
SECTION II

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SECTION II

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(8)

***INSOLVENCY LAW (AMENDMENT) BILL**

The Minister of Law (Dr. Ambedkar): Sir, I move:

“That the Bill further to amend the law relating to insolvency, be taken into consideration.”

Sir, I should like to make a brief statement in order to enable the House to understand what exactly the Bill proposes to do. The law of Insolvency in India is contained in two different Acts: One is called the Provincial Insolvency Act and the other is called the Presidency-towns Insolvency Act. The present Bill contains, apart from the short title, six clauses which make amendments in the existing insolvency law. The amending clauses in this Bill fall into two categories: some make changes in the Presidency-towns Insolvency Act and the other propose changes in the Provincial Insolvency Act. Those that make changes in the Provincial Insolvency Act are four ; they range from clauses 3 to 6 and there are two which relate to the Presidency-towns Insolvency Act.

Taking into consideration clause 2, all that clause 2 does is to remove a difficulty which has been felt for a long time. In the existing law as embodied in section 12 of the Presidency-towns Insolvency Act, it is said that an insolvency petition must be filed within three months from the occurrence of the event which is recognised as the justifiable ground for the presentation of the petition. It often happens that the period of three months comes to an end when the courts are closed. Under the law as it stands, the creditor loses the opportunity of presenting a petition merely because when the court re-opens, it is more than three months since the occurrence of the event. Courts, of course, have taken different

*Parliamentary Debates (Hereinafter called P.D.), Vol. 1, Part II, 3rd Feb. 1950, pp. 185-93.

views in this matter. The Madras and Calcutta High Courts have held that the period cannot be extended. The Allahabad High Court has held that the period can be extended. It is therefore felt that both for the purpose of removing what might be called an injustice, because, if the creditor is not able to present a petition within three months by reason of the fact that the court is closed, it is certainly not his fault, and secondly also in order to remove the conflict of decisions, it is proposed by this amendment that in any case where the period expires on a day when the court is closed, it shall be lawful to present a petition on the day on which the court reopens.

Coming to clause 3, it amends section 21 of the Presidency-towns Insolvency Act. Section 21 deals with annulment of adjudication. Under section 21, although the power of annulment is given to the court, the matter is left within the discretion of the court. The words are, "the court may". Then, this section 21 is contrary to section 35 of the Provincial Insolvency Act: because, under section 35 of the Provincial Insolvency Act, the power is obligatory and the wording is, "the court shall". Similarly, it is found that the existing section 21 is also to some extent inconsistent with its own section 13 sub-clause 4. Because, there it is stated that if the grounds exist for dismissing a petition, the court shall dismiss it. There is no reason why in the case of annulment the power should be discretionary and in the case of dismissal, the power should be compulsory. It is therefore felt that it would be desirable to bring the Presidency-towns Insolvency Act in conformity with the Provincial Insolvency law and use the word "shall" in the place of the word "may".

Then, I come to clause 4. Clause 4 makes an amendment to section 53 of the Presidency-towns Insolvency Act. Section 53 deals with the rights of an execution creditor against the property of an insolvent, who has obtained a decree against the debtor before he was adjudged insolvent. The question has arisen as to what should be the terminus, so to say, of the rights of the executing creditor: should the terminus be the presentation and admission of the petition of insolvency or should the terminus be the adjudication. It is felt that the

proper terminus, the equitable terminus would be the admission of the petition ; because, admission of the petition means that there are other creditors who are also recognised as having a right to a share in the property of the debtor. It is therefore unreasonable to permit the prior executing debator to continue to appropriate the property until the date of adjudication. There may be a considerable time between the admission of the petition of insolvency and the actual adjudication by the court. Therefore, this section substitutes the word “admission” for the word “adjudication”.

Then, I come to clause 5. Clause 5 introduces a new section, section 101A in the Presidency-towns Insolvency Act. The necessity for the introduction of this new section is this. As I just now stated, there is a provision for the annulment of adjudication. Now, the effect of the annulment of adjudication is that proceedings which by reason of adjudication are terminated or cannot be initiated, become open. What the section permits is that on annulment other persons who have a right to sue or proceed against the debtor will be free to so. The law of limitation comes in their way. As lawyer Members of the House would know, one of the principles of the law of limitation is that once limitation begins, it does not stop. Nothing can prevent limitation being suspended. Therefore what happens is this

Shri Tyagi (Uttar Pradesh): I could not follow.

