SECTION III

1st August 1950

TO

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SECTION III

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(17)

* DENTISTS (AMENDMENT) BILL.

The Minister of Law (Dr. Ambedkar): If the Hon. the Health Minister is ill, I am asked to take charge of this Bill and I, therefore, beg to move:

> "That the Bill to amend the Dentists Act, 1948, be taken into consideration."

The Bill is a very short one and it does not involve any controversial matters. The Dentists Act of 1948 came into force on the 29th of March 1948. It was made applicable to Part A, Part C and Part D States. Under Section 49 of that Act, it is provided that no person shall be entitled to practise dentistry after the 28th March 1950 unless his name appears on a register of dentists which the Act required should be prepared in accordance with the rules contained therein. It was hoped that that register would be ready by the 28th of March 1950. Consequently, the operative portions of this Act were so framed to come into operation on the 28th March 1950. Unfortunately, this expectation has not been fulfilled. It was roported from various States that the register would not be ready by the 28th March 1950 and consequently it became necessary to extend the period by one year in order to enable the States concerned to prepare the register. As the Parliament was not then sitting, Government issued an Ordinance giving effect to the necessary provision extending the period up to the 28th March 1951. This Bill is intended to convert the Ordinance into law. The main provision therefore, is to extend the period for the purpose of preparing the register.

Advantage has been taken of the present occasion to amend the law in order to remove some of the difficulties which have been felt in giving effect to the original Act. Firstly, the

* P. D. Vol. 4, Part II, 11th August 1950, pp. 841-43

original Act contained two provisions. One provision was not to allow any person who was not placed on the register to be employed in Government hospitals. Obviously, it was expected that this provision would become operative after the registers were ready. As the registers are not ready, persons who have not been placed on the register by reason—not of their not being qualified, but of the register not being ready—would become disabled from holding any office in Government hospitals. Therefore, it has become necessary to extend the period and permit such persons to hold office notwithstanding the fact that they are not placed on the register.

Secondly, there is a Dental School in Bengal which used to grant Diplomas in Dentistry. At the time when the Act was passed there was a controversy as to whether the diplomas granted by this Dental School of Bengal should be recognised to enable persons holding the diploma to be placed on the register. It was felt that the diplomas granted by the Dental School of Bengal were not sufficiently qualified to place them on the register. There has been considerable agitation by persons holding the diploma granted by the Dental School of Bengal that this disability should be removed. A compromise has been suggested by the Government of West Bengal according to which persons who have received their diploma before the year 1940, subject to certain conditions, may be treated as persons qualified to be entered upon the register. That compromise is also given a place in this Bill.

The Bill, therefore, contains three provisions : (1) to extend the period (2) to permit names of persons holding diplomas of the Dental School of Bengal in certain circumstances to be place on the Register and (3) to continue the employment of unregistered dentists in the Government hospitals till 1951 until the register is prepared.

This is all that the Bill contains and I hope that the House will not find any difficulty in giving its assent to the Bill

Mr. Speaker : Motion moved :

> "That the Bill to amend the Dentists Act, 1948, be taken into consideration."

Shri Sidhva (Madhya Pradesh)**:** First of all I take strong exception to the issue of an ordinance when the House was sitting in the month of March.

Dr. Ambedkar: The ordinance was issued some time in May.

Clause 2

* **Dr. Ambedkar:** I wish that the points that were raised by my hon. Friend Mr. Sidhva and Pandit Thakur Das Bhargava had been reserved by them to the time when their amendments were taken up. It becomes somewhat embarrassing to reply on matters which would, I have no doubt, be raised again when their amendments are moved. But, I cannot help now having to reply to the points raised by them; I shall do so rather briefly, because I know I shall have to say ....

Mr. Speaker: I do not propose to allow any arguments on the amendments.

Pandit Thakur Das Bhargava : I am not going to move my amendment if my hon. friend does not accept it.

