

such a custom is antagonistic to the Hindu *Shastras* and to our principles. There are, of course, differences on the application of divorce provision but I for one support it for I want justice for women who are meted out gross injustice these days. Poet Tulsidas had said through the mouth of Sitaji:

*Mitam dadati hi pita mitam bhrata mitam sutah,*

*Amitasya to dataram Bharatram ka no pujyet.*

It means that the poor woman is economically dependent upon the husband and for that reason she worships him. This is, however, not in the interest of the society and is not in accordance with the principles of justice. Tulsidasji should better not have said that Whatever respect we may show towards Shri Ram Chandraj, or Shri Tulsidasji, I am not prepared to keep the women in bondage any longer. This principle of divorce is based upon one's desire and upon the sense of equality and justice. I cannot close my eyes to the injustice that is being done to women. It is a daily occurrence now that young men leave their wives. I would ask them where are these sisters to go? So I believe that divorce is a right provision. People refer to *Satis*. But has a man ever been a *Sata*? Indeed, the principle of depriving the women of their rights prevailed in a gone-by age all over the world. The Married Women's Property Act was passed in England in 1883.

**Shri T. N. Singh** (Uttar Pradesh): What is meant by *Sata*?

**Pandit Thakur Das Bhargava**: Do you not understand even the meaning of *Sata*? All women know what is *Sati* but no man knows what *Sati* is.

So my submission is that we should not make provisions on the basis of customs—bad customs surely. We should, on the other hand, take courage to abrogate customs—those old customs that have now become out-of-date. The Government should make legislation that should be based upon justice and equality.

**Shri Bhatt**: Sir, an amendment of mine was left out due to my mistake. If you permit, I may move it now.

**Mr. Deputy Speaker**: Is it already in the list? What is the number?

**Shri Bhatt**: No. 288 in List No. 5.

**Mr. Deputy Speaker**: Why was this not moved yesterday?

**Shri Bhatt**: I was not present at the right time. When I entered the House, the speech had begun.

**Mr. Deputy Speaker:** He may move it.

**Shri Bhatt:** I beg to move.

In the amendment proposed by the hon. Dr. Ambedkar, in the proposed new clause 4,—

(i) in part (a), after “dealt with in this Code” insert “after ten years from the commencement of this Code”; and

(ii) after part (b) add the *Explanation*:

*“Explanation.—Notwithstanding anything contained in sub-section (a), for a period of ten years from the commencement of this Code, any text, rule or any custom to usage in force, shall have effect.*

**\*Babu Ramnarayan Singh (Bihar):** (*English translation of the Hindi speech*). Sir, today you have given me quite early the opportunity to speak on this dangerous subject and for this I thank you. Yesterday and the day before I tried to catch your eye several times and important as the subject was, I failed to get an opportunity to speak. May I make an observation in this connection that there is no doubt that you do full justice in your position about which nobody should have any misgiving.....

**Shri Syamnandan Sahaya (Bihar):** Nor anybody has.

**Babu Ramnarayan Singh :** And, indeed, nobody has, But you have to give your rulings with an even hand. Yesterday you were pleased to say that there was some feeling prevalent against you and you wanted that no such feelings be created so that there may be general satisfaction about the working. It is but meet Sir, that thing should be done judiciously. But if somebody worries with the thought that people should regard him infallible on all occasions, he is likely to commit some mistakes. Therefore, I beg of you to do your part justly as you have been doing so far. You should not labour under the apprehension that people might think that you are not doing things rightly.

**Shri Jangde (Madhya Pradesh) :** Please come to the subject.

**Babu Ramnarayan Singh:** I should also like to say one thing more. When I stood to speak, you in spite of the fact that no Member had expressed that desire declared that sufficient discussion had taken place on the subject and that the question be now put to decide upon the matter. However, I should draw your attention to the fact that the matter is very important.

**Shri Jangde:** The hon. Member must now come to the subject.

**Mr. Deputy Speaker:** What I would say is it must be left to somebody to decide whether the debate has been sufficient or not, and the Chair takes the responsibility. I called upon the Hon. the Law Minister to reply. It is no good referring to all those rulings when it is left to the Speaker to decide. I have now given an opportunity to the hon. Member. That was on the definition clause. This is clause 4. If he wants to say anything let him say now. What is the good of saying: "You did not give me any opportunity then"? All that is not relevant.

**Babu Ramnarayan Singh:** Sir, whatever your ruling it is acceptable. But I am not saying anything unreasonable.

**Mr. Deputy Speaker:** What is the good of wasting time over that matter?

**Babu Ramnarayan Singh :** That is not the thing. All the Members here have the right to speak, and the subject in discussion here is such that it should not have been brought up at all. To me indeed any punishment given to the Government, who have brought this measure here, and their supporters in this regard would be reasonable. Sir, you Probably do not know that hundreds of persons are daily arrested here outside and released ten or twenty miles away. It is said to be a secular State. Does a secular State give liberty to do all sorts of unreasonable things under the cover of secularism? This Parliament is meant to protect the rights of the people and you are its presiding officer. These things must come to your knowledge and you should give due consideration to them. What is it after all that police has been posted all round and none can pass that way? This is very bad and absolutely unjustifiable.

