

of the State, they shall not entertain a plea and give a judgment because after all the judgment on a decree of the Judiciary has to be executed by the Department of the State and they do not want themselves to be entangled with the State Department. That, I think, is a very salutary reason why the courts themselves have abnegated the right of exercising any jurisdiction in a matter which is likely to be political.

I submit, therefore, that this clause, clause 6, is a very right clause, appropriate, and should remain in the Bill as it is.

Mr. Chairman : The question is :

“That clause 6 stand part of the Bill.”

The motion was adopted.

(Clause 6 was added to the Bill.)

(5)

**FEDERAL COURT (ENLARGEMENT OF
JURISDICTION) BILL**

*** The Honourable Dr. B. R. Ambedkar** (Minister for Law): Sir, I beg to move for leave to introduce a Bill to provide for the enlargement of the appellate jurisdiction of the Federal Court in Civil cases.

Mr. Speaker : The question is :

“That leave be granted to introduce a Bill to provide for the enlargement of the appellate jurisdiction of the Federal Court in Civil cases.”

The motion was adopted.

The Honourable Dr. B. R. Ambedkar : Sir, I introduce the Bill.

**** FEDERAL COURT (ENLARGEMENT OF
JURISDICTION) BILL**

The Honourable Dr. B. R. Ambedkar (Minister for Law): Sir, I move:

“That the Bill to provide for the enlargement of the appellate jurisdiction of the Federal court in civil cases be taken into consideration.”

The Federal Court as constituted under the Government of India Act as adapted, exercises three kinds of jurisdiction :

(a) Original jurisdiction under section 204;

(b) Appellate jurisdiction over High Courts under section 205 ; and

(c) Advisory jurisdiction under section 213.

The present Bill is concerned only with the appellate jurisdiction of the Federal Court. As I said, the appellate

* C.A. (Leg.) D., Vol. II, 9th December 1947, p. 1546.

** C.A. (Leg.) D., Vol. II, 11th December 1947, pp. 1708-11.

jurisdiction of the Federal Court under Section 205 is a very limited jurisdiction. It is confined in the first place only to those cases in which the issue involved is the interpretation of the Constitution, that is to say, the interpretation of the Government of India Act, 1935.

Secondly, this limited jurisdiction accrues to the Federal Court, only if the High Court, after deciding a case before it gives a certificate to the effect that a question regarding the interpretation of the Constitution is involved,

It is only when these two conditions are satisfied, namely, that there exists an issue relating to the interpretation of the Constitution : and secondly, when the High Court has given a certificate that an appeal can go to the Federal Court under section 205.

The result of this limitation is this. All other appeals from the High Court in which questions relating to the interpretation of laws, other than the Constitution or those in which the interpretation of the Constitution is involved but where the High Court has not given a certificate, go directly to the Privy Council without the intervention of the Federal Court.

The object of this Bill is to prevent direct passage of appeals from the High Court to the Privy Council. In other words, the aim of the Bill is to make it compulsory that all civil appeals which arise from the judgment or decree of the High Court shall in the first instance go to the Federal Court.

The method adopted by the Bill to achieve this object is as follows :

What the Bill first does is to fix a day, which is the first of February, and which in the Bill is called "the appointed day". The next thing that the Bill does is after the appointed day no appeals shall go to the Privy Council directly from the High court unless and until the appeal falls in a category of what is called "a pending appeal". If an appeal on the first day of February can be described within the terms of this Bill as "a pending appeal" then the appeal shall

be continued to be heard and decided by the Privy Council. But if on that day the appeal is not “a pending appeal” within the definition of this Bill, then the jurisdiction of the Federal Court extends to such an appeal as the Federal Court gets a right to hear and decide such an appeal.

Section 7 of the Bill describes what is “a pending appeal”. Now for this purpose a rough and ready made rule has been adopted in the Bill. The rule is this : that if the records of an appeal are transmitted by the High Court to the Privy Council on the appointed day or before the appointed day, then the appeal is a pending appeal and the Privy Council continues to exercise its jurisdiction to hear such an appeal, although it is a direct appeal.

If on the other hand the appeal is in such a state that the records have not been transmitted, then the appeal becomes automatically transferred so to say to the Federal Court and the Federal Court gets the right to hear the appeal.

Appeals to the Privy Council go in two different ways. They go under what are called the provisions of the Civil
12 NOON Procedure Code, Sections 109 and 110, which are called appeals by grants or they are appeals where the party have a right to appeal. In addition to that the Privy Council also has got the right to give special leave to appeal and when a party obtains special leave to appeal, such appeals also go to the Privy Council. Appeals which go to the Privy Council directly from the High Court on special leave being granted by the Privy Council, are also dealt with in Section 5 of the Bill. The provision there is this:

“Every application to His Majesty in Council for special leave to appeal from a judgment to which this Act applies remaining undisposed of immediately before the appointed day shall on that day stand transferred to the Federal Court by virtue of this Act.”

