

or the Parliamentary Secretary or the Parliamentary Under secretary. The Hon. the Law Minister told us just now that according to his reading of the Bill a Minister of State, a Deputy Minister, Parliamentary Secretary or Parliamentary under-Secretary can hold office for six months without being a Member of Parliament. I have read the Bill again and I do not understand how the Hon. Minister came to this conclusion. Would he explain ?

Mr. Deputy Speaker : It is not absolutely germane to this Bill. The hon. Member may look into the matter at leisure.

Dr. Deshmukh: Sir, one point may be made clear, which is on a matter of fact, *viz.*, whether Deputy Ministers are appointed by the President. This is a matter of concrete fact and probably the Hon. Minister may be able to reply.

Mr. Deputy Speaker : How is it necessary in this connection ?

Dr. Ambedkar : Surely, they are appointed by the President : who else call appoint ?

Mr. Deputy Speaker : The question is :

“That the Bill to make provision in regard to certain offices of profit under Article 102 of the Constitution, be taken into consideration.”

The motion was adopted.

***Shri Tyagi :** I beg to move:

“That in the heading of clause 1, after the words ‘Short title’, the words ‘*and commencement*’ be inserted.”

It is a very simple amendment and I hope the Doctor will accept it.

Dr. Ambedkar : Perhaps what my friend Mr. Tyagi has noted is that there is no clause stating the commencement. Generally a Bill has a clause saying that the Bill comes into operation from such and such a date. This clause does not exist here, and he thinks there is a lacuna which ought to be filled. But may I submit that under the General Clauses

*P.D., Vol. 2, part II, 10th March 1950, p. 1365.

Act, where a Bill does not contain such a clause it is presumed that it comes into operation immediately after the signature of the President.

Mr. Deputy Speaker : He wants to push the date to 26th January, 1950.

Dr. Ambedkar : It is unnecessary so long as the Ordinance is there.

(12)

MOTION FOR ADJOURNMENT

***Shri Gopalaswami :** May I just point out that Mr. Chamberlain was not on a question of motion for adjournment of debate ?

Pandit Kunzru : Well, I think Dr. Ambedkar relying on the reply given by Sir N. N. Sircar on the basis of Mr. Chamberlain's reply came to the conclusion that in a matter like this there was no essential difference between a demand for information and a demand for discussion. The word used by Sir N. N. Sircar in his reply was "discussion" and that is the word that my Hon. friend Dr. Ambedkar relied on.

The Minister of Law (Dr. Ambedkar) : I should like to say just one word with regard to the comment of my hon. friend on the reply given by Mr. Chamberlain and his attempt to establish a sort of analogy between the position which existed when that question was put and the position that will arise under article 371 of our Constitution. I should request him to bear in mind the essential distinction that exists between our Constitution now and the Government of India Act, 1935. That distinction is this, that while Parliament did enact the Act of 1935 and transferred certain responsibilities to the people of India, they never failed to emphasise time and over again, that the ultimate responsibility for the good Government in India rested with Parliament, and therefore, to the extent that the power was reserved of giving directions it was really responsible for maintaining good Government; while under our Constitution we have given over the power of maintaining good Government to our States and only in some cases we have reserved to the Centre certain powers of direction. That distinction has to be borne in mind.

* P.D., Vol. 2, Part II, 14th March 1950, pp. 1512-13. .

Pandit Kunzru : I entirely disagree with my hon. Friend Dr. Ambedkar, not with regard to the general point that he has raised, but with the construction that he has put on article 371. As my hon. friend pointed out the other day, this article 371 does not apply to States in Class A. It applies only to States in Class B, and why ? Why was this article 371 inserted in the Constitution with reference to States in Class B only ? It was inserted in order to ensure good Government there.

(13)

SOCIETIES REGISTRATION (AMENDMENT) BILL

***Shri Sidhva** (Madhya Pradesh): This is a Bill which I had moved during the last session. The Hon. the Law Minister (Dr. Ambedkar) told me that he would like to take the opinion of the States. I would, therefore, like to know, before I formally move this Bill, as to whether the Opinions of the provinces have been received. If not, I would like to have this Bill confined to the Centrally Administered Areas.