This Bill abrogates all the previous texts of the Hindu Law and all rules and interpretations given in respect of them. I am not talking of customs. (I am simply speaking of text). Sir, you are a scholar and are very well aware that the *Vedas* of our country came to be revealed at the beginning of the world and the establishment of the social organisation. The rules of conduct and duties of men in our country are determined by the *Vedas*. Today we have Pandit Nehru's administration whose representative, Dr. Ambedkar wants to abrogate with a single stroke all those rules which have existed since the beginning of the world. I would say that all the Hon. Members should oppose such a measure. Firstly, the Hindu Code Bill should not pass

at all. But if it has to pass, at least this portion of it, clause 4, must not pass in any case. You know, Sir, and Dr. Ambedkar also knows very well, that Buddhism was preached by Lord Buddha to undo the hold of the *Vedas*. But the *Vedic* religion did not perish. Hardly a few years have passed since the advent of Pandit Nehru's rule and Dr. Ambedkar's coming into office and the *Vedic* principles are sought to be repudiated. Do they not think that such laws should not be passed? Nobody in the country would accept this law.

**Shri Syamnandan Sahaya :** Babu Ramnarayan Singh is perfectly right.

**Babu Ramnarayan Singh :** How could they dare to say that things that have been in existence since times immemorial, since the beginning of the earth and the creation of the Sun and the Moon should now no more be followed? Wherefrom did they get this right? Buddhism was preached to overthrow the *Vedic* religion. Other religions including Islam also came. All came and fell, but *Vedic* religion is still there and would remain as such. No one can destroy it and it is an improper and absolutely misguided effort that is being made to efface it. It gives me pain that such things are brought in our Parliament. As our friend Thakur Das Bhargava just said religion and the rules of good conduct were determined by the *Veda* and the *Smriti*:

*Veda, Smriti, sadacharah*

*Atmanstushtireva cha,*

*Etachchaturvidhah prahus-*

*Sakshaddharmasya Lakshanam.*

The definition of Religion is four-fold ; Veda, Smriti, Sadacharah (good conduct) and Atmatusthi (self-satisfaction).

Rules of good conduct were thus fixed in accordance with the *Vedas*. But simply that was not enough. It was also to be seen that what the *Vedas* prescribe, what they command, should also be there in the *shastras*, *Vedas* set down the path of religion and the *Shastras* supplemented them. But that was not the end all. The rules incorporated in the *Vedas* and supported by *Shastras* should be observed in the conduct, manners and actions of the good people. That is what was meant by the rules of good conduct. But nobody was bound as to their observance simply for the reason that they were laid down by the *Vedas* and *Dharma Shastras* and also followed by good people. In the last, he was to see how far his conscience, his knowledge of good and bad, agreed with them. After consideration of all these factors, his duty was to be finally determined.

Not to speak of the *Vedas*, the *Shastras* and good conduct; not even was the conscience spared; the Hon. Minister and this Government mean that our conscience be left out and this Bill be passed: and work be done according to it. Just think, what an injustice it means. Need I submit more, you just look up the meaning of the word 'Law' in the dictionary. What does it mean, after all? You can look up the word in the dictionary, and some of you must have seen it already. Dr. Ambedkar is a scholar no doubt; he must have looked it up in the dictionary.

**Dr. Ambedkar:** No; I don't look it up.

**Babu Ramnarayan Singh:** But he puts his scholarships aside and is behaving in a strange way. What is Law after all? Law today means a supremacy, or a predominant society making a regulation with the help of a military or police and thrusting it on the society as a whole. Sir, Law does not mean this. Law, according to the lexicon, means:— "Law is nothing but the will of the people expressed in terms of Law"—which, in other words, means—whatsoever is the will of the society, is placed in the form of a law and is called a law. These people have now gained supremacy: Police and military are at their command, and with the help of police and military and in the name and with the help of party discipline, they may get anything passed.

**Shrimati Dixit** (Madhya Pradesh): There is no party discipline.

**Babu Ramnarayan Singh:** There is party discipline and you will pass it.

**Shrimati Dixit:** No; it is not so.

**Babu Ramnarayan Singh:** Well, what will come out of 'yes' and 'no'? I know the position.

Sir, I mean to say that a lot of injustice is caused by such a law. It is not in the interests of this country, nor do the people of this country want it, and, therefore, this should not be passed as law. As I told you a number of revolutions took place, great religious revolutions, but the fundamental of the *Vedas* were not changed. With one stroke of pen Dr. Ambedkar now wants the *vedas* an offence, and this Bill should, in no case, be passed. As there are different texts and rules, the interpretations follow them. A number of sages (Rishis) were born in our land. Shri Thakur Das made a mention of them. It has been said:

*Vedah vibhinnah Smritiyo vibhinnah,  
Naiko muniryasaya vachah Pramanam,  
Dharmasya tatvam nihitam guhyam,  
Mahajano, Yena gatah Sa Pantha."*

Vedas differ and *smritis* also differ. There is no sage whose word can be taken as final. The secret of Dharma is very deep, follow the path traversed by the great.