If it is disposed of, that is to say, if it rejected no further question arises. If it is admitted then the Privy Council will be competent to deal with it. But if the Privy Council has not passed any order, then such an appeal shall be deemed to be transferred to the Federal Court and the Federal Court will have the right to dispose of the matter.

I should like to tell the House in very concrete terms what this Bill does and what it does not do. I have told the House what this Bill does. I will tell the House now what this Bill does not do.

In the first place, it does not abolish appeals to the Privy Council in criminal matters. Criminal matters can still be entertained by the Privy Council from the Judgments of the High Courts. Secondly, it does not abolish appeals to the Privy Council from courts which are not high courts, that is to say, the courts of the Judicial Commissioner of Ajmer-Merwara or of Coorg. Thirdly, it does not abolish appeals to the Privy Council from the judgment of the Federal Court.

The House would probably like to know why these deficiencies have been retained in the Bill and why we have not been in a position to provide in this Bill for the complete transfer in all cases, criminal or civil, from the High Court to the Federal Court and From the Federal Court to the Privy Council. The reasons are to be found in certain limitations from which the Dominion Legislature, *i.e.*, the Constituent Assembly (Legislative) suffers. As members of the Assembly would realise we are exercising the powers for enlarging the jurisdiction of the Federal Court, which are given to us by Section 206 of the Government of India Act. If Honourable Members would refer to Section 206 they will see that it is a sort of section which gives constituent powers to this Assembly enabling it to alter the provisions of section 205 of the Government of India Act, 1935. Section 206 says :

“(1) The Dominion Legislature may by Act provide that in such civil cases as may be specified in the Act an appeal shall lie to the Federal Court from a judgment, decree or final order of a High Court without any such certificate as aforesaid.

(2) If the Dominion Legislature makes such provision as is mentioned in the last preceding sub-section consequential provision may also be made by Act of the Dominion Legislature for the abolition in whole or in part of direct appeals in civil cases from High Courts to His Majesty in Council, either with or without special leave.”

Sub-section (3) requires the sanction of the Governor-General.

Anybody who reads section 206 will find that although the power to amend and enlarge the jurisdiction of the Federal Court is given to this Assembly, it is limited in certain particulars. It is limited to civil cases. Therefore no provision can be made for the abolition of direct appeals in criminal matters. Secondly, it refers to direct appeals, that is to say appeals from the High Court to the Privy Council. The reason why we are not able to abolish appeals from the Federal Court to the Privy Council is because of the existence of Section 208 in the Government of India Act. Section 208 says: (a) that an appeal will lie to His Majesty in council from a decision of the Federal Court, from any judgment of the Federal Court given in the exercise of its original jurisdiction in any dispute which concerns the interpretation of this Act and (b) in any other case, by leave of the Federal Court or of His Majesty in Council. What I wanted to tell the House was that if it was desirable to abolish all appeals to the Privy Council and to enlarge the jurisdiction of the Federal Court in as complete a manner as we want to do for that purpose we would have been required to hold a session of the Constituent Assembly and ask the Constituent Assembly to pass a Bill, which it can do, notwithstanding any limitation in the Government of India Act 1935, for the simple reason that the Constituent Assembly is a sovereign body and is not bound by the provisions of the Government of India Act, 1935. The position of this Legislature which is spoken of as the Dominion Legislature is very different. It is Governed by the Government of India Act of 1935 and therefore it must conform in anything that it wants to do to such provisions of the Act which permit it to do what it wants to do. As I said, the only permissive section which we have in the Government of India Act is Section 206 and we have taken the fullest liberty of this section to enlarge the jurisdiction of the Federal Court to the fullest extent possible. The deficiencies in the Bill I do not think need worry any Members of the Legislature for the simple reason that this Act will be in operation only for a very short time. As soon as our constitution is framed and a passed by the Constituent Assembly, we shall then be in a position to make the amplest provision for the jurisdiction of the Federal Court and to abolish appeals to the Privy Council. For the moment I think the house must be satisfied with what is done under Section 206. Sir, I move.

Mr. Speaker : Motion moved :

“That the Bill to provide for the enlargement of the appellate jurisdiction of the Federal Court in civil cases be taken into consideration.”