Dr. Ambedkar: I cannot open a class now.

The point is that as the right to sue begins long before the annulment by the time the annulment order is passed, the suit or the proceeding is time-barred. The question is raised whether this is a right thing to do, because if the proceedings or the right to sue is suspended, it is suspended not because of any fault on the part of the person who has this right to sue, but because the law says that when an adjudication is made all proceedings shall be suspended. Consequently, in order to remove this iniquity, what is proposed is this : That by this new section 101A, it will be open for the Court and for the party to have the time taken between adjudication and annulment excluded from the computation of the period

of the limitation laid down by the law, so that the right to sue may practically be deemed to have occurred when the annulment has taken place. Anyhow the period will not serve as an additional bar to any delay or lapses that might have occurred on the part of the person who has the right to sue.

Now, clauses 6 is merely clause 2 of the Bill. All that it does is this, that it introduces the same proviso in the Provincial Insolvency Act, so that even under the Provincial Insolvency Act, if the period of three months for filling the petition falls on the day on which the Court is closed, it would be open for a party to file the petition on the day when the Court re-opens.

Then, the last clause also amends the Provincial Insolvency Act. Under the present law, it is provided that along with the order of the adjudication, the Court also fixes the date for the discharge of the petitioner and he is required to appear on the day on which the date is fixed for his discharge. Now, the words are "He shall appear and the court, if he does not appear, shall" take a certain action, as stated therein. The section so far as the wording is concerned, is mandatory, but curiously enough the Courts have interpreted 'shall' as 'may' making it discretionary. It is felt that probably the Courts have really carried out the intention of the Legislature in treating 'shall' as 'may'. Similarly, the Presidency Towns Insolvency Act has also the word 'may' and not 'shall'. Therefore, this amendments proposes to accept the decision or the interpretation of the Court and substitute 'may' of 'shall'. These are all the clauses in the Bill.

I might say that these amendments are very much overdue. These amendments were suggested a long time ago, in fact before the War, but it was not possible to undertake any legislation while the war was there. Consequently, there has been this delay. I might tell the House that these amendments have been approved by the Provincial Governments and the Provincial Governments, have also stated that although the subject of insolvency falls in the Concurrent list, it is desirable these amendments should be made by a law made by Parliament, so that they may be uniform throughout the

country. That is the reason why this Bill has been brought forward.

Mr. Chairman : Motion moved :

“That the Bill further to amend the law relating to insolvency, be taken into consideration.”

***Dr. Ambedkar:** I am glad that my friend Shri Biswanath Das raised the points to which he made reference in the course of his speech. I should like to say that before bringing forth this Bill I myself was of the opinion that the time had come when these two enactments should be amalgamated into a single Act. The distinction which has been existing in our insolvency law between the Presidency towns and the other areas seems to me no longer justifiable. But I found that the amalgamation of the two Acts into one single enactment would take time and would also require special agency to be employed in the Law Department for the purpose of collating the sections. However, owing the financial stringency it was not possible for me to obtain the staff that was necessary to undertake this task in the expediency with which we intended to proceed. That was the reason why I kept back my original project of bringing forth a single enactment. I have, however, not abandoned that project and as soon as circumstances propitious to that purpose are available. I will certainly place a single, enactment before Parliament.

With regard to the other question that he has raised, whether the jurisdiction in insolvency should be the District Court or Courts of small jurisdiction, as well as the other sections to which he made reference which according to him, are sections which are abused by the insolvent, I don't think they are matters which can be debated on this particular occasion. The law of insolvency, as everyone knows, is a sort of legal relief against misfortune or mishap. It is quite possible that persons who ought not to get the benefit of the legal relief do get it, but that is a complaint which may not be made merely against the insolvency law—it can be made against

* P. D., Vol. 1, Part II, 3rd February 1950, pp. 191-93.

almost every law. It is never possible for the Legislature to enact a measure which will be so tight as to be completely fool-proof and knave-proof. There will always be available many crooks who will be able to find out ways and means of getting round the act and abusing it. However, there is not the slightest doubt about it that the intention of my friend Mr. Das, that we ought not to allow any loophole in a law of this kind which would enable undeserving persons to get the relief which the law intends to give only to the really unfortunate, is a praise worthy object and no doubt in future legislation it will be borne in mind.