Which means—One *Veda* gives one dictum, while the other shows a difference of opinion. In *Vedas* there are certain things where people can have doubts. Likewise, there are *smritis* and *Dharmashastras*. All of them are of the same opinion, it cannot be said so. Some *Dharmashastra* gives one thing, while the other gives something else. There also is difference of opinion—“*Naiko Muniyarasya Vachah Pramanam*”—“There is not a single sage whose word can be taken as final”; No such sage has born, whose dictum could be authoritative and, hence, to be taken as complete truth, and the rest to be discarded. Not even so. But after this those of us who make of a mention of Manu Maharaj—some amongst them say likewise, that Dr. Ambedkar is Manu of the day.....

**Dr. Ambedkar :** I have not accepted that title.

**Babu Ramnarayan Singh :** do not accept, please. They say it wrongly, as you, in fact, do not deserve it: this is not a thing to be accepted. Those who confer this title upon you do it by way of flattery. If you are called ‘Manu’, all of us, too, would like to be called so ; why you alone.

And whatever were the dictates of Manu, whatever were his orders, were automatically followed by everybody. They were not propagated at the point of sword. Whenever he were to sit to make a law no police and military were kept on guard. I go to the extent and say that we should feel ashamed that when such a subject is being discussed we are encircled and guarded by police and military lest somebody should come and interrupt us. Furthermore, it has been said : “*Dharmasya Tatvam nihitam guhayam*”—The secret of *Dharma* is very deep it is hidden in the caves. Sir, everybody does know that these people must have thought at times that the subject of *Dharma* was so difficult that it could not be understood. Its secret, which is said to be lying in some cave, is very difficult to find out. How beautifully has, therefore, been said : “*Mahajano yena gatah sa panthah*”—“That, indeed, is the path which was followed by great men.” In such circumstances, when *Vedas* say something, *Shastras* uphold something else, conduct rules ordain something else and it may become difficult to make a right choice then what should be done ? It is, therefore, said : “*Mahajano yena gatah Sa panthah*”

—i.e., whatever is done by the great should be followed. Those, who are called great in our country today, are doing and out to do such things as are not acceptable to anybody even today. Who will accept them in the days to come? I beg to submit that this subject should be considered in a definite light, and in such a way that everybody may get an opportunity to think and have his say.

Sir, about usages and customs they say that custom should not exist. These people are prepared to do away with customs and will surely do away with them. They should know that the Scriptures, *Vedas*, *Puranas* were not introduced at the point of the sword or by any kind of coercion. Those were such regulations as were be acceptable to any body when formulated. Some give the name ‘customs’ ‘family-customs’ some name it as ‘family conduct’ while others call them ‘customs and traditions.

At a certain place in Ramayana it is said:

*“Raghukul riti sada chali ayi,*

*Pran jahin par vachan na jayi.”*

(Raghu Dynasty has its ever-present custom. Life it will give, but not discard the word.)

It was a trait of the Raghu Family, yes—a tradition, a custom : Life should not be cared for, it should even be sacrificed, but the words given by them should in no case, go futile. What need I say today? Cheers to the talent of Dr. Ambedkar or the talent of this Government which tells us not to talk of customs and to do away with truth and customs. They say, all the customs and traditions should be done away with. This is just a thing to be understood as to how important the customs were *“Raghukul riti sada chali Ayi, Pran Jahin par Vachan Na Jayi”* Just look to it that the man who seeks to become our Manu today, says that there should not be any custom nor traditions whatsoever; we should do away with all of them.

**Shrimati Dixit:** But what is happening today?

**Babu Ramnarayan Singh :** If your will were to carry the day, the words could happen. Now comes to question of divorce. In our country, there are some five or six such communities which we know are not more than two to four crores in number. For them they are making this laws so that the right of divorce for them may be secured. In the rest 90 per cent of the society, we know that divorce is a thing of daily routine. And, sir, how is this divorce given? Two, four or

five of them sit together, both the contending parties come and they break some stalk of grass ; and their mutual realtions are broken—this completed the “divorce”. Not a panny as to be incurred on this, nor any botheration. Our Hon. Dr. Ambedkar is a well-wisher of the Untouchables and they too should know that such well-wishers should be shunned. Now all of them will have to go to the district judge for divorce, what a lot of expenditure arid botheration will this procedure mean ? Then alone will divorce be granted.