* **The Honourable Dr. B. R. Ambedkar :** Sir, I am grateful to the House for having expressed its general satisfaction with this Bill. I will, therefore, deal only with certain points of criticism which have been raised by certain Honourable Members who have taken part in this debate. The first point of criticism relates to what I might call a timidity for my not going the whole hog and abolishing appeals to the Privy Council and conferring the fullest jurisdiction on the Federal Court. I am told that I am making a sort of artificial distinction between this Legislature and the Constituent Assembly and that I am for no reason limiting the powers of this House. I am sure that that is criticism which, to put it mildly, is certainly far from valid. I cannot accept the proposition that this legislature as distinguished from the Constituent Assembly is a completely sovereign body, as complete as the Constituent Assembly itself. It is true that the same members who sit in this House sit in the Constituent Assembly, so that in regard to the personnel there is no distinction. But I have not the slightest doubt in my mind that so far as functions are concerned the two Assemblies are quite different. The function of the Constituent Assembly is to make the constitution and in making that constitution it is bound by nothing except by its own vote. So far as this Assembly is concerned, it is bound by the Government of India Act, 1935 ; that is the constitution which is binding upon this legislature. Except the British Parliament which has both sorts of powers, namely, ordinary legislative powers as well as constituent powers, I do not know of any Assembly anywhere which has got a written constitution which possesses powers to override a constitution which has created that particular legislature. I therefore submit that I am on perfectly strong and stable footing when I say that in carrying

* C. A. (Leg.) D., Vol. III, 11th December 1947, pp. 1719-22.

out the provisions of this Bill we must be bound by the limitations that have been imposed upon this legislature by the Government of India Act, 1935 as adapted.

I will now turn to the other criticism expression to which was given by my Honourable Friend Shri Alladi Krishnaswami Ayyar. With regard to his amendment I do not want to say that I regret that the amendment is something which I could not accept. All that I want to say is that according to my reading of the situation that amendment is probably unnecessary, and I will explain to him why I take that point of view. The ground that he urged for the amendment was that the Privy Council in a certain case decided in 1940 (as reported in the Punjab Co-operative Bank *versus* Commissioner of Income-Tax) stated, according to him, that they would not entertain any point relating to the consideration of the constitution of the High Court had not given a certificate ; therefore the Privy Council said that they would have to send that case back to the High Court for a certificate. His argument was that the decision of the Privy council in this case may also be accepted by the Federal court as binding upon itself; and therefore, wherever there was no certificate given and the matter came up before the Privy Council—and as a matter of fact it was found that a question relating to the constitution did arise—the Privy. Council would find itself unable to deal with that appeal. I think that was the sum and substance of his argument. Now what I would like to point out is that I think he has read a little more into the judgment of the Privy Council than it really says. I will read a few lines from the judgment. They have laid down three propositions which they say would arise in the consideration of section 205. the second proposition is the only one which is relevant to our purpose.

“Secondly, if in the absence of a certificate it appears to the Board on an appeal that there is ground for thinking that that is a matter for the consideration of the High Court and that they ought to have given or ought to have withheld the certificate, the Board ought to decline to hear an appeal until the High Court had an opportunity of doing one or the other.”

That is what the Privy Council have laid down, Now my submission is that this matter was as matter of fact considered by the department when this Bill was drafted, and it was felt that after all in the observations made by the Privy Council they have not said that they do not possess jurisdiction in a case of this kind. All that they have done is to lay down a sort of rule of prudence that if a case came in for which there was no certificate they would not deal with it directly—not they had no power to deal with it—but would send the case back to the High Court. Therefore, it does not mean that the Federal Court which under our Bill would be inhearing the jurisdiction of the Privy Council would have no jurisdiction because the Privy Council has laid down no such rule at all.

My second submission is that assuming that the Privy Council's dictum does go to the question of jurisdiction, is it necessary for us to presume that the Federal Court in exercising a new jurisdiction which we are giving to it would accept what has been laid down by the Privy Council? The Federal Court would be free to give its own interpretation. It may say that notwithstanding that that certificate was not given, we shall entertain the question and decide it.

Thirdly, the Privy Council has also got the power to give special leave and they may give special leave and get over the difficulty. What I am trying to do is to explain to the House that we did not incorporate the sort of provision which my Honourable friend Mr. Alladi Krishnaswami has tabled in his amendment. But if eminent lawyers in this House think that we ought not to leave this question in doubt, and I find that he is supported by my friend, Bakshi Tek Chand, I myself would raise no objection to the amendment if they insist that the amendment should be introduced in the Bill.

