
SECTION I

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SECTION I

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(1)

* FOREIGN EXCHANGE REGULATION
(AMENDMENT) BILL

Mr. Speaker: Motion moved.

“That the Bill to amend the Foreign Exchange Regulation Act, 1947, be taken into consideration.”

What has the Law Member to say about the position regarding the expression ‘British India’?

The Honourable Dr. B. R. Ambedkar (Minister for Law): I thought I would speak when the amendment was being moved, in reply to it. If you so desire, I shall explain the position.

Mr. Speaker: Yes, because it would save time.

The Honourable Dr. B. R. Ambedkar: Sir, we have got what is called an Existing Laws Adaptation Order in which certain terms are defined. In that order the term ‘British India’ is defined and is defined to mean ‘all the Provinces of British India’. It is therefore open to the House to include in this particular Bill either of the two phrases which under the Adaptation Order mean the same thing. We could either use ‘British India’ or we could use ‘all the provinces of India’ which would mean one and the same thing. The question of these two alternatives and as to which of them we should adopt really has to be determined by the phraseology which has been used in the main Bill to which this Bill is merely an amendment. In the original Bill dealing with foreign exchange regulation, the term used is ‘British India’ and my submission is that if this amendment is to be intelligible it must use common phraseology which is ‘British India’.

* Constituted Assembly (Legislative) Debates, hereinafter called C. A. (Leg.) D. Vol. I, 20th November 1947, p. 357.

There is nothing to be lost, everything to be gained, by using the same phraseology. The amendment which is tabled is purely sentimental in my judgment and wishes to avoid the word 'British' from the text of the law.

Shri K. Santhanam (Madras : General): Not at all,

The Honourable Dr. B. R. Ambedkar: My submission is that in view of the necessity for uniformity between the main Act and the amending Act we should adopt the same phraseology which has been used in the main Act.

Mr. R. K. Sidhwa (C. P. and Berar : General): May I know whether there is any legal difficulty if the word 'British' is omitted?

Mr. Speaker: That is exactly what the Law Member has pointed out. Without going into the merits of the case, and looking *prima facie* into what the Law Member has said, I shall curtail the discussion by saying that I refuse to give my leave to this amendment.

(2)

* APPOINTMENT OF STATUTORY
LAW REVISION COMMITTEE

* **The Honourable Dr. B. R. Ambedkar** (Minister for Law): Mr. Chairman, I may at once say that the object of the Mover is quite laudable and that he has my full sympathy in the Motion that he has made. Sir, there is no doubt that periodical revisions of law in a modern society is an absolute necessity. When a popular Legislature engages itself in the task of legislation, touching every aspect of the society which it governs, there are bound to be created certain problems, which it is necessary for some expert legal body to examine and to rectify. First of all, it happens that a draftsman in order to put an idea in the form of a law suggests certain phraseology, which he thinks is appropriate and complete enough to embody the intention of the Legislature. In a certain stage the Judiciary and the Members of the profession find that the phraseology used by the draftsman is mistaken and does not carry the intent which the Legislature had. That problem therefore becomes a problem which somebody has got to look into and rectify to bring it in consonance with the original intention. It often happens that when a Legislature is engaged in of course of legislation over an extensive period certain inconsistencies unconsciously creep in. It is not always possible either for the draftsman or for the legislature to examine every piece of legislation that is brought before it with a view to find out whether that piece of legislation is consistent with other legislation which has preceeded it. Therefore in course of time these inconsistencies accumulate. They trouble lawyers, they trouble judges and they also trouble the litigating public. It also often happens that in modern time when a legislature is so busy that it is unable

* C.A. (Leg.) D., Vol. II, 2nd December 1947, p. 1103-05.