**Shri Naziruddin Ahmad** (West Bengal):..... A decent work for lawyer !

**Babu Ramnarayan Singh:** Lawyers giving maintenance to lawyers !

**Pandit Thakur Das Bhargava :** The *Panchayat* is being empowered to register the divorce.

**Babu Ramnarayan Singh :** Well, even if it is in the hands of the *Panch*, it is right to some extent, but that too will be a Government Post. I assert that the Bill be scheduled. Let this law go to hell and then you will see how easily the entire system work. We have *panchayats* and *panchas*; and in our country customs and usages are pliable they will continue to hold good and people would accept them automatically. If any law is formulated or any decision taken, it should be so clear and precise as may be amiably accepted by people, and they may not think of going against it. But the law that is being passed here, is such that people in our country will take pride in breaking it, and will not act upon it. This is nothing but a whim of those who today have gained power. They are obstinacy-ridden and say that the Bill must be passed somehow. What the country thinks, and what she needs, the Government never worry about it. What is being spent for it here, and what, after all, is its necessity, nobody cares for it: the Government go on spending money lavishly and thus ruin the country ; go on passing baseless and futile laws against the will of the public. I insist upon our Rajaji and Dr. Ambedkar that the Bill be withdrawn : the country does not want it, and the good of the country, good of us all, lies in its being withdrawn. This simply astonishes me that such an injustice is being here where personages like Rajaji are present. There can be nothing more shameful and sorrowful than this.

Sir, I do not want to take more time but I want to request you that the subject is so serious that it needs a proper debate ; and if

any hon. Member wants to speak on it, he should be permitted to do so. This Bill has created a stir in the entire country as also in the City, and hold that the Bill should not be proceeded with. The Government should withdraw it, and if it is not withdrawn, but proceeded with instead discussion in a proper way be conducted and the hon. Members be not stopped from speaking on it. I would request all the hon. Members to understand all the pros and cons and pass it, then. They may also bear in mind that the good of the country and the society be not impaired in any way by this self-willed piece of legislation, and I again submit with respect to all the hon. Members, that this clause at least be omitted.

**Shri Sarwate** (Madhya Bharat): I rise to oppose the amendment of Dr. Ambedkar because I consider part (b) of the amendment as unnecessary and superfluous while part (a) is quite undesirable.

**Dr. Ambedkar** : You may abuse me as much as possible, provided you do not take much time. I am concerned more with the time than with the abuse.

\* **Shri Sarwate**: Sir, I am not abusing him. I am only opposing his amendment. If not interrupted, I shall take very little time.

I submit that by virtue of article 254 of the Constitution, all laws made by the State which are repugnant to or are inconsistent with the laws made by Parliament stand *ipso facto*, to that extent, inoperative. The other laws which may possibly be referred to in this connection are laws made before this code by the Centre. In their case the later law will precede the previous law. Therefore, in both the cases, that is, in the case of laws made by the Centre, they would, to that extent, to which they are inconsistent to the code be *ipso facto* inoperative. Therefore, I say part (b) is unnecessary and superfluous. As regards part (a), the effect of this amendment would be that all customs and all texts or rules or interpretation of Hindu law and customs would be made inoperative, subject to the saving clause at the beginning, namely, all such customs as would be saved by being included in any of the later provisions. My submission is that this is entirely undesirable. The Hindu religion has been living and progresssing. It has been said that it is dying and decadent. It has been compared to the shameful life of a coward who flies away from the field of battle. I would only submit that it is often ignored that one who fled

from the battle field may return only to vanquish those who erstwhile were the victors. It must be remembered that the Hinuds have repelled those who were for a time, and only for a temporary time, able to overcome them. In the last century the Marathas in Maharashtra from where Dr. Ambedkar himself comes, and then the Sikhs in the north were successful in achieving their independence and establishing their kingdoms. But I need not go into past history either ancient or modern. In our own day and before our own eyes, we have seen this accomplished. Have we forgotten that the present Parliament of which Dr. Ambedkar is an illustrious Member is the result of .....

**Dr. Ambedkar:** I have no right to be here. I have sneaked in.

**Shri Sarwate :** I wish he makes no confession of that nature.

This very Parliament is an illustration that the Hindus repelled the foreigners who had dominated over them temporarily. And what was the element or factor which gave this like or this rejuvenating characteristic to the Hindu religion? In my opinion, it is custom and by custom I mean such custom as is defined and accepted by this House in clause 3—custom, which is a rule that is certain and not unreasonable or opposed to public policy. It is said that custom might be of a bad nature and therefore it requires to be mentioned here. But to say so is contradiction in terms : just as contradictory as today वंध्यासुत For custom is defined here as that which is not opposed to public policy. Therefore, such customs as are opposed to public policy or morality, they will stand, *ipso facto* repealed. Those customs alone will be saved as would be good customs.

The House will realise that the sources of Hindu law have been described as:

श्रुति स्मृतिः सदाचार स्वस्य च प्रियमात्मनः ।

First of all the *Srutis* and *Smritis* lay down the fundamental common background. And then सदाचार and स्वस्य प्रियम् provide for variety, that is to say the element which would suit the various regions of the country. It has to be borne in mind that India is a continent in extent and its population is equal almost to the population of the U.S.S.R. in the East and to the U.S.A. in the West put together. So unless there is variety of the law, the law would be absolutely oppressive and it would be difficult to make it suit the various requirements of the different regions.