Then the question was raised with regard to the Courts of the judicial Commissioners of Ajmer-Merwara and Coorg. It is quite true that it would be very anomalous that we should stop direct appeals from the High Court to the Privy Council and allow appeals from Judicial Commissioners to go to the Privy Council without the intervention of the Federal Court. The anomaly is patent and nobody can deny it. But the question is this : that unless and until we declare the Courts of the Judicial Commissioners as High Courts, we could not make this Bill binding upon them. Now I am told that the

question of the declaration of the Judicial Commissioners Courts as High Courts would involve certain administrative problems. For instance, all the provisions in the Government of India Act relating to High Courts would have to be applied to the Judicial Commissioners before they become High Courts. It seemed to me that might create complications and that is the principal reason why we did not think it advisable at this stage to extend the provisions of this Act to the Judicial Commissioners. After all, as I said, this Bill will be of a temporary duration. It may not be in operation for more than two or three months, and I do not think that within these two or three months any very large number of appeals from the Courts of the Judicial Commissioners are likely to come to the Privy Council.

Therefore, I submit, rather than face the difficulties that may arise out of administrative considerations, it might be better for this House to suffer the anomaly and let the position stand as it is.

With regard to the question of criminal appeals that matter has been fairly disposed of by my friend who spoke before me, and therefore I do not think it necessary for me to touch upon that matter at all.

Mr. Speaker : I might just state what I was feeling about the amendment. In case the Honourable Law Minister is inclined to accept it, isn't it likely that an objection might be raised about the competence of this Legislature inasmuch as the amendment uses the words "notwithstanding anything contained in section 205 of the Government of India Act"?

The Honourable Dr. B. R. Ambedkar : That also is a point.

Mr. Speaker : So that will also have to be considered. The House will be rising and in the recess the Law Minister may consider this point.

The Honourable Dr. B. R. Ambedkar : Yes, I will consider it.

The Assembly then adjourned for Lunch till Half Past Two of the Clock.

The Assembly re-assembled after Lunch at half Past a of the Clock, Mr. Speaker (The Honourable Mr. G. V. Mavalankar) in the Chair.

Mr. Speaker : The question is :

“That the Bill to provide for the enlargement of the appellate jurisdiction of the Federal Court in civil cases be taken into consideration.”

The motion was adopted.

Clause 2 was added to the Bill.

The Honourable Dr. B. R. Ambedkar : Sir, with regard to clause 3 I would like to move an amendment. I move:

“That in clause 3—

(1) The word ‘and’ at the end of sub-clause (a)(ii) be omitted;

(2) The following be inserted as sub-clause (b):

* (b) in any such appeal as aforesaid, it shall be competent for the Federal Court is consider any question of the nature mentioned in sub-section (1) of section 205 of the Government of India Act, 1935; and

(3) The existing sub-clause (b) be re-lettered as s sub-clause (c).”

Mr. Speaker : I suppose this is an agreed amendment. **The Honourable Dr. B. R. Ambedkar :** Yes, Sir.

Mr. Speaker : Amendment moved.

“That in clause 3—

(1) The word ‘and’ at the end of sub-clause (a) (ii) be omitted;

(2) The following be inserted as sub-clause (b):

‘(b) in any such appeal as aforesaid, it shall be competent for the Federal Court to consider any question of the nature mentioned in sub-section (1) of section 205 of the Government of India Act, 1935’; and

(3) The existing sub-clause (b) be re-lettered as sub-clause.(c).”

*** Mr. Speaker :** Amendment moved :

“That after clause 5 of the Bill, the following new clause be inserted, namely:

‘5A. After the appointed day, any party to an appeal pending before His Majesty in Council, before that day, may apply to the Federal Court to withdraw the appeal to its own file, if the appeal

* C.A. (Leg.) D., Vol. II, 11th December 1947, p. 1725.

is one which it filed after the appointed day before the Federal Court it could have jurisdiction under this Act to entertain it; and the Federal Court may after notice to the other party to the appeal withdraw the appeal to its own file on such terms and conditions as it may deem fit’ ”.

The Honourable Dr. B. R. Ambedkar: Sir, I cannot accept this amendment. My honourable Friend has not defined what is a pending appeal. The Bill defines a pending appeal. An appeal where papers have been despatched is deemed to be a pending appeal under the Bill. After the papers have been despatched there is no provision in this Bill for withdrawal for the simple reason that it is presumed that when papers and documents have been despatched, the parties have incurred all liabilities for payment of such costs as may be involved in that appeal, and there is therefore no reason why the appeal should be transferred to the Federal Court with the obligation of a double expenditure once at the Privy Council end and once here; and I, therefore, think that we have to look at it purely from the point of view of the costs to the litigant. If sufficient costs have been incurred, then, I think it is not right that the appeal should be transferred to the Federal Court. No doubt here there is provision that the terms of such transfer and withdrawal may be prescribed by the Federal Court. But I think it would be putting an unnecessary obligation upon the parties which they may not voluntarily accept and I therefore think that the provisions contained in the Bill ought to be regarded as satisfactory at the present stage.