to give the whole of its time to codifying the whole of the law on a particular subject it tries to discharge its responsibilities by undertaking what we call 4-00 p.m. fragmentary and piecemeal legislation. This accumulation of piecemeal and fragmentary legislation again in course of time creates a problem. People cannot understand what the law is and consequently a problem of codifications arises. Therefore, it needs no special pleading to suggest that a Statute Law Revision Committee is necessary. I think the Government of India long ago accepted the necessity of having a Statute Law Revision Committee. In fact as soon as the Montagu-Chelmsford reforms came into operation and when it was found that there was a popular legislature and that popular legislature was more likely to undertake legislation of social reform than the previous legislature had been likely to do, the Government of India *pari passu* and simultaneously with the introduction of the Montagu-Chelmsford reforms introduced and established what was called a Statutory Law Revision Committee in 1921. Therefore there is no difficulty in my accepting the underlying purpose which my honourable Friend Sir Hari Singh Gour has in mind, namely, that there should be a Statute Law Revision Committee. The only point of difference between him and me is whether we should forthwith proceed to establish a Statute Law Revision Committee that he has in mind or whether we should leave the matter to Government to think about the most appropriate time and the most appropriate machinery which could carry out the purpose which both he and myself have in mind.

In regard to the Statutory Law Revision Committee of the type that was set up in 1921, I should like to inform the House of the work that it did and whether it could not have done something better. The Statute Law Revision Committee was appointed in 1921 and lasted up to 1932, After 1932 it died ; whether it died a natural death or an unnatural death is not a matter which I propose to disquisition about. But I should like to tell the House that during these eleven years that the Committee was in session from time to time, the work that it did was the codification of the Merchant Shipping Act, the Criminal Tribes Act, the Indian Succession Act, the

Forests Act and the Tolls Act. Now, Sir, without any intention of casting any reflection upon the work of the Committee, I think it will be agreed that the production of five laws in a period of eleven years is certainly not an enormous piece of work which could be expected from a Committee of this kind. On the other hand when the Committee was dissolved and when the responsibility fell upon the Government of India to do the work which the Committee was appointed to do—if I may say so again without reflection on the work of the Committee or without trying to take any credit for the Legislative Department of the Government of India—the Acts produced after the Committee were the Sale of Goods Act, 1930, the Partnership Act, 1932, Factories Act, 1934, Tariff Act, 1934, Petroleum Act, 1934, Insurance Act, 1938, Motor Vehicles Act, 1938 and Arbitration Act, 1940. Any one who knows these Acts will admit that each one of them is an enormous piece of legislation. The reason why the Statute Law Revision Committee failed to fulfil the promise which it was expected to fulfil was that there was a great defect in composition and constitution of the Committee. First of all, the Committee consisted of six members ; it was elected mostly from members of the legislature. No doubt the members who were elected were elected purely on the basis of their legal knowledge and legal acumen, but in my judgment that was a pure accident. The Chairman of the Committee was the President of the Council of State. I fail to understand what virtue there was in appointing the President of the Council of State as Chairman of this Committee which, as all of us know, requires specialised legal knowledge.

The second difficulty about the Committee was that its members were not paid members. I do not wish to suggest that if members are not paid they do not discharge the duty which all people are conscientiously required to do. But it did happen, and it is a fact, that the Committee met very seldom. The members of the Committee having been drawn from the legislature met only during the sessions, and when they were asked that now that they were present in Delhi they might devote some portion of their time to the discharge of their functions as members of the Statute Law Revision

Committee, all of them pleaded that their legislative work was more important than the work of the committee. At the end of the sessions all of them naturally repaired to their homes in order to perform either their personal or their professional duties. The result was that the Committee was not able to devote all the time that it was expected to devote. Now obviously my Honourable friend Sir Hari Singh Gour will agree that if his purpose is to be carried out we must have an altogether different sort of Committee. It is no use having, a Committee of the sort that we had and which, for the reasons I have mentioned, did not fulfil the functions with which it was charged.

Now, Sir, there are two ways, in my judgment of doing the thing. First of all we might have a permanent Commission sitting for no other purpose except that of revising and codifying the statute. Secondly, if it is to be a permanent body it undoubtedly must be a body of experts who know their job. And I think every one will agree that if experts are to be called away from their professions we must make it worth their while to come and serve on the Committee. Obviously it is a matter of cost. That being so, it is not possible for me to say off-hand that without examining the question of cost it will be possible for Government to say here and now that we shall agree to appoint a Statute Law Revision Committee of any sort that might be suggested either by Sir Hari Singh Gour or by any other member of the legislature.