The Minister of Law (Dr. Ambedkar): Sir, in accordance with the promise that I gave when my friend Mr. Sidhva moved his Bill, that in view of the fact that this matter fell under the Concurrent List and according to the Standing Orders of the Government of India, it was necessary to consult the States before undertaking legislation, my Ministry had addressed a letter to the various provinces to ascertain their views with regard to the proposed enactment of a law as proposed by my friend Mr. Sidhva. I am sorry to say that on account of the pre-occupation of the various States, the replies of all of them have not been received as yet. I have received, however, replies from two States in Part A and some of the States in Part C.

With regard to the States in Part A, I have received replies only from Madras and Punjab and I am sorry to say that both of them are opposed to the Centre meeting such a piece of legislation. The Madras Government have said that they themselves have under consideration an exhaustive and comprehensive piece of legislation to deal with the points raised in this particular Bill. The Punjab Government have said that they realised the necessity of having a penalty clause such as the one proposed by Mr. Sidhva, but they say that

*P. D., Vol. 3, Part II, 25th March 1950, pp. 2115-16.

they themselves have recently enacted a law imposing such a penalty and so far as that particular province is concerned, no such legislation is necessary.

With regard to the States in Part C, the position that they have taken is this : that they have no such problem for the moment on hand. Some of them say that there are no such societies existing within their jurisdiction. Others have said that the law which my friend Mr. Sidhva seeks to amend has been very recently introduced within their area in the year 1949. There are no societies and there is as yet no experience to suggest whether any societies have violated the provisions of the Bill. That is the position as revealed by the replies given by the various States to which this communication was addressed. Some of the other important States such as, for instance, Bombay, U.P. and Madhya Pradesh have not replied. This is a matter placed in the Concurrent List and it is desirable that we should have the reaction of most, or the majority of the States in Part A before the Centre can undertake this legislation.

As I said last time, personally I do not think that any one could really dispute the position taken by my friend Mr. Sidhva that if the provisions of this Bill have to be effective, it is necessary to have some such penalty clause. I agree with him. But my point is this that it is desirable to carry the majority of the States in making this legislation and as they have not as yet replied, personally I would have very much preferred that this Bill was either withdrawn or held back on the assurance that the Centre will grapple with the situation as and when time and circumstances permit.

Shri Sidhva: Sir, in view of the statement made by my friend Dr. Ambedkar that he is personally in favour of this Bill and that as this subject is in the *Concurrent* List he would like to have the opinion of all the important States, I would like to hold over this Bill. I cannot withdraw the Bill in any case. It is an important Bill. I know what is happening in the various societies. Therefore, I would request you to allow me to keep this Bill alive. I shall not move it now.

Mr. Speaker: If no motion is made this time, it will automatically be kept alive under the rules.

(14)

ARMY BILL

The Minister of Defence (Sardar Baldev Singh): I beg to move.

“That the Bill to consolidate and amend the law relating to the Government of the regular Army, as reported by the Select Committee, be taken into consideration.”

***Mr. Speaker :** Hon. Dr. Ambedkar.

The Minister of Law (Dr. Ambedkar) : If other hon. Friends do not want to speak, I thought I would like to reply to the two points raised by my hon. friend Pandit Kunzru because they have a constitutional aspect.

Mr. Speaker : I would give him precedence.

Dr. Ambedkar : My. hon. Friend Pandit Kunzru, in the course of his speech on the motion, raised two points. As they refer to the constitutional aspect of the matter, I thought that it may be appropriate that I should deal with them rather than leave them to be dealt with by my hon. colleague.)

The first point was that clauses 4 and 5 of the Bill were inappropriate in view of the fact that they made separate mention of the Forces in Part B States. I will take these two sections separately.

With regard to section 4, I think my hon. friend will agree that under the scheme of this Act, there is a distinction to be made between what is known as the regular Army and Forces which do not form part of the regular Army. My friend will see that the regular Army is defined under item 21 of section 3 which deals with definitions. For instance, there are what are called Assam Rifles, Bhil Corps and several other units which may be mentioned as illustrations which do not

*P.D., Vol. 4, Part II, 6th April 1950, pp. 2601-5.

form part of the regular Army. As the Act principally applies to the regular Army, it is necessary to provide for an eventuality where the provisions of this Act would have to be extended and applied to units which are not part of the regular Army. That is the purpose of section 4. Section 4 says.....

Pandit Kunzru : Are these Forces Part B States Forces ?