Shri M. Ananthasayanam Ayyangar: I do not like to press my amendment. I do not want to divide the House on the matter. I consulted the Law Minister and I thought he consented.

Mr. Speaker: Apart from this, I was feeling another difficulty, and that was as to whether the Federal Court could be treated as a court superior to the Privy Council for the purpose of withdrawal of an appeal that has been filed. It would have been another matter if the amendment had sought to compel the litigant himself, but that is a question of phraseology of the section.

Has the honourable Member leave of the House to withdraw his amendment?

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

Clauses 6 to 8 were added to the Bill.

Clause 1 was added to the Bill.

The Title and the Preamble were added to the Bill.

The Honourable Dr. B. R. Ambedkar: Sir, I move:

“That the Bill, as amended, be passed.”

Mr. Speaker: Motion moved:

“That the Bill, as amended, be passed.”

(6)

* PROVINCIAL INSOLVENCY (AMENDMENT) BILL

The Honourable Dr. B.R. Ambedkar (Minister for Law):
Sir, I move :

“That the Bill further to amend the Provincial Insolvency Act, 1920, be continued.”

Mr. Speaker : Motion moved :

“That the Bill further to amend the Provincial Insolvency Act, 1920, be continued ”

Shri Raj Krishna Bose (Orissa: General): I would like to know if this Bill also was referred to a Select Committee ?

Mr. Speaker: It was only introduced.

Shri K. Santhanam (Madras : General): It can be newly introduced. What is meant by ‘continuation’ ? Only if it has gone through the other stages of discussion or Select Committee there is a purpose in having a motion for its continuation. It can as well be newly introduced.

Mr. Speaker: I would invite the Honourable Member’s attention to the provisions of sub-clause (2) of section 30 of the Government of India Act, 1935, as adapted :

“A Bill which, immediately before the establishment of the Dominion, was pending at the Legislative Assembly of the Indian Legislature may, subject to any provision to the contrary which may be included in rules made by the Dominion Legislature under section 38 of this Act, be continued in the Dominion Legislature as if the proceedings take with reference to the Bill in the said Legislative Assembly had been taken in the Dominion Legislature.”

So the time and expenditure incurred in the previous stages—publication etc.—are now dispensed with. That is the point in continuing the Bill.

* C.A. (Leg.) D. Vol. I, 17th November 1947, pp. 40-41.

Shri M. S. Aney (Deccan and Madras States Group): May I know, whether, in view of the wording of the particular clause, just read out it if necessary that a motion for continuation should be made ? The rule permits the Government to continue the Bill and take it through further stages if it wants to do so. Is a separate motion for its continuation therefore necessary at all ?

The Honourable Dr. B. R. Ambedkar: If the motion for continuation is not made the Bill lapses. That means all the stages will have to be begun again.

Mr. Naziruddin Ahmad (West Bengal: Muslim): Sir, on this point of order the section which you were pleased to read says that a Bill which was pending in the Legislative Assembly 'may be continued'. It is thus discretionary on the part of this House to continue or not to continue it. Therefore, a decision of the House is necessary.

Mr. Speaker : That is exactly why the motion is brought. The question is :

"That the Bill further to amend the Provincial Insolvency Act, 1920, be continued."

The motion was adopted.

***The Honourable Dr. B. R. Ambedkar** (Minister for Law): Mr. Speaker, Sir I move:

"That the Bill further to amend the Provincial Insolvency Act, 1920, be referred to a Select Committee consisting of Shri Alladi Krishnaswami Ayyar; Dr. Bakshi Tek Chand, Shrimati G. Durgabai, Dr. P. S. Deshmukh, Shri M. Ananthasayanam Ayyangar, Pandit Thakur Das Bhargava, Mr. Naziruddin Ahmad, Shri Ram Sahai and the Mover, with instructions to report on or before the 16th March, 1948, and that the number of members whose presence shall be necessary to constitute a meeting of the Committee shall be five."