There is also another way of carrying the purpose into practice. That might be by the appointment of a small standing committee consisting of the Law Minister of the Government of India, a Judge of the Federal Court, the Advocate-General of India, one or two Judges of the High Courts in India and two or three eminent lawyers. The Committee might be asked to sit at stated periods of the year and a person from the Law Department of the Government of India may be deputed to act as a Secretary, to collect the information and to place it before the Committee for the Committee to take notice of what might be done.

As I say these are various ways of carrying the purpose into effect. That as I said requires time and examination and it is not possible for the Government, besieged as it is with an infinity of problems of all kinds to find time for the work which it will have to do if I were to accept the resolution of Sir Hari Singh Gour with the immediacy with which I believe he has charged it. Therefore, what I would like to suggest is this : that Sir Hari Singh Gour would realise that so far as the ultimate purpose is concerned, there is no difference of opinion between me and him. Both of us are agreed that this is a matter which the Government of India ought to take into consideration. The only difference is when and how, and that is a matter on which he need not press the Government for the immediate issue. Therefore my suggestion is this that as I have given a reply which meets more than half the ground on which he stands, I think he will agree that it will be gracious on his part to withdraw it.

*** Mr. Chairman :** Amendment (by Mr. Naziruddin Ahmad) moved:

“That in clause 2 of the Bill, in the proposed new section 289B—

- (i) the word, figures, letters and brackets ‘57 & 58 Vict., c. 60) be omitted; and
- (ii) the word, figures, letters, and brackets ‘(57 & 58 Vict., c. 60)’ be inserted in the margin.”

The Honourable Dr. B. R. Ambedkar (Minister for Law): I should like to explain the position. I would say that the amendment has no substance in it. The identifying clause may either be in margin or may be in the context of the section itself. All that is necessary is that there should be some identification. Originally it is true that in all the Bills that we have presented to the Assembly, such identification references were in the margin. But recently the printers have adopted the method of giving the references in the very body of the section itself and the purpose is to economise paper. For instance, when you have to give the references in the

* C.A. (Leg.) D., Vol. II, 2nd December 1947, pp. 1199-1200.

margin obviously you want to use a larger piece of paper. Since the war started this device was adopted just for the purpose of economising paper. I do not think there is any violation of the principles relating to drafting nor any violation of any law with regard to marginal notes. As a matter of fact marginal notes are unnecessary and need not be printed.

Shri Suresh Chandra Majumdar (West Bengal: General): There is such a thing as “inner margin” note which does not waste paper.

* **Mr. Speaker:** Amendment (by Shri M. Ananthasayanam Ayyangar) moved:

“That in part (c) of clause 2 of the Bill, after the word ‘Province’ wherever it occurs the words ‘or a State’ be inserted.”

The Honourable Dr. B. R. Ambedkar (Minister for Law): As the amendment moved by my friend Mr. Ananthasayanam Ayyangar raises a question of law, it is only right and proper that I should take the responsibility upon myself to meet the point that arises out of his amendment. No one can deny that the object underlying the amendment of Mr. Ananthasayanam Ayyangar is a very laudable one. A Bill like this which deals with the nursing profession and tries to regularize and establish that profession on a footing which would gain the confidence of all those who take service from the nurses and that it should be extended to the whole of India. I say, is a very laudable thing. But unfortunately, situated as we are, and governed as we are by the Government of India Act, 1935, as adapted, I am afraid it will not be possible to accept his amendment because I have no doubt that his amendment would make the Bill *ultra vires* of the Legislature. Sir, to explain my point I should like to state to the House that for the moment the States are linked with the Union of India in two different ways. The one way by which they are linked is what is called the standstill agreement which has been made between the Union of India and the various Indian States. The second link by