Dr. Ambedkar : I am coming separately to Part B States. So far as section 4 seeks to apply the provisions of this Act to units for the moment other than those referring to Part B States, I do not see that there can be any valid objection to the provisions contained in that particular section.

With regard to section 5 which deals with Part B States, my hon. Friend's contention was that this was inappropriate, and also the latter part of section 4 which made mention of Part B States. The answer to that question is this. My hon. Friend will remember that in the earlier part of the Constituent Assembly, the position was that the States in Part B which were then called Acceding States, had been given power to raise and to maintain independent Forces of their own. If he has got a copy of the original draft of the Constitution, he will see item 4 on page 189 and he will also find that I took objection to that provision. I did not want that any particular unit under the Union should have a right to raise and to maintain troops. I was glad that my contention prevailed, and that part of the entry was deleted. So that, the right to raise and maintain troops under the Constitution exclusively belongs to the Union. Although this position was accepted, it did not remove altogether the difficulty.

As my hon. Friend well knows, there were certain covenants that were entered into between the Government of India and the various Indian States mentioned in Part B. One of the terms of the covenant was that the States which had certain Forces maintained and raised by them should be continued to be maintained by them and that what should be prevented was the raising of new troops. The existing units were to be continued. Then arose the question what is to happen to the existing units : were they to be independent

or were they to be subordinate to the military authorities of the Government of India ? A compromise was entered into which is mentioned in article 259 to which he referred. Therein it is provided that although the troops already raised were to continue, they were to be subject to any law that Parliament might make. Now, it was possible for Parliament to make a law declaring that for all purposes the troops raised already by the States in Part B would be regarded as part of the regular Army of India. That is, of course, the intention. But, as I said, these matters were governed by the covenant. Although the Rajpramukhs who represent the States in Part B were prepared to accept the provisions contained in article 259, that is to say, confer the power on Parliament to make such a law, they still desired that they should continue to be the Commanders-in-Chief of those Forces and that their position ought to be safe-guarded. These things arising out of the covenants which, as I said, had already been entered into and on the basis of which accession was made, had to be respected. I hope and trust that a time will come when the States would voluntarily agree to Parliament exercising complete jurisdiction, effecting complete assimilation between the Indian regular Army and the Forces raised by them. Therefore, what we have to do today is to effect a sort of a compromise. These sections 4 and 5 really represent the best compromise that we can make.

Pandit Kunzru : If I may interrupt my hon. friend, he has dealt with a very wide question. My criticism was limited to one point only. Why has not the power conferred on Parliament by article 259 of the Constitution been used to extend the Army Act to Part B States Forces ?

Dr. Ambedkar : That is what I am dealing with.

Pandit Kunzru : I did not deal with the wider aspect of the problem on which my hon. friend has dwelt so far.

Dr. Ambedkar : But, the wider aspect is the real aspect. The whole question is governed by the covenants which were entered into before the Constitution was made, unless, of course, my hon. Friend's position is that covenant or no

covenant, agreement or no agreement, understanding or no understanding, wherever Parliament has got power, Parliament should exercise it. That would be a different position.

Pandit Kunzru : Surely my hon. friend knows that on the 24th January the Unions of States and the State of Mysore 3-00 P M issued a proclamation accepting the Constitution and saying that the agreements that were inconsistent with the provisions of the Constitution were invlaid.

Dr. Ambedkar : Yes. That may be so. As I said we are following really an understanding. Before I go to that, I would like to draw his attention to the fact that he has not adverted to an important point of cluase 2, *viz.*, part (b) of clause 2 which says:

“persons belonging to the land forces of a Part B State, when such persons are attached to any body of the regular Army for service, or when the whole or a part of the said forces is acting with any body of the regular Army or is placed at the disposal of the Central Government in pursuance of a notification under section 5;”

Therefore, it is not altogether as though this law places the Forces in States in Part B in a separate water-tight compartment. When the Central Government issues a notification under clause 5, then as soon as the notification is issued, this Act would apply to that part of the Army in Part B States automatically. He will also see that under clause 5 there is power given to the Central Government to see that any particular Part of the Forces in Part B shall for the purposes of this Act be treated as attached to the Indian Army. That also is a direct power of intervention so far as attachment of certain Forces is concerned.