With regard to the points made by my friend Mr. Karunakara Menon, I think he has not followed what I stated in my opening remarks. He has forgotten that what we really are trying to do is to bring either the Provincial Law in conformity with the Presidency Law or to bring the Presidency law in conformity with the Provincial Law. We are not making any particular innovation which is not to be found in either of the two Acts. If he does not like the word "shall" which is introduced in some sections of the Provincial Act and wants "may", then he shall also have to give his justification as to why the word "shall" should continue in the Provincial legislation. All that I have done is to bring the two in conformity so that there may be no obvious inconsistency in legislation in matters of this sort. If, as I have said, he has still any points of contention he can raise them when a new Bill consolidating the whole is brought before Legislature. For the moment these are only pressing amendments which both the Provincial Governments as well as, if I may say so, all the High Courts have accepted.

Mr. Chairman: The question is:

"That the Bill further to amend the law relating to insolvency, be taken into consideration."

The motion was adopted.

Mr. Chairman: The question is :

"That clauses 2 to 7 stand part of the Bill."

The motion was adopted.

Clauses 2 to 7 were added to the Bill.

Dr. Ambedkar: I beg to move:

“That in clause 1, for the figures ‘1949’ the figures ‘1950’ be substituted.”

The motion was adopted.

Clause 1, as amended, was added to the Bill.

Mr. Chairman: The question is :

“That the Preamble stand part of the Bill”

The motion was negatived.

Dr. Ambedkar: I beg to move:

“That for the existing Enacting Formula, the following be substituted :—

‘Be it enacted by Parliament as follows:—’.”

Mr. Chairman: The question is:

“That the Enacting Formula as amended stand part of the Bill.”

The motion was adopted.

The Enacting Formula, as amended, was added to the Bill.

The Title was added to the Bill.

Dr. Ambedkar: I beg to move :

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

The motion was adopted.

(9)

***CRIMINAL LAW AMENDMENT BILL**

The Minister of Law (Dr. Ambedkar): I beg to move for leave to introduce a Bill further to amend the Criminal Law Amendment Ordinance, 1944.

Mr. Deputy Speaker: The question is :

“That leave be granted to introduce a Bill further to amend the Criminal Law Amendment Ordinance, 1944.”

The motion was adopted.

Dr. Ambedkar: I introduce the Bill.

****CRIMINAL LAW AMENDMENT BILL**

The Minister of Law (Dr. Ambedkar): I beg to move :

“That the Bill further to amend the Criminal Law Amendment Ordinance, 1944, be taken into consideration.”

[SHRIMATI DURGABAI *in the Chair.*]

The object of this measure is to replace Ordinance No. III of 1950, which is called the Criminal Law Amendment Ordinance, 1950. This Ordinance No. III of 1950 was passed in order to add a new section 9A to the Original Ordinance XXXVIII of 1944. The history of this Ordinance No. XXXVIII of 1944 may be helpful to hon. Members in order to understand why exactly the Ordinance III of 1950 was enacted.

During the war the Government of India as well as the Government of the various Provinces had entrusted public property and public funds into the hands of certain persons such as contractors and officers of Government. It was found that some of these persons who were entrusted with Government property and funds had committed certain defalcations and consequently in order to try the delinquents

* P. D. Vol. 2, Part II, 14th February 1950, p. 538.

***Ibid*, 28th February 1950, pp. 983-84.

Ordinance XXXVIII of 1944 was passed, which constituted special tribunals for trying these offenders. These tribunals were spread all over India in the different Provinces of United India before the Partition. These tribunals were given power to freeze the property of the delinquent by passing attachment orders and the courts so empowered were courts within whose jurisdiction the delinquents stayed or carried on business.

After the Partition a peculiar situation arose, namely that the tribunals which passed the orders of attachment against the properties of the delinquents became part of Pakistan, whereas the property of the delinquents remained in India proper. This difficulty has to a large extent held up the work of carrying on these trials. It is therefore now proposed that the power of passing further orders with respect to property which has already been attached by courts (which unfortunately happen to be now in Pakistan) should be transferred to courts operating within the Indian Republic. Consequently it is thought desirable to add this section 9A which permits the courts within whose jurisdiction the offences are now being tried to exercise the power of passing orders regarding the property which is held by these delinquents.