* C.A. (Leg.) D., Vol. II, 9th December 1947, pp. 1480-82.

which the States are bound to the Indian Union are the Instruments of Accession. Now there is a fundamental difference between the two links. The standstill agreements are purely contractual. They preserve such agreements as existed between the old Government of India and the Indian States under paramountcy before the 15th of August 1947. As I said they are purely contractual. They do not confer any jurisdiction upon the Government of India to legislate either by way of altering those arrangements or making them the foundation of any law which would bind the Indian States. Therefore, so far as we are concerned, in the matter of making any law by this legislature which is intended to be applicable to the Indian States, it is quite clear to my mind that we cannot take our stand on the standstill agreement. We must therefore, rely upon the Instruments of Accession which is the only foundation which gives us legal jurisdiction to pass any law. My submission is this, that if you take the Instruments of Accession, the Instruments of Accession, as they stand now—and I shall presently explain to the House why I emphasize ‘as they stand now’—this House has no jurisdiction. In the first place this legislation relates to entry No. 16 in the Concurrent field. It does not relate, so far as the matter under legislation is concerned, to the Federal List or to the Provincial List. It relates only to the Concurrent List. Now, as everybody is aware, the Instruments of Accession, whatever power they give to the Central Legislature to legislate, definitely exclude all items which are included in the Concurrent List. I should have thought that by that very proposition, that the Concurrent Lists are not covered by the Instruments of Accession, the jurisdiction of this House is completely ousted. The only thing therefore that we have to find out is whether the Instruments of Accession which have been passed by the different States in favour of the Union of India cover anything which relates or which is equivalent to entry No. 16 in the Concurrent List. Now, Sir, these Instruments of Accession were placed on the Table of the house, and anybody who has had the time to scrutinize them would have found that the States have acceded only in respect of three subjects, and none of the subjects can be so interpreted

as to include an item like item No. 16 in the Concurrent List. Therefore, my submission is this, that even if we were to rely upon the Instruments of Accession, this House cannot derive any jurisdiction from those Instruments of Accession, My Honourable friend Mr. Ananthasayanam Ayyangar evidently realised this difficulty and put forth the proposition which he said was capable of being adopted by this House in order to extend the legislation to the Indian States. His proposition was this. There have been many pieces of legislation passed by this House which were limited in the first instance to certain areas, such as for instance a province or a district or any smaller area, and the Bill included a clause which enabled the executive, by a notification, to extend that particular legislation to other areas not originally included in the Bill. Now that proposition, so far as it applies to the provinces of British India, is perfectly sound. But if it were to be applied to the Indian States, it would be wholly unsound, and the reason is this. The analogy is absolutely false and not true. Now Sir, when we apply the legislation, which is originally in the Bill itself confined to a particular area, to another area not made subject to that at the time when the Bill was passed, the position is this, that the area over which the legislation is subsequently extended to is not subject to the jurisdiction of that legislation. If the legislature wanted in the very first instance to apply that law to that area, nothing in the constitution of this Government or in the powers of the legislature could prevent the legislature from doing so. So far as the States are concerned, we have jurisdiction over their territory with regard to three subjects only; we have not got full jurisdiction. We are not limiting our jurisdiction when we are legislating with respect to a State in respect of the three subjects ; we are in fact spending our legislative authority to the fullest extent that we have. The analogy, therefore, is not a correct analogy. So far as the Provinces are concerned, we have at the moment, when we are enacting the law, jurisdiction which we would exercise if we wanted to do so. That is not the case with regard to the Indian States. True enough, if a supplementary Instrument of Accession was passed we could get the jurisdiction necessary for the purpose of enacting the law; but what I