My friend asked why we have not taken direct action. The answer is, to my mind, obvious. He will realize that the Forces in States in Part B were raised under their own individual laws and were not raised under any Act of the Central Government. The condition on which enrolment was made in Part B States materially differed from the rules and conditions regarding enrolment of personnel to the Indian Regular Army. One important difference was this that the person enrolled in the Indian Regular Army was bound to save anywhere but

with regard to a person enrolled in Forces belonging to the Part B States, such a condition was not there. I think it is in everybody's knowledge that their conditions of service were confined to their States and the widest circuit of their service was India. It was during the war that special provision was made when these troops were placed under the control of the Government of India with the condition that they may be used anywhere. It was the Government of India who bore the expenditure and sent them to battle-fields outside India. That being so, it does appear to be somewhat difficult, harsh and illegal even to compel a man who has been enrolled under different set of circumstances to come and be a part of the Regular Army. Consequently, the fact that we have had covenants with the States forces as to adopt what might be regarded as a *via media* and I do not think that from either point of view any objection could be raised to the provisions contained in clauses 4 and 5.

Now, I come to the other point raised by him, *viz.*, clause 70 which deals with the authority of the Court Martial to try what are called civil offences. It is quite true that offences against civilians should be tried by civilian courts and not by military courts but there are considerations which weigh on the other side and which support the provisions contained in this Bill. Let me give first some of the difficulties which one has to face in deciding upon an issue of this sort. Suppose an offence is committed by a soldier within the barracks where the army is stationed, which should be the forum, the Court Martial or the Ordinary Magistrate's Court? Let me point out another difficulty and it is this. An offence is committed against a civilian but that offence is such that while it involves the breach of an ordinary criminal law at the same time, it involves what is called a breach of the rules of discipline which every soldier must follow. What would be the appropriate forum in a case like this where the act committed by a soldier is equally an offence under the ordinary criminal law and is also a breach of discipline under the Army rules? Take another illustration. Supposing an army is about to move from one place to another: every soldier belonging to that army must move. Then suppose we made

a provision that every offence committed by a soldier must be tried by a civilian court. It might be that a recalcitrant soldier who does not want to move with the troops to another station deliberately gets himself involved in some kind of a crime in order to stay back so that the civilian judge may try him. Should that be allowed ? If my friend himself were to exercise his mind on the subject he would find many other difficulties with which he would be confronted if he came to the dogmatic conclusion that all offences committed by a soldier against a civilian must be as a rule tried by a civilian court:

Pandit Kunzru : That was not my contention.

Dr. Ambedkar : Therefore, I say there can be no question of having any dogmatic opinion about this question. None can say that all such offences must be tried by the Military Court nor can anyone say that no such offence shall be tried by a civilian court. Consequently the Bill makes certain compromises which are in keeping with the necessities of the case. The trial of offences committed by a soldier which are to be tried by a military court are limited in number. They are murder, culpable homicide, etc.

Pandit Kunzru : By a military court or a criminal court ?

Dr. Ambedkar : By a criminal court. All others may be tried by court martial.

In connection with this there are other provisions in the Bill which must also be taken into consideration. They are clauses 125, 126 and 127. The discretion or the jurisdiction of the courts martial to try offences which are left to them is not absolute but it is governed by the provisions to which I have referred, namely, the military court under clause 125 may decide whether they want to try the offence. If the civil courts think that the offences should be tried by them they should under clause 126 obtain the permission of the Government of India and if the permission is granted they can proceed to try the offence. There is a further provision which in a sense is rather an extraordinary thing, namely, "Successive trial". If it was found that the offence was a grave or serious one but the court martial which was permitted to try the offence let off the man with a light punishment, then

subject to the permission granted by the Government of India, the man could be tried twice. Having regard to the difficulties mentioned, namely, of allowing civil courts to try all offences and having regard to the fact that there are the provisions contained in clauses 125 and 127, I do not envisage that there is likely to be far more cases which can be described as containing miscarriage of justice. I think we have taken enough precaution to prevent that sort of thing happening and therefore I submit, that having regard to these provisions and having regard to section 70 there can be no objection to this part of the Bill.

I might also mention—I think reference was made to it by somebody—that clause 70 of this Bill is virtually a repetition of section 41 of the British Army Act. There also they have a similar provision. In the U.S.A. the provisions are more extensive. After all we have to look at this matter from the point of view of the offender, not so much from the point of view of the complainant. In all these cases the offender would be a soldier and the question is whether the soldier who is accused of any particular offence and would have been tried by a civil court, if he had not been a soldier, would not get justice at the court martial.