The Ordinance was promulgated because the matter was regarded as very urgent. As the power of continuing the Ordinance is of a limited duration it is necessary to revise the Ordinance before the expiry of time by this measure.

Mr. Chairman: Motion moved :

“That the Bill further to amend the Criminal Law Amendment Ordinance, 1944, be taken into consideration.”

Shri Himatsingka (West Bengal): On a point of information, may I know if the property that has been attached by an order of the court is now in Paksitan. If the property continues there.....

Dr. Ambedkar: The property is here.

Mr. Chairman: The question is:

“That the Bill further to amend the Criminal Law Amendment Ordinance, 1944, be taken into consideration.”

Mr. Chairman: The question is:

Mr. Chairman: There are no amendments. I will put the clauses.

The question is:

“That clauses 2 and 3 stand part of the Bill.”

The motion was adopted.

Clauses 2 and 3 were added to the Bill.

Clause 1 was added to the Bill.

The Title and the Enacting Formula were added to the Bill.

Dr. Ambedkar: I beg to move:

“That the Bill be passed.”

Mr. Chairman: The question is:

“That the Bill be passed.”.

The motion was adopted.

(10)

MOTION FOR ADJOURNMENT

ESCAPE OF MIR LAIK ALI OF HYDERABAD FROM CUSTODY.

* **Mr. Speaker :** May I ask who is the controlling authority or the directing authority, so far as the prosecution of Mir Laik Ali and others is concerned ?

Sardar Patel: The final prosecution sanction is from the Nizam.

The Minister of Law (Dr. Ambedkar): I do not know but the first impression which I have of this matter is this that Hyderabad is like any other State. There is no distinction between Hyderabad State under the Constitution in its relation to the Centre and, say, for instance Bombay in its relation to the Centre, which means that for subject matters set out in List II the responsibility is entirely of the State, while the responsibility, so far as subjects in List I are concerned, belong to the Centre. The same rule would apply to Hyderabad. That is to say that so far as the matter relating to the custody of Laik Ali is concerned, it is a matter of law and order which is undoubtedly under the Constitution a matter for local administration. On that footing, I submit that this is not a matter which constitutionally could be held to be under the control of the Central Government, but I should like to add one more remark, *viz.* that in view of the fact that there is no local legislature to which the local Ministry could be held to be responsible, it is possible—I speak subject to correction—that whatever action is being taken by the local administration is perhaps done under the power which the Constitution vests in the Central Government of direction and control over certain States. I am not yet aware as to what

* P.D., Vol. 2, Part II, 7th March 1950, pp. 1179-80.

the position under that part of the Constitution is. But so far as the Constitution is concerned and the relation of Hyderabad State to the Centre is concerned, this, I submit, would be a matter falling within law and order which is absolutely a States subject.

*** The Minister of Law (Dr. Ambedkar):** Sir, I am grateful to you for the second opportunity which you have given to me to clarify and to explain further the points that were made by me as well as by other Members of this House in the course of the debate that took place yesterday on the adjournment motion. Since you have been good enough to point out to me, before I commenced my remarks, the difficulties which you feel, I will follow the line of points which you have to set out: I will first of all try and explain the Constitutional position of the States on the one hand and the Centre on the other and to what extent the States are free and independent of the Centre, to what extent they are under the subservience or surveillance or superintendence or control of the Centre.

The first thing I would like to draw the attention of the House to is this that there is a certain amount of parallelism in the constitutional frame-up of the Central Government and of the States. For instance, with regard to the Central Government you have article 53 which says that the executive power of the Union shall be vested in the President. Corresponding to that article, you have article 154 which states that the executive power in the States shall be vested in the Governor or the *Rajpramukh*, as the case may be. Coming to the question of actual administration, article 74 of the Constitution provides that there shall be a Council of Minister to aid and advise the President in the matter of the exercise of the executive authority which is vested in him by the Constitution. Analogous to that article, we have also

* P.D., Vol. 2, Part II, 8th March 1950, pp. 1236-44.

