have got a copy.

Dr. Ambedkar : I have not got a copy.

Dr. C. D. Pande : At least I have been supplied with one copy.

Mr. Deputy Speaker : When was notice given ?

Dr. C. D. Pande : I gave notice in the Notice office this morning and they have given me this copy. This has got to be moved. In any case, the office has given this copy to me ; it may have been given to the Hon. Law Minister as well.

Mr. Deputy Speaker : Amendments will be pouring in everyday in the morning. This is only the first of its kind. We had similar amendments also. I do not propose to waive the notice for such amendments unless the Hon. Minister sponsoring the Bill is willing to accept them.

Pandit Thakur Das Bhargava : With your permission. Sir, I beg to move amendment No. 420 in my name.

Mr. Deputy Speaker : The same amendment in another form.

Pandit Thakur Das Bhargava : There is difference. There is a small error here ; it is wrongly typed. It should be “in so far as it is inconsistent”.

Mr. Deputy Speaker : That has been provided for.

Pandit Thakur Das Bhargava : That has not been provided for. The original clause 4 says :

“Save as otherwise expressly provided in this Code, etc.....”

These words are not there.

Dr. Ambedkar : The words are there :

“Save as otherwise expressly provided in this Code.”

Pandit Thakur Das Bhargava : I say that so far as this Code goes, any custom shall cease to have effect.

Mr. Deputy Speaker : The matters must have been dealt with in this Bill.

Pandit Thakur Das Bhargava : That is not necessary. We make a provision that custom is saved and by the force of that section, custom is saved.

Mr. Deputy Speaker : Let us see what the objection is in principle. What this clause wants to do is whatever may be the custom, in so far as it is provided for by this Bill, the provisions of this Code will

have to prevail except in so far as a specific reservation is made. What is his objection ?

Pandit Thakur Das Bhargava : This is an amendment to the old clause 4. There is no question of inconsistency etc. there.

Mr. Deputy Speaker : Only in cases where it is inconsistent, the Law must override. If it is not, it may continue.

Pandit Thakur Das Bhargava : This is an amendment to the original clause 4. It is quite different from the new clause 4. If you adopt the amendment moved by Dr. Ambedkar, then, it may be unnecessary.

Dr. Ambedkar : That is my amendment.

Pandit Thakur Das Bhargava : I am in agreement with your amendment; but I have given a different amendment.

Dr. Ambedkar : What is before the House is my amendment.

Pandit Thakur Das Bhargava : The original clause 4 does not consider the question of inconsistency at all.

Mr. Deputy Speaker : I am not able to follow the need for this amendment.

Shri Santhanam : He wants to restore the original wording that the custom should be invalid to the extent of inconsistency.

Dr. Ambedkar : We have never used the word 'inconsistent' even in the original clause. The original clause was :

“Save as otherwise expressly provided in this Code, any text, rule, or interpretation of Hindu Law, or any custom or usage or any other law in force immediately prior to the commencement of this Code shall cease to have effect as respects any of the matters dealt with in this Code.”

It was an absolute thing with regard to law and custom.

Pandit Thakur Das Bhargava : In clause 4 as it stood in the original Bill, there is no reference to inconsistency. It is absolute. My amendment seeks to amend the clause in two ways : in the first place these words are not there : 'save as expressly provided etc.'. Secondly, the question of inconsistency is absent in the original clause. Then all customs and texts of Hindu Law shall prevail but to the extent of inconsistency only they would not have effect. Otherwise whatever is provided in this Act will have effect. With your permission. Sir, I move amendment No. 420, with this correction. I beg to move :

For clause 4, substitute the following :

“4. Any text, rule or interpretation of Hindu Law and any law, custom or usage in force immediately before the commencement of this Code shall in so far as it is inconsistent cease to have effect with respect to the matters dealt with in the Code.”

Mr. Deputy Speaker : Amendment moved :

“4. Any text, rule or interpretation of Hindu Law and any law, custom or usage in force immediately before the commencement of this Code shall in so far as it is inconsistent cease to have effect with respect to the matters dealt with in the Code.”

Shri Syamnandan Sahaya : I beg to move :

In the amendment proposed by Dr. Ambedkar, in part (a) of the proposed clause 4, after the words “this Code”, where it occurs for the second time, insert the words “in so far as it is inconsistent with any of the provisions contained in this Code”.

Mr. Deputy Speaker : In part (a) ?

Shri Syamnandan Sahaya : Yes.

Mr. Deputy Speaker : The object of the Law Minister seems to be that once a particular matter is dealt with here, you need not go to any other Code. But the suggestion of the amendment seems to be that it is only in cases where the provisions are inconsistent with the provisions of the Code that the code provisions will prevail.

Shri Syamnandan Sahaya : That is exactly my point.

Mr. Deputy Speaker : Amendment moved :

In the amendment proposed by Dr. Ambedkar, in part (a) of the proposed clause 4, after the words “this Code”, where it occurs for the second time insert the words “in so far as it is inconsistent with any of the provisions contained in this Code”.

And so the following amendments have been moved :

No. 6 of Dr. Ambedkar, No. 450 of Dr. Deshmukh, No. 129 of Sardar Hukam Singh, Nos. 128, 420 and 449 of Pandit Thakur Das Bhargava, Nos. 380 and 419 of Shri Naziruddin Ahmad, Nos. 130 and 418 of Shri Jhunjhunwala and No. 417 of Shri Syamnandan Sahaya.

These amendments and the clause are now thrown open for discussion.

Dr. Deshmukh : This is a very important clause and it has assumed greater importance because the provisions of the present law are going

to be limited only to those related to marriage and divorce. It was for that reason that I was going to say, so far as clause 3 was concerned, that there was not any very great need for a definition of the words "custom and usage". Also I thought that so far as marriage and divorce were concerned, there was the prevailing opinion that custom should not be taboo and should not be prevented from operation to the same extent as might have been the case if we were to include inheritance and succession in the provisions of the Code. So I thought that since we were going to limit this now only to marriage and divorce, insisting on defining custom and usage and also making provisions in clause 4 were not of such great importance. Therefore, I was suggesting that the definition also should be omitted from clause 3. so far as the wording of the definition is concerned. I am in complete agreement with the learned Doctor, because it is absolutely identical with the rulings on the subject and there is not a single word there which can be objected to. In fact, if anything, it liberalises (Shrimati Durgabai in the Chair) and widens the scope, for it extends to anything uniformly observed for a long time and it gives recognition even to family customs. From that point of view there is nothing objectionable about the definition. But so far as most of the provisions in the present Bill are concerned. I would like the Hon. Minister to view the whole thing as early as possible from this point, namely that the provisions are now going to be limited only to marriage and divorce. Now as he had himself admitted, there are many things here in this Bill, many provisions which were intended specifically to govern other provisions in a particular manner, I would like him to view even some of the provisions to which we are going to confine ourselves from this point of view. If he does that I think some modifications would be necessary even in this clause which gives the overriding effect to this law as against custom and usage as well as interpretation of Hindu law prevalent at the moment.

If we pass the clause as suggested by Dr. Ambedkar's amendment we would certainly be going further than what was, I believe, intended. Sub-clause (a) of clause 4 reads :

"Any text, rule or interpretation of Hindu Law or any custom or usage in force immediately before the commencement of this Code shall cease to have effect with respect to any of the matters dealt with in this Code."

If it is correctly interpreted, it would mean that all custom and usage so far as marriage and divorce are concerned will be barred, because they are matters dealt with in this Code.