Sir, in order to put the House in possession of the facts which have made it necessary for Government to introduce this measure I should like to make some preliminary

* C.A. (Leg.) D., Vol. II, 25th February 1948, pp. 1220-21

observations with regard to certain decisions which have necessitated the making of this provision. I think it would be enough if I began from 1924 when a case went up to the Privy Council which is known as *Sat Narain versus Behari Lal*. The facts of the case briefly were that a Hindu father had been adjudged insolvent. Now under section 17 of the Presidency Towns Insolvency Act the property of the insolvent becomes vested in the official Assignee from the date of the adjudication. The property of the Hindu father consists of two things : (i) his share in the joint family property, and (ii) his power to dispose of his sons property in the joint family for his personal debts provided that the debts were not incurred for an immoral purpose. The question that arose in that case before the Privy Council was whether the power of the father to dispose of property of the son is property within the meaning of section 2(e) of the Presidency Towns Insolvency Act. On that issue the Privy Council gave its decision to the effect that the power of the Hindu father to dispose of the property of his son in the joint family was not 'property' within the meaning of section 2(e) on the ground that section 2(e) contemplated that power which was absolute over property and power which was not absolute was not property. According to the Privy Council the power of the father to dispose of the sons' property was not absolute because it was subject to the condition that the debts for which the property could be disposed of must not be immoral. On that ground they did not agree that the Official Assignee could become automatically vested under section 17 with the property belonging to the son. In that particular case that decision of the Privy Council did not matter very much to the creditors, for the simple reason that the Presidency Towns Insolvency Act contains a separate section—section 52—which permits the Official Assignee and the creditors to pursue such property or such capacity to obtain the property of another person. Therefore although in that particular case the property did not automatically vest in the Official Assignee, yet the Official Assignee was free to pursue the property of the son which was liable under the rule of pious obligation to pay the debts of the father by separate proceedings; and I believe he did that.

Now what happened was this. After that decision of the Privy Council the courts in India had occasions to interpret another Act which is called the Provincial Insolvency Act. As lawyer members of this House will remember, we have two separate statutes dealing with insolvency,—one which deals with insolvency taking place within the towns, and the other with those in the mofussil. The Provincial Insolvency Act does not unfortunately contain a provision such as section 52 which finds a place in the Presidency Towns Insolvency Act. Consequently when a similar question arose before the courts, namely, whether the property which a Hindu father could claim under his right or power to sell his son's interest for the payment of his own debts could be interpreted as property and become vested in the Official Assignee, only that was property within the meaning of section 2(e). Unfortunately what has happened is that different courts have interpreted this section 2(e) of the Provincial Insolvency Act in different ways. It would be interesting to note that the Bombay High Court has held that though the property does not vest power is not property and therefore, it does vest; the Patna High Court also follows the Bombay High Court and so does the Allahabad and Nagpur High Courts. On the other hand when you come to Madras, one Bench of the Madras High Court has held that the property vests, while another Bench has held that it does not vest. And the same is the case in Calcutta where one Bench has held that the property does vest and another Bench has held that it does not vest.

Now I think this matter should be put right. The Madras High Court in one of its decisions clearly gave an indication to the Government of India that it was high time that legislation was brought in to set aside this discrepancy in the decisions of the different High Courts. Unfortunately during the war such a piece of legislation could not be brought in because there was not enough time. Therefore, it is to set right this discrepancy and division of opinion in the different High Courts that this measure has been brought in. All that this measure does is to reproduce bodily section 52 from the Presidency Towns Insolvency Act and makes it a part of the Provincial Towns Insolvency Act as section 50-A. There is nothing more that the Bill seeks to do.

As the House is aware, there is also a measure for a similar purpose standing in the name of Shrimati Durgabai. Her measure differs from the Government measure in two particular respects. She wants to give retrospective effect to the measure; the Government Bill does not propose to do so. The other provision contained in the Bill of Shrimati Durgabai is that the law not only should declare that the power which the Hindu father has over the son's interest in joint family property should be made clear as being available for distribution among the creditors, but that the power of disposal of the Manager also should be clearly stated. On that point all that I should like to say is this that I have not an empty mind but I have an open mind; and I am prepared to leave this matter to be decided by the Select Committee. Indeed one of the purposes or motives which have led me to move for reference to Select Committee was to enable the Select Committee to discuss these matters.

I do not think there is anything more I need say in elucidation of the provisions of this Bill. Sir, I move.

Mr. Speaker : Motion moved.

***Prof. N. G. Ranga :** There is the question of the manager. My Honourable friend wants this power to be extended to the Manager also. Evidently she has in mind some of the big zamindars who get their properties managed by managers.

The Honourable Dr. B. R. Ambedkar: They are called 'Karta'.

Prof. N. G. Ranga: It is bad enough to vest the power in the father but it is worse to vest it in the agent also.

The Honourable Dr. B. R. Ambedkar: No, no. It is wrong.