article 163 which relates to the States. It also is worded in the same language as article 74. It says that there shall also be a Council of Ministers to aid and advise the Governor in the carrying out of the administration which is vested in the Governor, or the *Rajpramukh*. Then we have another article, 79 which vests the legislative power of the Centre in Parliament consisting of two Houses. Analogous to that, we have article 168 constituting a legislature for the States in almost the same terms except for the fact that in some cases there are two Houses and in other cases there is one House. There is a further provision, namely, that where at the commencement of the Constitution there does not exist any popularly constituted legislature in any States, then the *Rajpramukh* of that State shall be deemed to be legally the legislature for that State. It will therefore be seen that the paraphernalia, so to say, of administration in accordance with the Constitution is parallel in both cases. Supplementing this by what I stated yesterday that the legislative authority of Parliament is primarily confined to subjects enumerated in List I, and the legislative authority of the States is confined to subjects mentioned in List II, with the further proposition—to which there can be no objection raised because it is a well-established judicial proposition—that the legislative authority is co-extensive with executive authority, it follows that so far as the States are concerned, primarily and fundamentally they occupy an independent position in the Constitution. That being so, it is quite clear that by the rule of comity and also by the rule governing responsibility, it would not be open to this House to discuss any matter, either in the form of legislation or in the form of administrative action, which has been taken by the State which lies within the ambit of subjects mentioned in List II. As I stated yesterday, so far as I can understand the subject-matter of the Adjournment Motion relates primarily to law and order. Law and order is a subject which is included in List II and therefore, it would not be open to this House to discuss such a question when the Legislature of the State is competent by the rule of the Constitution to deal with it. That I think is a general proposition which must be accepted.

I should like, if hon. Members want to see the thing in a clear light to ask them to compare the provisions of article 239 with the provisions of the article to which I have referred in regard to the States. Article 239 refers to States in Part C ; they are what are called “Centrally Administered Areas”. The language of article 239 is absolutely different from the language of article 154. The language of article 154 is that the executive power, which also includes administration, vests in the Governor, while article 239 begins by saying that the States in Part C shall be administered by the President, which means “President on the advice of his Council of Ministers”, which in turn means that the responsibility for any matter of administration so far as States in Part C are concerned, directly falls upon Parliament and upon the Central Government. It is therefore open for any Member to discuss any matter relating to States in Part C on the floor of the House, which would not be the case so far as the other States are concerned.

With regard to the States, I should also like to point out that although our Constitution divides the States in Part A and Part B for certain purposes, that is for the purposes to which I have referred, namely the frame of their constitution, the vesting of the executive authority, the authority to make law, and all that, they are on a parallel footing and there is complete parity. True enough that the Constitution contains an article, article 238, which applies with certain modifications, the articles which apply to States in Part A to States in Part B. But anyone who has the curiosity to examine the provisions of article 238 will find that the changes made in the articles which are applicable to States in Part A in their application to States in Part B are of a very minor character—substituting “Governor” for “Rajpramukh” etc. a sort of terminological difference. Beyond that there is no difference at all. Therefore, from that point of view, just as it would not be competent for this House to discuss any matter falling within the jurisdiction of States in Part A, it would also not fall within the jurisdiction of the House to discuss any matter relating to Part B States because both of them, as I said, are placed by the Constitution on the same footing.

At this stage I would like to endorse what the Hon. the Home Minister has said just now. The mere fact that the Nizam is a *Rajpramukh*, the mere fact that there is no legislature, the mere fact that certain officers have been lent by the Home Ministry to the Nizam for carrying on the administration of the State, would not alter the character of the Hyderabad State being exactly on the same footing as other States in Part B, which is the same thing as being equivalent to States in Part A. I shall have to say something at a later stage by way of a small qualification, but I should like to say that the mere fact that the officers have been lent would not alter the status and the character or position of the Hyderabad State within the field of the Constitution.

Now, this is the general proposition, namely that the States in Part A as well as the States in Part B are free and independent of the Centre in the matter of executive authority, in the matter of legislative authority and in the mode and manner of administering the legislative and executive authority that they possess. This is the general proposition. The question that we have now to consider is the provision contained in article 371, and the question is: does the provision of this article make any change in the position of States in Part B? Because, as everyone knows, article 371 applies only to States in Part B and does not apply to States in Part A. In the course of the debate yesterday, I found that one hon. Member said that the Central Government possess no authority to issue any directions to the States except under emergency provisions, which gave me the impression that in his view article 371 could not be the foundation for the Ministry of States or the Government of India to issue directions to States in Part B. With all respect, I submit that I cannot accept that position. To explain the matter fully, the Centre has the power to issue 352 directions under the Constitution to the various States, under *four* different articles. The first is article which is what is called an emergency article arising out of war or internal aggression and things of that sort. The second article which permits the Centre to issue directions to the States is article 360 which deals with financial emergency; when the President is

satisfied that the credit of the State is in jeopardy he can declare a state of financial emergency and under that article he can issue certain directions to the States. The third article is article 356 which is called a breakdown article. When the President finds that the Constitution in any particular State is not being carried on in accordance with the provisions contained therein, then also, the President issues certain directions to see that the Constitution is carried on in accordance with its provisions.