Now I would refer to another text of Hindu Law—I mean that law as it prevails at present. Yajnavalkya says :

यस्मिन् देशे य आचारो व्यवहारः कुलस्थितिः । तथैव परिपात्यो सौ ॥

That is to say, whatever customs, practices or family usages prevail in the country shall be preserved intact. And the *Vyavastha* or rule in this connection is stated thus :

येषां परम्परा प्राप्ता पूर्वजैष्यनुष्ठिता । त एव तैर्न पुष्येदुः आचारैर्न पुनः ॥

They are not liable to censure, whose predecessors used to practise these usages. In modern language, it means that the customs are ancient and from time immemorial. And others which are not so would not be observed.

So with this *Vyavastha*, the Hindu religion was vitalising itself and adopting itself to different regions.

Now, I shall take a small illustration and show that if we entirely do away with customs by accepting this amendment what would be its effect. There are many reasons why the amendment should not be so accepted. First of all, I trust even the learned Law Minister is not conversant with all the good usages that are prevalent in this country from Cape Comorin in the south to the Himalayas in the north. Neither are the Members conversant with all of them. And even if they are, they would not be in a position either to convince the learned Doctor or to convince the other Members of the House of the utility or significance of those usages and of the importance in which those usages are held in particular parts of the country. Therefore, I tried in an amendment of mine, which was for a technical reason not accepted or not put forward, to provide a simpler device by which the local Legislature may be able to supplement this law. That, however, has gone. Therefore, I submit that because of ignorance of all the good usages in the country we should not say “save as otherwise provided in the provisions .....”. The effect of this saving clause will be nil and part (a) of the amendment will do away with all good customs, whether they are repugnant or not to the law.

According to part (b) only those laws which are inconsistent with the present law are only repealed, whereas in the case of customs, whether repugnant or otherwise, they have all been abrogated. This is a very wide provision which should be lost if it is omitted altogether. A custom is governed by all the requisite qualifications mentioned in clause 3, which the house has already passed and laws would be governed by article 254 of the Constitution.

I shall now take one more instance. Marriage is after all a social institution, meant to satisfy a social need. If social circumstances vary to a great extent in various regions of the country, several provisions would have to be made in the law which is to be enacted. In the present Hindu Law this is achieved in two ways. There are firstly various schools of Hindu Law. There was the law of *Dayabhaga* and *Mitakshara*. The common background is the Yajanavalkya's and Manu's *smritis*. The variety was given by *Dayabhaga* and *Mitakshara*. Further there were in मिताक्षरा various schools which governed different parts. There was the Mithila school, the Banaras school, the Madras school and the Maharashtra school. This was one of the ways in which variety was provided in Hindu society, which I maintain will for that reason never die. Secondly, there was the achar and on account of this the Hindu Law and religion have been progressive and satisfying the needs of all, which were this vitalising factor. It is the variety which, added to the common background, has kept the religion alive throughout the century. Invaders have come and gone, but Hinduism is still progressing.

I shall now take up the question of monogamy. Irrespective of what the law gives lay down, society would adopt monogamy or other systems of marriage according to its needs. Good law gives therefore ought to provide for this varying need. One of the factors which govern the form of institution of marriage is the ratio between the males and females. If there is an equal ratio between the sexes there will be monogamy and society is bound to be happy. But if there is very great disparity between the sexes then society will have to adjust form of marriage accordingly. If females exceed the number of males then bigamy or polygamy would have to be allowed. Otherwise the result would be either adultery or increase in illegitimate children.

**Shri Naziurddin Ahmad:** Adultery is permitted by this Bill.

**Shri Sarwate :** I will not take notice of it. There was a common phenomenon which had been observed during the war. When in U.K. the adult male population went to the war fronts there remained behind in the country an excessive number of women and the result was a great increase in the number of illegitimate children, which has now become a very difficult question for solution. This phenomenon has occurred in other countries also. So also if the number of men is much more than the number of women then poliandry would come

in, in one form or another. Even in that case the same result would follow, I am in favour of monogamy, both because it is a law of nature and society has enjoined it and it is in accordance with modern trends. In that respect fortunately in India the ratio between the sexes is equal but even here there are certain other factors which have to be taken into consideration. I have some figures about the ratio in the different provinces. These figures show that the ratio in Madras and Bombay is equal.

**Dr. Ambedkar:** You are pleading for polygamy ?

**Shri Sarwate :** Let me proceed. In Bengal and some other provinces the males are preponderating and the females are less. So if you provide only one form of marriage for all these provinces it may not do.

**Shri Brajeshwar Prasad (Bihar):** Has my hon. friend studied the ratio between the different age groups—the males between the ages of 16 and 35 and the proportion of females between the ages of 16 and 35 ? That will throw light on the question whether there should be monogamy or polygamy.