would like to submit to my friend Mr. Ananthasayanam Ayyangar is that the law can never be hypothetical and a law can never be passed in anticipation of some jurisdiction being acquired. That is contrary to the principle of legislation. Law must be definite, law must be absolutely clear as to what it applies, to what it cannot apply. And therefore, unless and until we have with us a supplementary Instrument of Accession giving the Central Legislature the power to extend this legislation to the States, I am sure we could not anticipate that there might be an Instrument of Accession which the Governor-General might accept and then we might get a chance to extend this legislation. I am sure that is contrary to the principles of legislation. All that, therefore, we must hope for, for the moment, is to confine the Bill to the Provinces of British India, to hope that we will get similar Instruments of Accession—supplementary ones—from the Indian States, when we can by law either extend our legislation to the States or the States can *pari passu* along with this legislation have similar legislation in their own States and make the provisions of this law applicable to their territory. Sir, I therefore think that this amendment would make the Bill *ultra vires* and therefore could not be accepted.

Mr. Speaker : The point has been cleared. Does the Honourable Member press his amendment now ?

Shri M. Ananthasayanam Ayyangar : I do not, Sir.

Mr. Speaker : Has the Honourable Member leave of the House to withdraw his amendment?

The amendment was, by leave of the Assembly, withdrawn.

Mr. Speaker : The question is:

“That clause 2 stand part of the Bill.”

The motion was adopted.

Clause 2 was added to the Bill.

(3)

INDIAN NURSING COUNCIL BILL

*** The Honourable Dr. B. R. Ambedkar :** The position is, as I said on the last occasion this legislation refers to entry No. 16 in the Concurrent Legislative List. The executive authority with regard to the legislation framed under the Concurrent Legislative List does not vest in the Central Government. Rule making has been interpreted to be in exercise of the executive authority and the Central Government does not possess that executive authority and therefore, they cannot make the rules. The rules may be made by somebody else. If my Honourable friend objects to the President making the rule, he may suggest some other method to making them, though he certainly cannot make any amendment whereby the responsibility or the authority for making the rules shall be vested in the Central Legislature. Section 8(1) of the Government of India Act and section 49(2) of the Government of India Act of 1939 are quite clear on this point.

Shri K. Santhanam : Here again, I find that it is rather a curious law that has been expounded the Central Government cannot make rules. A nominee of the Central Government can make rules but not the Central Government. The present proposal is that the President should be nominated by the Central Government and he may make rules. After all it is a Council of All India and I cannot see any authority in the Government of India to make rules. It is only so far as Provincial Councils are concerned that directions cannot be issued. I therefore think that the law as expounded is altogether wrong. The Central Government should have the power. I, therefore, suggest that the amendment should be accepted.

* C.A. (Leg.) D., Vol. II, 8th December 1947, p. 1486.

(4)

***EXTRA PROVINCIAL JURISDICTION BILL**

The Honourable Dr. B. R. Ambedkar (Minister for Law): Mr. Speaker, I stand to make just a few observations in order to clear some of the doubts and suspicious which have been expressed by Members of the Assembly who have so far taken part in the debate.

Sir, the one point which was made by the Honourable Mover of the amendment was that this Bill was reviving the jurisdiction of paramountcy which was abolished by the Indian Independence Act. Now, it is quite true that the Indian Independence Act releases the Indian States from all the obligations that were imposed upon them by virtue of paramountcy. But, I think, what that means is this, that the Dominion Government cannot as a succession State inherit the jurisdiction which arose out of paramountcy. It means nothing more than that ; it does not mean that any Indian State could not confer by an agreement upon the Dominion Government the rights and jurisdictions which were exercised by the British Government as against that Indian State. I think that point has been clearly lost sight of and I should like to repeat it again that what the Independence Act means is this; that the Dominion Government cannot be regarded as a succession State to the British Government in so far as Paramountcy is concerned. It certainly does not mean that if an Indian State chooses, for reasons which it thinks are imperative, to confer jurisdiction of the analogous type that arose out of Paramountcy upon the Dominion Government, there is anything either in the Government of India Act or in the Indian Independence Act to prevent that Indian State from doing so. I think that point has to be clearly borne in mind. When the question is raised as to which are the Indian States to which this particular Bill and its provisions would

* C. A. (Leg.) D., Vol. II, 9th December 1947, pp. 1559-61.