Then comes the last Article, Article 371, which is the supervisory Article. It has to be understood that Articles 352, 360 and 356 are, in a general sense, emergency articles, that is to say, they can be invoked for the purpose of giving directions to the States only when certain circumstances arise and the President is satisfied that those circumstances have arisen.

Pandit Kunzru (Uttar Pradesh): May I ask the Hon. Minister of Law whether he has made this observations with reference to Article 371 also?

Dr. Ambedkar: No, I am taking it separately. I am trying to point out the distinction between the provisions contained in Article 371 on the one hand and Articles 352, 360 and 356 on the other. As I said, these latter Articles are emergency Articles. They are not Articles which deal with normal administration in normal times. Circumstances must justify their invocation. The second thing with regard to them is that they apply to States in Part B to the same extent, in the same degree and in the same manner as they apply States in Part A, provided of course, that the emergency has arisen.

Article 371 stands on a different footing. It does not require an emergency. It can be used in normal times. That is one feature of distinction. The other feature of distinction is that it applies only to States in Part B. It does not apply to States in Part A. Therefore, in my judgment it is not correct to say that the Central Government must use either Article 352 which is an emergency Article, or Article 360, or Article 356, to issue directions to States in Part B. (*Pandit Kunzru* : Hear, hear). Independently of these three Articles, the Centre has the power to issue directions to States in Part B under Article 371.

Pandit Balkrishna Sharma (Uttar Pradesh): And it is only transitional.

Dr. Ambedkar: That is a different matter. The transition has not ended. The Article is in operation and we must therefore take it as it is. Therefore, in my judgment, Article 371 does give the power to the Centre of issuing directions to States in Part B even though there is no emergency. It is an Article which is to be used in normal times.

Now, Sir, the question you have been good enough to raise is one which if you will permit me, I would like to take up towards the close. In so far as Article 371 is concerned and in so far as a direction has been issued—I am using my language very deliberately—in so far as Article 371 is concerned and in so far as it has been used for the purpose of issuing a direction to the State Government, it seems to me that there is a possible basis for discussion of that matter by this House. That is my view of the matter.

Now, I would like to take up

Mr. Speaker: May I have clarification on one point at this stage? Will the failure to give direction

Dr. Ambedkar: I am just coming to that. That is the very point I want to deal with, because that is a very important one, and we must be very clear about it.

Pandit Balkrishna Sharma: May I know what direction has been issued under Article 371 ?

Dr. Ambedkar: I am coming to that. I am stating the position generally. My. Hon. colleague, the Home Minister will say what direction he has issued. I am not in charge of administration, and I have merely been asked to explain the legal position.

Now, Sir, I was trying to find out whether there was any precedent in the past procedure of our Legislature which could help us to come to some definite conclusion on the issue before the House. I have examined the provisions of the Government of India Act, 1919, in order to find out whether there was any ruling which could furnish to us some kind of a precedent.