**Dr. Ambedkar:** He wants you to study the proportion of the different age groups among the sexes. But why do you not leave the argument to younger people ?

**Shri Sarwate :** Every body has to do his work. Dr. Ambedkar has to do his work and I am doing mine.

To proceed with my argument, it is irrelevant or unnecessary for developing my argument to show what the proportion of the males to the females in the different age groups is. I want here to show that in different tracts different conditions prevail and would have to be provided for as has been done in the prevailing Hindu Law through the different schools and through the *achar*. This is a case where it is absolutely necessary that variety must be provided for and it can be done only by allowing customs, customs which are ancient and are governed by public morality.

I conclude with this observation, that this amendment is entirely unnecessary. Sub-clause (a) is undesirable and sub-clause (b) is unnecessary. Therefore, this clause should be entirely dropped and the amendment disallowed.

**\*Dr. C. D. Pande (Uttar Pradesh):** I rise to speak in favour of omitting the clause which seeks to abrogate the validity of customary

law. I think this clause enlarges the scope of the Hindu Code. Let me go briefly into the genesis of the Hindu Code Bill. What was the necessity of this Bil ? If you know the background you will know how absurd it is to maintain this clause in this Code. The genesis of the Hindu Code Bill is that there was a constant demand, and there was a feeling in the minds of the leaders of the Hindu society, that there must be a law to be in conformity with the civilised concept of human society. There are only two things for which a case has been made out conclusively and we stand for them : one is acceptance of monogamy, imperatively and without exception: the other thing is that those who seek divorce in certain cases of hardship should be able to get it, that there should be no difficulty in that process of separation, annulment or divorce. These are the only two things for which a case has been made out and I do not see if any similar case has been made out for the abrogation of the validity of customary law. Have you ever heard of a single representaton or of a single meeting of the people who are governed by customary law, that this law should be changed, that it should be brought in conformity with the strict law of Manu ? Or, have you heard that they are tired of their customary law and they want to come within the orbit of Manu's law ? No : I have not heard of one single reprsentation or of one single meeting, either in the Press or on the platform, demanding that. There has been a constant demand for improvement in the law as far as monogamy goes, and also as far as divorce goes. People say there is a slur on our name in foreign countries. Well, that may be so; for that we have now accepted the prinicple of monogamy and of divorce. But I do not like that in the garb of making changes in the Hindu law you should introduce things which are absolutely detrimental to the interest of more than 80 per cent of the people of this land. If you analyse the population of this country, how many people, will you find, governed by Manu's law ? Only a handful of Brahmans, Kshatriyas and Vaishyas. But even they are governed by local laws as well and local laws have got an overriding position over Hindu law. Hindu law was originally not a textual law but a customary law and it was codified by Manu, Yajnavalkya and others in course of time.

Difficulty was experienced by the Legislature of India in the course of the last 100 years in these matters, and they made certain laws about specific drawbacks which were thus removed. Now the demand has arisen for change with respect to monogamy and divorce. We

concede it, but how do you presume that there is a desire for change so far as customary law is concerned ? What is customary law ? It is a natural law, it is a dynamic law, it is a growing law, it has got the force of the needs of the time ; if you do not allow that growth, that dynamic character in the society you will become rigid, you will be doing harm to the Hindu society just as Manu's law has done harm, according to you in the course of the last 3,000 years. Do you want that this should be perpetrated in the vast sections of the society which is not governed by that law ? This House stands for the principles of monogamy and divorce. Now in the progressive age you want to create hardships in the matter of those very things in respect of which you want to give facilities ? it is absolutely inconceivable to me that you desire to do so. It will be a retrograde step.

There is another reason for customary law being maintained. It will be impossible for the State to maintain adequate number of judicial officers and magistrate to deal with cases of divorce or judicial separation. (An hon. Member: Government have enough money.) They do not have enough money even to maintain magistrates to try ordinary cases, which are pending for several months together. You have no idea as to how many more magistrates will be needed. Even if you have money and you are bent upon doing it, do you know the hardship involved ? The cost may be ignored, but the hardship cannot be ignored, because in this country unfortunately whenever a citizen comes into contact with Government machinery he is subjected to vexations at every step. I myself have been a functionary of the Government and I have a clear idea of these things. I had some influence, but if I were an ordinary non-official and I went to a court of law, I know how much attention I would receive. An ordinary citizen finds it difficult even to get a ration card. Do you think it will be easy to get a divorce certificate in a court of law for a person who is ignorant and poor ?

**Pandit M. B. Bhargava** (Ajmer): Courts will be more efficient hereafter.

**Dr. C. D. Pande** : Things should be accepted as they are. You cannot expect to improve things all of a sudden. There is no justification for creating hardships. Why do you want to abrogate the customary law ? Have you received any representation for the abrogation of customary law ? Why do you insist on it ? Why do you insist on creating difficulties ?

**Shri A. C. Shukla** (Madhya Pradesh) : Because it is against public morality.

**Dr. C. D. Pande:** Let not morality be governed by law? If you have any illusion that you can govern people's morality by law, you are mistaken.