My friend said that the men who sit in the court martial are not trained lawyers. I do not know but I can say from my experience that I have met some Judge Advocates-General who were as good as the lawyers whom we meet in courts, if not better. However, after all a soldier cannot expect to get better justice for having committed civilian offences than he is ordinarily expected to get when he commits a military offence. If he gets the same justice as he gets in the civil courts I do not think there need be any cause for complaint. My friend need not have much confusion about it. I do not think that his criticism is well placed.

Shri S. N. Sinha : What are those cases in which the criminal courts and court-martial have got concurrent jurisdiction ? Under clause 125 the choice has to be exercised.

Dr. Ambedkar : I cannot say. That requires some kind of exhaustive compilation. There are undoubtedly some offences

which come under the jurisdiction of both military and civil courts.

Shri S. N. Sinha : My contention was that clause 70 of this Bill alone gives jurisdiction to the ordinary criminal courts in respect of specified cases.

Pandit Kunzru : There is this doubt in the minds of many hon. Members. If my hon. Friend Dr. Ambedkar will turn to clause 125 he will find that the opening words are: "When a criminal court having jurisdiction is of opinion". The question is what do the words "having jurisdiction" mean. Do they mean having jurisdiction under the ordinary criminal law of the land or jurisdiction under this Bill? This is the question that troubles many hon. Members. If it is said that these words mean having jurisdiction under this Bill

Dr. Ambedkar : Under the ordinary law.

Pandit Kunzru : Then obviously clauses 69 debar the ordinary criminal courts from dealing with any criminal cases except those which fall under section 70. That is the real question.

Dr. Ambedkar : "Civil offence" has been defined on page 2 of the Bill as meaning "an offence which is triable by a criminal court" as distinct from a court martial.

(15)

PART C STATES (LAWS) BILL

***The Minister of Law (Dr. Ambedkar):** I beg to move for leave to introduce a Bill to provide for the extension of laws to certain Part C States.

Mr. Speaker : The question is:

“That leave be granted to introduce a Bill to provide for the extension of laws to certain Part C States.”

The motion was adopted.

Dr. Ambedkar : I introduce the Bill.

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

“That the Bill to provide for the extension of laws to certain“
Part C States, be taken into consideration.”

It is perhaps necessary that I should offer to the House some explanation as to why this Bill is restricted to certain Part C States. The position is this, that we have altogether about ten Part C States mentioned in Schedule I of the Constitution. Those ten States fall into three groups. There are Coorg, Ajmer and Delhi which were Chief Commissioners' Provinces now designated as Part C States, and which had come into existence long before the Constitution. Consequently, so far as these three States were concerned, the question of the extension of Central laws does not arise because they applied at the time when they were enacted.

Then there is the *second* group of Part C States which are Bilaspur, Himachal Pradesh, Bhopal and Cutch. With regard to them, it was only last year that this Legislature passed a law extending the Central Acts to them. This Bill is confined to three Part C States, namely, Vindhya Pradesh, Tripura

*P. D., Vol. 4, Part II, 5th April 1950, p. 2551.

***Ibid.*, 11th April 1950, pp. 2777-84.

and Manipur. They have to be separately dealt with because they came into existence as Part C States after the 1949 Act was passed. Consequently, this measure is restricted to these three Part C States. I might mention that although all the laws that were extended to Part C States by the Act of 1949 are extended to Vindhya Pradesh and Tripura, some exceptions have been made with regard to the State of Manipur. All the laws that have been applied previously or are applied by the present measure to Vindhya Pradesh or Tripura are not applied *proprio vigore* to Manipur. It is said that Manipur is largely settled by what are called the tribal people whose civilisation and whose manners and modes of life are considerably different from those who are living in what is called the 'settled area'. Consequently it would create a great deal of disturbance if all the enactments were extended to Manipur and therefore a Schedule has been added as to what enactments will not apply to Manipur. Similarly, while the Indian Penal Code is applied to Manipur, there are two sections of it which are sought to be applied, with a certain modification.

I hope the House will see that there is nothing very complicated about this measure and accept it.

Mr. Deputy Speaker : Motion moved:

"That the Bill to provide for the extension of laws to certain Part C States, be taken into consideration."