As the House will remember, the scheme of the Government of India Act, 1919, was to divide, so far as the Provinces were concerned, the field of administration into two parts: the transferred part and the reserved part. The House will also remember that under the old Government of India Act the superintendence and control of the civil and military Government of India was vested in the Secretary of State in Council. It was also provided that the Governor-General in Council as well as the Governors would carry out their respective duties of administering this country, subject to the power of superintendence and control of the Secretary of State. When the field of administration was demarcated into the reserve and transferred sides in 1919, a rule was made that those subjects which were classified as 'transferred subjects' were not to be under the supervisory control either of the Secretary of State or of the Governor-General or of the Governor, because they were administered by Ministers who were responsible to the Legislature. Now, the question that arose under the provisions of the 1919 Act was this: whether it was possible for the Central Legislature to ask a question with regard to the administration in the Provinces. The researches that I have made—and I am grateful to the Secretariat of the Speaker for the help they have rendered me in this connection—show that the then President of the Assembly took the view that in so far as the question related to transferred subjects, he would not allow them, but if they referred to 'reserved subjects', he would allow them subjects to the sanction of the Governor-General. You will recollect that such sanction was necessary, because the Assembly worked under both Rules and Standing Orders. The Rules were made by the Governor-General, which sometimes restricted the scope of Standing Orders. Therefore, his permission was necessary. But the principle was conceded that in so far as the administration continued to be under the superintendence, direction and control of the Governors, of the Governor-General and ultimately of the Secretary of State, it was possible for a Member of the Central Legislature to ask a question relating to those subjects and the President, subject to other conditions being fulfilled, would admit that

question. That is one precedent. Of course, it must not be extended to a field which it did not cover. As I said, it extended only to questions and not to other matters.

Now, I come to the Government of India Act, 1935. Probably, some Members of the House will remember that as soon as the Government of India Act, 1935, was passed, certain members of the House of Commons were considerably agitated as to their rights to ask questions to the Secretary of State in Parliament with regard to the administration of India and a question was put to the then Prime Minister, Mr. Chamberlain, in the year 1937. Mr. Chamberlain gave the reply to the effect that since the administration of the country was transferred to agencies in India and to that extent the Secretary of State ceased to possess to have any kind of responsibility for the actual administration, it would not be possible or permissible for Members of Parliament to put any questions to the Secretary of State on those matters. That matter was taken up in the Assembly here immediately after the interpellations had taken place in the House of Commons and a question was put by our old friend Mr. Pande, who was a well-known Member of this Assembly, to the then Law Member, Sir Nripendra Sarcar. I propose to read the answer which Sir Nripendra Sarcar gave, because it is a very illuminating reply and, in my judgment, supports the conclusion to which I have come and to which I have given expression just now

The answer of Sir Nripendra Sarcar was this :

“(a) The general position is that where the executive and legislative authority are vested under the Act in the provinces, it would not be appropriate for the Central Legislature to discuss those matters. There are likely, however, to be matters in which the Central Legislature may be properly interested, (e.g., a direction under sub-section (1) and (2) of section 126 of the Government of India Act) and thus the prevention of any encroachment on the provincial sphere may well be left to be regulated by the powers vested in the Hon. the President under Rule 7 of the Indian Legislative Rules in regard to questions and in the Governor-General under Rule 22 in regard to the Resolutions.”

My submission is this : that the provisions contained in Article 371 are more or less analogous. I do not say they

are exactly alike to the provisions contained in Section 126 of the Government of India Act. The Act of 1935 vested power in the Governor-General. It says :

“The executive authority of the Federation shall extend to the giving of such directions to a province as may appear to the Federal Government to be necessary for that purpose”.

Further it says ;

“The executive authority of the Federation shall also extend to the giving of directions to a province as to the carrying into execution thereunder any act of the Federal Legislature, etc.”

As I said, Section 126 deals with power to give directions to the provinces. Similarly, Article 371 also gives power to Central Government to give directions. As interpreted by my predecessor Sir Nripendra Sarcar, on the basis of the discussions and clarifications that took place previously in the House of Commons, he came to the conclusion that a matter such as the one lying within the purview of section 126 could be discussed in this House. My submission, therefore, is that that opinion of his is a sound one.

Shri T. T. Krishnamachari (Madras): May I Sir, suggest to the Hon. the Law Minister to give us his opinion on Section 126 of the Government of India Act *vis-a-vis* Articles 257(1) and 73(1) proviso of the Constitution.

Dr. Ambedkar: I have not considered those sections. If at any other time the point is raised I would be prepared to clarify it. For the time being, it does not seem relevant to the subject we are discussing.

Pandit Kunzru: Will the Hon. Law Minister read out Article 371 and tell us whether under it orders can be issued by the Government of India to Governments of the States only in regard to Central (Federal) subjects, or also in regard to subjects included in the State list?

Dr. Ambedkar: It is quite clear that Article 371 contemplates issue of directions relating to matters lying within the purview of the State Legislature and the State Executive. It is really in relation to the administration of the States that Article 371 has been drafted. In my mind there is no doubt on the point at all. Now, Sir