apply, the answer to the question must be related to the Instruments of Accession which have been passed by the various Indian States in favour of the Dominion Government of India. Therefore, in order to understand what are the States to which this Bill applies, what we have to do is go to the Instruments of Accession and find out what is contained therein. As the House knows, so far as the accession of Indian States is concerned, they are divided into three categories: (1) fully jurisdictional States, (2) semi-jurisdictional States and (3) non-jurisdictional States. All the three classes of States have passed, barring a few exceptions here and there, Instruments of Accession in favour of the Indian Dominion. Now if Honourable members were to refer to the Instrument of Accession passed in Labour of the Dominion of India by States which fall in class (2) they will realise that their Instrument of Accession contains this very important clause which in order to remove all doubts and suspicious, I propose to read with your permission, Sir. This is the paragraph 1:

“And I further declare that the Dominion of India may through such agency or agencies and in such manner as it thinks fit exercise in relation to the administration of the civil and criminal justice in this State all such powers, authority and jurisdiction as were at any time exercisable by His Majesty’s representative for the exercise of the functions of the Crown in its relation with the Indian States.”

That, I submit is a very important clause in the Instrument of Accession passed by the semi-jurisdictional States. Now if my honourable friends will turn to the third category of States and read the Instrument of Accession passed by them, it reads as follows :

“Whereas ... of the said State or Taluka, am desirous that the Dominion of India should exercise in relation to the said *taluka* or state all the powers and jurisdictions which were exerciseable before such attachment by His Majesty’s representative for the exercise of the functions of the Crown in its relation with the Indian States,” etc.

This is a clause which finds a place in the Instruments of Accession of the States falling in the second category or the third *category*; it has not found a place in the Instruments of Accession passed by the States which fall in the first category, namely, fully jurisdictional States. Obviously two

things follow from this. The first is that this Bill does not apply to those States whose Instrument of Accession does not contain this clause; secondly, that this applies only to those States whose Instrument of Accession contains such a clause and which have voluntarily granted to the Dominion Government the rights, whether they arose out of treaty or sufferance or usage, which were exercised by the British Government; they have transferred them voluntarily to the Indian Dominion, and they may do so in future. Now the point is that all that the Bill does is this that wherever any State has granted to the Dominion jurisdiction by virtue of its Instrument of Accession the Central Government will have the legal authority to exercise that jurisdiction. There is no case of usurpation at all; it is merely giving legal authority to rights and jurisdictions which have been voluntarily transferred by the Indian States to the Dominion of India. Therefore the first thing that I should like to emphasise is that there is no clandestine effort in the Bill to usurp any authority as against any Indian State which has not voluntarily surrendered its authority in this respect to the Dominion Government. I think that ought to put at rest all the doubts and suspicions which have been expressed in this House with regard to this Bill. And I do not think that if honourable Members bear in mind what I have stated there will be any necessity for very many of the amendments which I find on the order paper.

I do not want to say anything more because that is all that I wanted to say but my honourable friend Mr. Santhanam while making his observations on the Bill said that there was an inconsistency in the position which I took yesterday and the position as it arises from this Bill. I think my honourable friend Mr. Santhanam must have completely misunderstood what I said yesterday. What I said then was that having regard to the fact that the Nursing Bill had reference to entry No. 16 in the concurrent legislative list there was never any possibility of the Dominion Government acquiring any jurisdiction because the Instruments of Accession and the Indian States have made it absolutely clear that if they at all join the Indian Union they will join it only with respect

to list No. 1 which is a Federal List and that too with respect to some subjects only. Therefore my contention was that there was not even the remotest possibility, having regard to these circumstances, that the Indian Dominion should acquire any jurisdiction. And so any sort of legislation which he wanted to be introduced by his amendment to clause 1 would be purely speculative. Here so far as this Bill is concerned, there is nothing inherently impossible in the Indian Dominion acquiring further jurisdiction of an extra-provincial character, and therefore a legislation which looks in the application of this by anticipation would not be speculative because the possibility is always there. I therefore submit that there is no inconsistency in the two positions I have taken.