Prof. N. G. Ranga: That is the answer given by lawyers. I am looking at it from the point of view of the debtors. They have as much right to be protected as the creditors. Creditors

* C.A. (Leg.) D., Vol. II, 25th February 1948, p. 1224.

are rich enough to engage these lawyers and get things done in their own way. I wish to suggest that the benefit of this Act should not be extended at all to these managers and it should not be given retrospective effect. This amendment may be passed but we should take care to see that the Law Minister comes forward at an early date with a suitable amendment in order to protect the interests of the sons also as against the vagaries of their own fathers.

* **Shri Biswanath Das :** I have nothing to say about this particular Bill. In fact I have clearly stated that if the House comes to the conclusion that the Insolvency Act as it should stand then this Bill is a natural corollary to it. There is no denying that fact. Therefore, I have nothing more to say in the matter.

The Honourable Dr. B. R. Ambedkar: Mr. Speaker, Sir, I will begin with my answer to the point made by my friend who spoke last. If I understood him correctly his points were two. One was that this was purely a provincial matter and ought therefore, to be left to the Provincial Legislatures.

Shri Biswanath Das : May I interrupt 'my honourable Friend, Sir ? I stated clearly that it is in the Concurrent List and that as such the Central Government should have left it to the Provincial Government and the Provincial Legislatures. I know it is in the Concurrent List."

The Honourable Dr. B. R. Ambedkar: I was just going to say that. The reason why it was put in the Concurrent list is undoubtedly—and I do not think there can be any other reason—that in a matter of this sort there ought to be uniformity if the Centre decided there should be uniformity. Therefore it is the right of the Central Legislature to legislate on the subject.

With regard to the question whether there should be an Insolvency Act or not I do not think that that can be point at issue on a matter of this sort. If my honourable Friend wants that there should be no insolvency legislation at all

* C.A. (Leg.) D., Vol. II, 25th February 1948, p. 1227-28.

the proper thing for him would be to bring in a resolution before the House and say that all laws relating to insolvency may be abolished.

Shri Biswanath Das: May I state that I never said that the Insolvency Law is not necessary. All that I said is this law is unnecessary, undesirable and breeds immorality into society.

The Honourable Dr. B. R. Ambedkar: Yes, therefore not necessary. However with regard to the point made by Dr. Punjabrao Deshmukh he is not here—I was somewhat surprised when he said that the Bill ought to be circulated. He has accepted a place on the Select Committee and I am sure about it that the two positions are quite inconsistent. I do not wish to say anything more about what he has said.

With regard to the point Shrimati Durgabai, namely that the Bill should have retrospective effect, I was bound to make a reference to it because I had induced her to withdraw her own Bill on a promise that when I bring my Bill I will say something about her Bill also. But as to the substance of it, as I say I feel a certain amount of doubt and difficulty, and I cannot very readily say in this House that I shall accept the proposition that the Bill should have retrospective effect. In fact one of the friends on the bench there who spoke said something which has a great deal of force and we must be very careful in giving retrospective effect to a measure of this sort.

Now coming to the point made by my friend Professor Ranga—he of course has the habit of entering into subjects which undoubtedly he himself will acknowledge are not his own—I am prepared to modify his argument and to give it some sort of a shape so that it might appear respectable. Now if I understand correctly, what he said was that there was a difference between the Presidency Towns Insolvency Act and the Provincial Insolvency Act, inasmuch as one contained a clause or a section like 6 and 52 while the other did not.

One could infer from what he said that the legislature in passing the law had different intensions from the very beginning that while they intended that since interest must pass to the Official Assignee under section 52 when the father

became insolvent, the legislature has no such intention when they passed the Provincial Insolvency Act. I think my friend Professor Ranga, not being a lawyer, has not understood the position correctly. If he refers to the definition of the term 'property' to which I made reference, he will see that in both the laws, provincial as well as Presidency Towns, the definition of 'property' is just the same. There is no difference at all. In both cases the phraseology as property or power. The difference is that under section 52, the official assignee can pursue property, but somehow there being an omission in the Provincial Insolvency Act, he has no right to pursue that property. Therefore, there is no doubt about it that this must have been a very inadvertent omission. If the legislature did not intend that the father's right to dispose of the property of his son under the Provincial Insolvency Act should not accrue to the official assignee, the definition of the term 'property' in the Provincial Insolvency Act would be very different to what it is now, and therefore, I submit with all respect to my friend that his point really has no substance. Sir, I move.