**Shri Lakshmanan** (Tranvancore-Cochin): He is not addressing the Chair. He is addressing individual Members as 'you'.

**Dr. C. D. Pande :** I am sorry. It is a manner of address to say 'you'. 'You' does not mean an individual Member. It means the Legislators here.

**Mr. Deputy Speaker:** No interruptions please.

**Dr. C. D. Pande:** I do not mind the interruptions, because the case that I am putting before you is sustained by the will of the people outside. I know the people. I know their difficulties. I know the prevalence of the customs. The difficulties that will be created will be enormous. You have not got the machinery to deal with the cases. The cases may be in far off places where there will be no Government machinery. People manage their affairs in an automatic manner. There is an automatic adjustment in social affairs. That automatic adjustment of the society will be disturbed. You wish to take upon yourself a responsibility for which you are not prepared. Moreover it is uncalled for. There is no justification for it. No case has been made out for the abrogation of customary law. A case has been made out for making divorce easier, not for restricting the scope of divorce. Why do you want to enact legislation which is not in consonance with the likings of the people and which goes against the very spirit of this Code? This Code seeks to confer divorce and you want to restrict divorce. If this contention has any validity, then I submit the Law Minister will consider the matter carefully and sympathetically.

**\*Shri Oraon :** (*English translation of the Hindi speech* ) Sir, I had not to speak much about this Hindu Code Bill; but we are now confronted with a situation which compels me to speak something. I mean to say that Scheduled Tribes and Abroiginals are neither Hindu nor Muslim nor Christian. They are without any religion. First they were not included in this Bill nor did they want themselves to be dragged into it. But now I find that we too are being dragged into this Bill. I want to say that the divorces which take place amidst our Community, perhaps do not take place in any part of the world. We know that not less than 80 or 85 per cent divorces take place before

any child is born as a result of the marriage. If some action is to be taken there or a divorce is to take place, we shall be handicapped in getting the case recorded with a *Panch*. It is said that the case will have to be recorded in our own *Panchayats*. The *Mukhia* of that place will go to the court and apply. If either of the two—man or woman, who come for divorce do not agree to his decision, the case will proceed further and move to the court. We know how many divorces take place. Not even in 18 months will the cases registered in only twelve months be decided. Dragging us into the Hindu Code Bill, therefore, is not only injustice but our virtual death. I would request the learned doctor, therefore, to exclude us from it.

Next, whatever we see in the Hindu Code Bill, is both good and bad. May be, people living in the cities may not know this, but we are villagers and come across people of all types. All of them are against it. In this state of affairs we see that on the part of the members of the Parliament, the representatives of people as they are, this will not be a right course of action nor will it be right on the part of the Government to pass this Bill. It is, therefore, I must say that this Bill should not be passed unless new elections are held.

**\*Shri Jangde :** (*English translation of the Hindi speech* ). Sir, I have been listening to the speeches of the Hon. Members for the last four or five days. From their speeches it appears to me that clauses are not being considered, but that general discussion has started.

I wish to recount the objections raised by the hon. Members against this Marriage and Divorce Bill and I consider it my duty to reply to them.

Just now Shri C. D. Pande said that a loose custom of marriage and divorce prevalent among 90 per cent of the people should be left intact. He also asked why should the *Dwij* communities, among which this divorce custom does not obtain, be compelled to adopt it.

**Pandit M. B. Bhargava:** He did not say this.

**Shri Syamnandan Sahaya :** This was not said. Why are you unjust to him?

**Shri Jangde :** He said that this matrimonial code, which is going to be passed, would greatly lengthen the procedure of marriage etc. and would create many difficulties for the village people.

**Babu Ramnarayan Singh:** He came only to give a sermon to us. He did not speak on any clause in particular.

**Babu Ramnarayan Singh:** You deserve it.

**Shri Jangde:** I have been doing work of social reform among these 90 per cent of the people and I know them thoroughly. I know their marriage and divorce customs very well. The people who are speaking on their behalf do not know them. They speak only to place obstructions in the progress of this Bill. It has been said that easy divorce is a very good thing. I want to tell you sir, that the custom of divorce among the *Shudras* has become so old and useless that it is being highly misused. Today the honour of our mothers and sisters is at stake on account of this. They are sold in Calcutta and Bombay and they embrace other faiths. Today among the *Shudras* a woman does not enjoy even as much respect as a cow does. A cow is sold only once, but women are sold many times. The custom now prevailing among them has become the custom of the high-handed and is no longer the custom of the poor. You say that if this custom is abolished, people will have to incur much expenditure in the Law Court, but I cannot help praising the wisdom of Dr. Ambedkar who has suggested the remedy that the decisions of the *Panch* of the caste shall not be binding until the sanction of the Government is obtained. Today what we do is to marry, perform the custom of *Saptapadi*, and to sell her (the wife) after two or three days. People become ready to sell and divorce her. In this case, what is the meaning of sacramental marriage and *Saptapadi* ? The old customs have become rotten. You want to maintain them. You want to keep them in the name of Hindu religion. But I want to tell you that 90 per cent, people of Hindu society are becoming opposed to them. Women are not shown any respect. They are labouring under difficulties. You say that we regard them as *Devis* and *Saubhagya Lakshmi*, but this is all wrongly put by you.