Pandit M. B. Bhargava (Ajmer) : I have to make a few observations in respect of this Bill. So far as the extension of any Central laws to the States referred to by the Hon. the Law Minister is concerned, I have got nothing to say. But there is one clause, namely, clause 2 in this Bill which lays down that it will be open to the Central Government by notification in the *Official Gazette*, to extend any Provincial enactment to any of these States in Part C, subject to such modifications and restrictions as may be laid down in the notification I have not the least doubt that if all these extended laws are ever questioned before a competent legal authority, this legislation will not stand the scrutiny of the judicial court and will be declared *null* and *void*. I would, therefore, respectfully request the Hon. the Law Minister to

consider the legal position before proceeding further with this piece of legislation.

Dr. Ambedkar : I am glad my hon. Friend raised this question. I did not bother to it because I thought that the section was so simple that it should not require any explanation. However, now that the question is raised, I think it is desirable that I should explain the position. In going through the merits of this particular clause, there are certain aspects of the case which have to be taken into consideration. The first is this, that in most of the Part C States, except Coorg, there are no local legislatures which could be entrusted with the duty of passing such local laws as may be necessary for their local administration. It is, I think, equally clear and my hon. friend, himself admitted the matter that the only other alternative is for Parliament to sit here and to make detailed laws for the local administration of these Part C States, and the question that has to be considered is this, whether in view of the time which is available to Parliament—and every one knows how difficult it is for this Parliament to get through some of the most essential measures necessary for carrying on the Central Administration—to find time which could be devoted in a meticulous consideration of the details of a local legislation. We are, therefore, so to say between two difficulties ; one is that there is no local legislature and the other is that Parliament is not in a position to engage itself in passing local laws for Part C States. What is, therefore to be done in a situation of this sort ? The only thing that could be done seems to be to give the Government of India the power to extend certain laws made by Part A States or other Part C States to be applied to Part C States with such modifications as may be necessary by reason of local circumstances and local difficulty. I do not see that there is any other way open to provide for local legislation for Part C States. Of course, it would be possible for Parliament at some stage to create local legislative councils for Part C States and to endow these local legislative councils with the power to make laws for their local administration but so long as Parliament has not done it, I do **not** see that there is any *via media* except what is suggested in this particular Bill, and, therefore, apart from

the question whether this is the proper mode of doing the legislative business which Part C States would be entitled to do, from a practical point of view, I do not see that there is any other method open.

My friend put forth a point of criticism that this power has been exercised by the Centre without even consulting such local advisory bodies as exist in Part C States. I do not know much about that aspect of the matter, because as my hon. friend knows the administration of this particular matter rests with the Home Ministry and I have no doubt about it that the Home Ministry does consult these bodies. If they do not, I have no doubt that they will adopt the suggestion made by my hon. friend.

Then, I come to the constitutional question which my hon. friend, has raised, namely, that this will be delegated legislation. Any application of any law made by Part A or Part B or Part C States extended to Part C States would be a performance of what might be called a delegated legislation, the Parliament delegating the executive to apply that legislation. My hon. Friend referred to the decision of the Federal Court. No doubt there is the decision of the Federal Court. All I want to say is this, that we have not had as yet the decision of the Supreme Court; we are waiting for it, because, with all respect to the Federal Court, the view that the Government of India takes in this matter is that decision was not a correct decision, and with all respect to the Federal Authority, that is still the view that we hold. I might point out to my hon. friend that this activity of the Government of India to employ what is called delegated authority to legislate is not a new thing. It has been in existence practically from 1912 and he will know that we have a law for the purpose of permitting the Central Government to extend the laws made in any part of India to the Province of Delhi with such modifications as the Central Government may make. From 1912 up to the date of the decision of the Federal Court, there has not been in existence a single decision of any Court in India which has questioned the legality of that action taken by the Government of India. I might also tell my friend that

many cases have gone to the Privy Council from this country and the Privy Council itself has never questioned the validity of this. I, therefore, hope that when on a proper occasion the matter comes before the Supreme Court, the Supreme Court will *de novo* examine the position and, as I hold the view, the Supreme Court will not feel itself bound by the decision of the Federal Court, although a good many of the personnel of the Federal Court is the same as the personnel of the Supreme Court, but the court certainly is a different court. Therefore if my friend likes it, I do not mind saying that we are making a venture. We are hoping that the stand that we take and we have taken so far and which has not been questioned by any court during the last 25 years is the correct stand. If the Supreme Court when it comes to deal with the question comes to a decision different to what our point of view is we shall then consider the matter. For the moment it is our view that there is no objection to delegated legislation at all. Parliament is quite supreme either to legislate itself or to ask any other agent on its behalf to exercise that legislative power. I do not think that that matter can be questioned. I do not think that there is any other point raised by my friend which I have not dealt with.