* **Mr. Speaker :** I suppose the Honourable Member wishes to move the amendment at present.

Shri Himmat Singh K. Maheshwari : Yes and I would be grateful for a reply to the point that I have raised. Sir, I move:

“That in part (a) of clause 2 of the Bill for the words ‘treaty, grant, usage, sufferance or other lawful means’, the words ‘treaty or agreement’ be substituted.”

Mr. Speaker : Amendment moved :

“That in part (a) of clause 2 of the Bill, for the words ‘treaty, grant, usage, sufferance or other lawful means’, the words treaty or agreement be substituted.”

The Honourable Dr. B. R. Ambedkar : Mr. Speaker, Sir the two amendments although they are set out under different headings are in substance one. The amendment No. 10 may be put as the result of amendment No. 9 and from that point of view, there is no difference between the two. The aim of both the Honourable Members who have tabled this amendment is to delete the word “grant, usage and sufferance”. I think that is what they want to do and in so far as that is their object, I have no doubt that the two amendments are one and the same.

* C. A. (Leg.) D., Vol. II, 9th December 1947, pp. 1571-72.

Sir, I am sorry to say that I cannot accept this amendment and I am also sorry to say that the amendment has been based upon a misunderstanding. First of all, I should like to say with regard to the amendment moved by Mr. Naziruddin Ahmad that item (iii) in his amendment is entirely out of place. Tribal areas are part of British India or the Indian Dominion. Secondly there is no question of the Indian Dominion acquiring any extra territorial jurisdiction so far as the tribal areas are concerned. What does the honourable Member want to do? The Honourable member, if I understood correctly, wants to say that whatever extra territorial jurisdiction which the Dominion of India can exercise must be relatable to the Instruments of Accession. I think that is the sum and substance of his position and he wants to make it clear that the jurisdiction which the Central Government may exercise under the provisions of this Act must be in turn sanctioned by the Instruments of Accession.

Mr. Naziruddin Ahmad : That is also conceded to by the Government.

The Honourable Dr. B. R. Ambedkar : Now, sir, does the Act do anything different from what my honourable Friend wants us to do in this Bill? As I have stated, what the Instruments of Accession passed by the Indian States enable the Central Government to do is to exercise all such powers, authority and jurisdiction as were at any time exercisable by His Majesty's representative for the exercise of the functions of the Crown in relation to the Indian States. That is what the Instruments of Accession passed by the Indian States empower the Central Government to do, to exercise all such powers, authority and jurisdiction as were at any time exercisable by His Majesty's representative. Let us go back to the question and ask what are the powers which His Majesty's representative was exercising in relation to the functions of the Crown in relation to the Indian States. Any one who reads the Foreign Jurisdiction Act passed by the Indian Legislature where the powers, authority and jurisdiction which were exercised by the representatives of His Majesty exercising the functions of the Crown in relation to the States, are described in the very precise terms which are used in

part (a) of clause 2, namely “treaty, grant, usage, sufferance or other lawful means”. These are exactly the words that occur in the Indian Foreign Jurisdiction Act and they are the words which we have adopted in our Act because the Instruments of Accession passed by the Indian States give all the power which His Majesty’s representative exercises in relation to the States and Paramountcy. Therefore, it seems to me purely tautological whether you say that you derive your powers from the Instruments of Accession or whether you say that you use the powers given to you by “treaty, usage, sufferance and so on” which were the modes by which power was acquired by the Paramount authority, I see no difference at all. It is one and the same and therefore, I submit that apart from the difficulty that I have pointed out that you cannot accept an amendment relating to the Tribal area, this amendment seems to be utterly based upon some confusion of understanding of the real position and seems to me to be tautologous and it is nothing more than what has already been done in the Bill.