Just now some hon. Members said that they did not want divorce for the *Dwijas* and why should they be compelled to adopt it. This is the opinion of many of the hon. Members. You want to place the lion and the cow in the same category. Should the hunter and his prey be placed together ? Do you want to unite the East and the West ? They can never meet. On the one hand you say that there should be no divorce among the *Dwijas*, on the other, you say that loose divorce should be maintained among the *Shudras*. This anomaly is

leading to a fall in our moral and human standards. The Hindu Code has been drafted to remove this extreme kind of discrimination and to bring the *Dwijas* and *Shudras* from Cape Comorin right upto Kashmir together. You want to spread the awakening among the Hindus. I say that the Hindu Code Bill would be a great help in this direction. You do not want to show the same sense of moral values which has been shown by Dr. Ambedkar in drafting this Bill. In this connection I wish to say that if there can be any means of bringing the *Dwijas* and the *Shudras* together, it can only be the Hindu Code Bill. You say that it should be applied only to those who want it, and those who do not want it should not be compelled to adopt it and none should be forced to adopt monogamy and divorce. In my opinion propaganda has been done in the wrong manner in this connection. Government have no money and they do not want to do propaganda in this respect. Not the supporters, but the opponents of the Hindu Code are doing forceful propaganda. Once I heard that Karpatriji said in a speech that it could even make marriage between father and daughter possible. Similarly other false propaganda is being done. It is said that it would lead to marriages between brothers and sisters and the Hindu religion is going to pieces. I say that the diseases which have crept into Hindu religion are being sought to be removed by treatment. This is the aim of the Hindu Code. Such a propaganda is being done in this connection. You say that you do not want divorce, but on the other hand, you want that it should be introduced for us. Among the *Dwijas* a married woman who becomes a widow, cannot be re-married in any case but men can marry a hundred times if they like. This is no justice. Just as Rama married once .....

**Mr. Deputy Speaker:** You leave Rama aside.

**Shri Bhatt:** He should be allowed.

**Shri Jangde :** I was speaking of the evil custom prevailing among the *Shudras*. We want to change it. Every person can marry five or six women. In no home are women married according to *Saptapadi* are found. They go away with the high-handed persons. By changing their women repeatedly they incur much expenditure. More than half of their property is spent in marrying these women. Is it justice that a woman married to a man should go to another ? This Bill in which you see the end of the Hindu religion has been introduced to remove these evils. Therefore, without taking more time I would like to submit that if you want to see the renaissance of the Hindu religion, if you

want to maintain it and bring the *Dwijas* and the *Shudras* together, the amendment in respect of Marriage and Divorce clauses of the Hindu Code Bill should be accepted.

**\*Shri T. N. Singh :** (*English translation of the Hindi speech* ). Sir, I am deliberately speaking in Hindi, because some of the hon. Members and particularly Shri Oraon, by speaking on the Hindu Code Bill in Hindi, have in a way asked us to do the same. We have one thing specially in mind while discussing this particular clause 4. Dr. Ambedkar has certainly tried to take a place in the galaxy of Manu, Parashar and Yajnavalkya by following in their footsteps, but I believe that it is an unjustified effort on his part because our traditions have gradually evolved according to the dictates of time and circumstances. They are formed on the basis of collective wisdom and experience. Therefore, the wisdom of any particular individual cannot affect them. What I mean to say is that we cannot violate our traditions so simply and so easily. We perhaps do not even know all of these traditions. I would challenge Dr. Ambedkar, our Minister of Law, to state how many traditions of ours, which he wants to destroy completely through this Hindu Code, are there in this vast country of ours, in the Bharatvarsh. How far is it proper for him to say that these traditions which he perhaps does not know of should be completely destroyed? Therefore, you can make efforts to follow Parashar or Yajnavalkya or any other lawgiver (*Smritikar*) but, for god's sake, do not make this wanton assault on these traditions.

Sir, I would like to tell you that a good many traditions are being followed by innumerable people in every corner of our country. They are perhaps being followed on a higher level of morality than what was obtained by Manu, Parashar or any other *Smritikar*. Can anybody today say that in that section of our country to which our Shri Theble Oraon has the Honour of belonging, many things, many traditions, many laws are not such as are highly superior to our laws? In my view this divorce (perhaps there is no one word of it in Hindi). (*An hon. Member: Vivah-Vichheda.*) You may say *Vivah vichheda*, but it is not one word anyway, the rules in force there in this regard are far superior to the rules in our Code or rules found anywhere, in England, in America or elsewhere. In our opinion it is not proper to curtail them or to boast that this Code or this measure is better and should replace them. Therefore I would appeal to our Government,