Mr. Deputy Speaker : Is it open to the Parliament to say that the Government may pass such laws as are necessary ?

Dr. Ambedkar : They can say so, that Government is left with the power to frame rules.

Mr. Deputy Speaker : Can they give a blank cheque in regard to all the matters referred to in the list ?

Dr. Ambedkar : It may do so under proper safeguards. No Parliament will give a blank cheque to the executive : it can certainly ask the executive to fill in the blanks and I do not think there can be any difficulty about that.

Shri T. T. Krishnamachari (Madras): So far as the Constitution is concerned the only operative articles are 240 and 242. We have made a special provisions in regard to Coorg. As you will see, Sir, Coorg has been taken out of the operation of the particular Bill before the House. So far as the Constitution is concerned there is no specific direction in this

regard. So it is left practically to the free will and pleasure of the Parliament. The *modus operandi* to be followed is the only thing that can be under dispute, whether the *modus operandi* should be that all these enactments should form part of the schedule attached to this Bill, with such powers as we normally give to the executive by means of what is called delegated legislation, to make rules, etc. or the procedure that is now followed. As the Law Minister has mentioned, this procedure has been followed over a period of years and I am not sure, in the absence of any express instruction to the contrary in the Constitution, how this can be held to be void by any court. So far as delegated legislation is concerned the exact quantum, nature and extent of delegation is not defined by any legislature in the world. It varies from time to time. In the absence of any provision so far as Part C States are concerned which expressly prohibits enacting any type of law that Parliament likes and to delegate such powers as it wants to the Central Government, there could be no objection at the present stage to the Bill being passed by this House.

Mr. Deputy Speaker : The general laws are enacted in a Bill—and power is given to the Government to fill in the details and make the rules.

Dr. Ambedkar : The provision in the Bill is that there are laws already existing on any subject. The laws are already existing in certain Provinces.

Mr. Deputy Speaker : Is it not for the Parliament to choose which law is to be applied ?

Dr. Ambedkar : If Parliament wants it can do it but Parliament entrusts the power to the executive, which has to choose from the existing laws.

Shri T. T. Krishnamachari : The Committee on Ministers' Powers which was constituted by the House of commons to go into this particularly vexed question, what was called Star Chamber Legislation, in the thirties, indicated that it would be preferable for the Government of the day to give an outline as to how far they are going to use the delegated power and that is why we are following so far as ordinary legislation

is concerned the practice of saying that without prejudice to the generality of the foregoing powers such and such shall be rule-making power of the Government. Therefore, there has been no express limitation to the extent and scope of delegated legislation in any legislature in the world so far as is known.

Mr. Deputy Speaker : They have not even indicated the subjects here.

Pandit M. B. Bhargava : The Law Minister was pleased to remark that before the judgment of the Federal Court there was no decision laying down anything contrary to the practice prevalent. I would like to point out that the judgment of their Lordships of the Federal Court is itself based upon the Privy Council decision reported in 1945 Federal Law Journal, page 1. It is on the basis of that authority that the Federal Court has laid down the proposition.

I would also like to know whether the matter is before the Supreme Court and whether a decision of the Federal Court does not bind this Government until and unless it has been superseded or set aside by the Supreme Court.

Mr. Deputy Speaker : Is there an appeal from the Federal Court to the Supreme Court ?

Dr. Ambedkar : No. The Federal Court has ceased to exist.

Babu Ramnarayan Singh (Bihar): Could the Hon. Minister cite the article of the Constitution in this regard ?

Dr. Ambedkar : The Parliament has plenary powers. It can do anything with the legislative power that it possesses. It can use it itself or ask someone else to use it on its behalf in certain circumstances. There is no prohibition imposed on it.

Shri Hossain Imam (Bihar): I should like to have some light thrown on the fact that this is not a peculiar situation that has arisen just now. The Chief Commissioners' Provinces are administered by the Centre. We can extend the power of the Chief Commissioner by notification as was the practice in the past or it can be done by means of legislation as may be done now. But the question is who is to be empowered ?