Shri M. Ananthasayanam Ayyangar (Madras : General): My Honourable friend the Minister for Law referred to the Foreign Jurisdiction Act. I come much nearer to the Indian Independence Act itself. Under clause 7 of the Indian Independence Act to which reference is made in this amendment of my Honourable friend, the Mover of the amendment, paramountcy lapses. How is it that Paramountcy conferred under the second part of the Accession which the Honourable the Law Minister read, exercised ? I will read the relevant clause in the Indian Independence Act:

“.....and all powers, rights, authority or jurisdiction exercisable by His Majesty on that date in or in relation to Indian States by treaty, grant, usage, sufferance or otherwise.”

These are the very words that have been copied.

Mr. Naziruddin Ahmad: This has now lapsed.

* EXTRA PROVINCIAL JURISDICTION BILL—*contd.*

The Honourable Dr. B. R. Ambedkar (Minister for Law): If this clause 6 had been described by a Member of the Legislature who is not a lawyer as an unusual thing, I would not have any complaint: But I think for a lawyer to get up and say that this clause is not only unusual and strange, but cuts at the very foundation in the judiciary, I cannot help expressing my surprise. Sir, as every lawyer knows, the law makes a distinction so far as right are concerned between two sets—political rights and rights which are justiciable. Justiciable rights must always be determined by a judicial decree founded upon evidence produced by the parties before the court. But the political right, and I shall presently explain what is meant by political right, is never submitted to a court in the ordinary sense of the word. Now rights, whether they are contractual or otherwise, between two states are never regarded as justiciable rights. They are always regarded as political rights: and that is the one reason why this clause has been introduced into this Bill. The extraterritorial jurisdiction which is being conferred by the Indian States upon the Indian Dominion is a matter between, two states, and not between two individuals; and being a matter between two states, obviously all the matters connected with that jurisdiction are political rights, and as such they cannot be left to the judiciary to determine. This clause, as I said, is in no sense an unusual one, for if my honourable Friend refers to the British Act, on which this one is modelled, and refers to clause 4, he will find, the language of clause 6, is absolutely the same as the language of clause 4. Now, my honourable Friend also said that he was aware of certain provisions in the Evidence Act where a certificate given by a Secretary of a Department of the Government of India was said to be conclusive evidence of his authenticity, but it was never accepted as deciding the status of any particular individual. I am sure that he must have forgotten Section 86 of the Civil Procedure Code. If he refers to the Civil Procedure Code, Section 86, he will find therein a provision

* C.A. (Leg.) D., Vol. II, 9th December 1947, pp. 1580-82.

which is very much analogous to the provisions contained in clause 6 of this Bill. Section 86 of the Civil Procedure Code relates to a suit against an Indian Prince or a foreign Envoy or any such person occupying the capacity or status of a non-Indian citizen. It is provided by Section 86 of the Civil Procedure Code that no suit against an Indian Prince can proceed unless and until the party suing the Indian Prince secures the consent of the Secretary of State that he may be sued. The object underlying Section 86 is to give the Government of India an opportunity to express an opinion whether they regard the particular Prince who is sued, as entitled to the status of a sovereign Prince. If they think that he is entitled to the status of a sovereign Prince, we issue a certificate that he is a sovereign Prince, and the moment that certificate is issued the matter becomes a political matter and ceases to be justiciable in the ordinary sense and the suit falls through. There is nothing unusual in it.

My honourable Friend wants me to state the reason for this somewhat anomalous position which the law recognises not only in this country but in every other country. I could state for his information the reason why this distinction is made. Sir, supposing the Department of a State upon the assumption that a particular Prince is a sovereign Prince deals with him on that basis, and suppose that if the question of his status was left to be decided by an ordinary court of law, where evidence was brought in, and the court came to the conclusion that he was not a Ruling Prince in the sense of a Sovereign Prince, what happens? We have in a situation like this two conflicting decisions—one decision given by the judiciary and another decision given by the State and both are irreconcilable. In such a situation the execution of a decree becomes absolutely impossible. In England, as my honourable Friend knows, there is no such thing as an Evidence Act, but there is a very well-established rule which the British Judiciary has adopted that in matters of this sort where they are likely to come into conflict with the Political Department