Mr. Speaker: The question is :

That the Bill further to amend the Provincial Insolvency Act, 1920, be referred to a Select Committee consisting of Shri Alladi Krishnaswami Ayyar, Dr. Bakshi Tek Chand, Shrimati G. Durgabai, Dr. P. S. Deshmukh, Shri M. Ananthasayanam Ayyangar, Pandit Thakur Das Bhargava, Mr. Naziruddin Ahmed, Shri Ram Sahai and the Mover, with instructions to report on or before the 16th March 1948, and that the number of members whose presence shall be necessary to constitute a meeting of the Committee shall be five."

The motion was adopted.

(7)

***RESOLUTION *RE*. EXTENSION OF PERIOD
MENTIONED IN SECTIONS 2 AND 3 OF INDIA
(CENTRAL GOVERNMENT AND
LEGISLATURE) ACT, 1946 AS ADAPTED.**

The Honourable Dr. B. R. Ambedkar (Minister for Law): Sir I move :

“In pursuance of the proviso to section 4 of the India (Central Government and Legislature) Act, 1946, as adapted by the India (Provisional Constitution) Order, 1947, this Assembly hereby approves the extension of the period mentioned in sections 2 and 3 of the said Act for a further period of twelve months commencing on the first day of April, 1948.”

Now, Sir, it is not necessary for me to enter upon a very lengthy discussion in support of this resolution. It will suffice if I tell the House that the Central Legislature has passed various legislations imposing controls on commodities, requisitioning land, and so on, matters which are purely in the Provincial List. This power the Centre was able to exercise because of the proclamation of emergency which was issued by the Governor-General when the war broke out: and as the House knows, since the proclamation is issued by the Governor-General the Central Legislature gets the necessary power to make any order or to pass any law notwithstanding the fact that the subject falls in the Provincial Legislative List. It is also provided in the Government of India Act that this power of legislating upon provincial subjects would disappear six months after the Proclamation of emergency has been withdrawn. Now this power was exhausted in the year 1946. The Government of the day felt that although technically the emergency had disappeared, yet factually there did exist a certain urgency for the controls imposed by the Central Legislature to be continued. There was no

* C.A. (Leg.) D., Vol. II, 25th February 1948, pp. 1228-29.

method by which the Central after the emergency had ended, could get the power to keep the controls alive and therefore, the Central Legislature approached the British Parliament which was then the only authority which could confer such power on the Central Legislature to make due provision in this matter, and Parliament, as the House will remember in 1946 passed an Act called the India (Central Government and Legislature) Act, 1946. Section 2 of that Parliamentary statute permitted the Dominion Legislature make laws with regard to the matters which it had done during that emergency. But what the parliamentary Statute did was that it gave the power to the Central Legislature one year only in the first instance.

Under the provisions of that Act, the Central Legislature passed Acts called the Essential Supplies (Temporary Powers) Act, 1946 and the Requisitioned Land (Continuance of Powers) Act, 1947. That law was passed in 1946. Under the Parliamentary Statute it continued in existence for one year ; that is up to 1947.

Now, Section 4 of the Parliamentary Statute as I said provided that the Centre could exercise these powers for one year. It also provided that the power could be extended by another year if the Governor-General so certified. Consequently those two Acts to which I made reference were continued in existence by another year by the fiat of the Governor-General and we are now exercising those powers under that extension effected by the Governor-General. Now, under the extension effected by the Governor-General, these would continue up to 31st March 1948. The various Departments of the Government of India have been consulted in this matter in order to ascertain whether they could do without these controls after the 31st March 1948. I believe that almost all the Departments who are charged with the administrative control feel that they need at least one year more to continue these controls.

As I said, section 4 of the Parliamentary Statute gave the power for one year in the first instance, in the second instance one year on the fiat of the Governor-General, and thereafter

by a Resolution of this House. The position, therefore, is this, that unless this House passes a Resolution extending that power, these powers will come to an end on the 31st March 1948. As the House will remember, I am only a Law Minister, I have no administrative responsibilities for the affairs of the Government of India, and I am therefore not in a position to answer any questions if they are asked as to whether in fact this extension is necessary, but I can tell the House that all the Departments are agreed that this extension is necessary, and I hope that the House will accept the view of the Departments of the Government of India and pass this Resolution. I have taken the precaution of calling my friend Dr. Syama Prasad Mookerjee to be by my side in order to reply any questions requiring detailed particulars with regard to the necessity of a provision of this sort. Sir I move.

Mr. Speaker: Resolution moved:

“In pursuance of the proviso to section 4 of the India (Central Government and Legislature) Act, 1946, as adapted by the India (Provisional Constitution) Order, 1947, this Assembly hereby approves the extension of the period mentioned in sections 2 and 3 of the said Act for a further period of twelve months commencing on the first day of April, 1948.”