Are we going to empower the executive, judiciary or the Central Government? The power should not be distributed between all the three. Sub-clause (3) of clause 3 says:

“For the purpose of facilitating the application in the said States of any such Act or Ordinance as aforesaid, any court or other authority may construe the Act or Ordinance with such alteration not affecting the substance as may be necessary or proper to adapt it to the matter before the court or other authority.”

It shows that we have not made up our mind as to who is to have these powers. I can understand the Central Government being empowered during the interim period. Who is the authority

Dr. Ambedkar : Any authority. It is an adaptation: it is not adoption. We have passed so many adaptation laws in this House.

Shri Hossain Imam : This adaptation is done by the Central authority or the Legislature. Here the adaptation is left free to an unspecified number of people. The authority is nowhere defined in this legislation—whether it means the Chief Commissioner or the Chief Secretary

Dr. Ambedkar : Whoever will have to administer the law will have to adapt it.

Shri Hossain Imam : We are doing something to which we have not given proper consideration. The Bill has been introduced late in the session. It would be far better if the Government withdrew the Bill now and have some kind of Ordinance after the session has ended, if they want to have something of this kind. Otherwise a well considered law should be brought forward in which every kind of power should be given. It would be better to have an Ordinance rather than a Bill of this nature, where there are loose ends. I would, therefore, request the Hon. Minister to reconsider the matter.

Dr. Ambedkar : In view of the fact that my hon. Friend
5-00 p.m. is prepared to permit Government to enact this measure in the form of an Ordinance, obviously, it means that he cannot have much objection to the merits of the thing. Otherwise, I do not see what objection he has for enacting this measure.

Shri Hossain Imam : I was only suggesting. This Ordinance can last until six weeks

Dr. Ambedkar : From the commencement of Parliament.

Shri Kamath (Madhya Pradesh): Six weeks after the commencement of the next session of Parliament.

Dr. Ambedkar : We do not know what will happen. I cannot say when Parliament will be called. We do not want to be left in the lurch after having made an Ordinance.

Shri Kamath : How can that be ?

Dr. Ambedkar : This suggestion is a very impracticable suggestion.

Besides, so far as this aspect is concerned, as I have said, we have got a precedent. We have got a similar law with regard to Delhi. We have got a similar law with regard to Ajmer-Merwara, the Ajmer-Merwara Extension Act of 1947. If these two Acts are not so bad as my friend tries to depict them, I cannot understand why there should be any objection to this measure. It may be, if there was time, I could suggest to the House that at a later stage the House may consider the procedure which has been recently adopted in the House of Commons which consists of having a Standing Committee of the House to examine such delegated legislation and to bring to the notice of Parliament whether the delegated legislation has either exceeded the original intention of Parliament or has departed from it or has affected any fundamental principle. This is a matter which we may take up independently. I cannot understand how now after long practice, anybody can object to what is called delegated legislation.

Mr. Deputy Speaker : The question is :

“That the Bill to provide for the extension of laws to certain Part C States, be taken into consideration.”

The motion was adopted.

Shri Hossain Imam : May I ask the Hon. Minister to explain why—he has not explained in the Statement of Objects and Reasons—the age of consent has been reduced ?

Mr. Deputy Speaker : He has already stated.

Dr. Ambedkar : The changes with regard to Manipur have been made as a result of a conference which was held between the representatives of the Home Department and the Chief Commissioner in Manipur. It was he who suggested that these changes must be made if the Central legislation is to be extended.

Mr. Deputy Speaker : It is a little premature to apply this section to these areas.

Shri Hossain Imam : The age of consent has been reduced.

Mr. Deputy Speaker : Possibly it goes back to the age of consent under the old law, and all these reforms are not sought to be extended to that area.

Clauses 1 to 4 were added to the Bill.

The Schedule 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. Deputy Speaker : Motion moved.

“That the Bill be passed.”

Prof. Ranga (Madras): I am glad that the Hon. Minister has given us this information that in Parliament they have thought of the device of establishing a Standing Committee to study these things as and when they come up before them and advise Parliament, as a sort of a watchdog on behalf of Parliament. Unfortunately, the Hon. Minister has not given us any assurance that similar efforts would be made in this House. I do request him to take steps at the earliest possible opportunity to see that this Standing Committee does come to be established by our Government.

Dr Ambedkar : I will bear that in mind.

Mr. Deputy Speaker : The question is:

“That the Bill be passed”