Dr. Ambedkar : Mr Sidhva has raised one or two points. The last point raised was why an Ordinance was made when the House was in session. The answer to that is two fold. The first is this. The first request that was made to the Government of India in the matter of extension of time for the preparation of the register came from the Government of Madras, and that too on or above the 15th of March 1950. That means that only 13 days had been left for the period for the preparation of the roll to expire. That is one reason. The second reason is that after the receipt of this letter from the Government of Madras, informing the Government of India that it was not possible for them to complete the Register, naturally it was necessary for the Government of India to find out from other States as to whether they were in a position to prepare their list by the date fixed, or whether they too wanted some extension. Naturally, there ensued

* P. D. Vol. 4, Part II, 11th August 1950, pp. 856-62.

correspondence between the Government of India and the various other States.

They undoubtedly took time, and must make time, with the result that by the time the Government of India had received the replies and was able to assess whether an amendment in terms proposed by the Government of Madras was necessary, Parliament had been prorogued. That is the reason why the measure could not be brought up before the recess.

The second point raised by my friend Mr. Sidhva was this that he did not see any reason why we should make a statutory provision for the recognition of certain qualifications granted by the Bengal Dental School. According to him that was a matter which by the Act is left to the Dental Council. Now, I think my friend Mr. Sidhva has missed one important point and it is this. The power to grant recognition vested in the Council relates to qualifications or degrees granted by schools in existence; but we are dealing with a matter in which degrees and diplomas have been granted by a body which has become defunct. Consequently, it is for the Government of the day to decide whether the degrees granted by a school giving tuition in dentistry were worthwhile recognition or not. It is not a matter which should be left to the Bengal Council under Section 10, sub-clause (2). The word is "grants" which means "is granting at present" and not diploma which have been granted before. That being so it cannot be a matter which could be left easily to be dealt with by the Dental Council under its power, and if we have to amend the Schedule, then that must be done by the law itself. That is why a legal provision is made in the Bill to cover that particular matter.

Now, what I have said with regard to the Bengal Dental School also applies to what my friend Pandit Thakurdas Bhargava said on the very same question.

I come now to the points raised by Mr. Kamath. The first point raised by him was more or less of a technical character. If I understood him correctly, he said that the law required that the Register should be ready on the 28th March, 1950, and that if a person was not on the Register, then under the

provisions of Sections 46 and 49, he incurs certain penalties, while the Ordinance which exempted the person concerned from these penalties came into operation on the 29th May 1950. There is, therefore, a two months' period in which a person not being on the Register and continuing to practise or holding office was liable to certain penalties. What is the position with regard to these persons ? I think my friend Mr. Kamath, if he had read clearly the terms of the amendment proposed in the bill itself, he would have seen that the provisions say that:

> "In sub-section (3) of section 46 and sub-section (1) of section 49 of the said Act, for the words 'two years' the words 'three years' shall be substituted and shall be deemed always to have been substituted."

Therefore, it is clear that that point has been adequately covered by the present clause.

Shri Kamath : My point was that if during these two months, from March 29th to May 29, if a dentist had not been registered, then under the Act, and because the Ordinance had not come into force, how could mere executive instruction from the Government prevent a prosecution, or some other penalty being imposed on that dentist ?

Dr. Ambedkar : I quite agree that that could not have prevented prosecution. But fortunately no such case happened and it cannot happen now because the period is carried back to the original Act.

Shri Kamath : But then, Sir,……..

Mr. Speaker : Order, order. The point is very clear.

Dr. Ambedkar : My friend Mr. Kamath in dealing with the reasons as to why this Bill was brought in, has made, if I may say so, certain very serious allegations. The contention on behalf of the Government is that this Bill has become necessary by reason of the fact that the States which were required to carry out the provisions of preparing the list have not been able to do so. My friend suggests that there is another reason, and that reason is that there are certain British dentists working in this country who do not propose to become domiciled and get themselves registered, and that this Bill

is intended to benefit them. Now, I first of all do not understand how an extension of one year is going to benefit a British dentist working here who has no intention of becoming a domicile of this country. I cannot understand it. But if my friend persists in making that suggestion, which I think is a very setious allegation against an hon. Member of Government, then it should be his duty when that Member returns, to specifically put the question and ask her reply, whether this was the real motive in bringing forward this particular Bill. I am unable to give any categorical answer; but I may say that I find it extremely difficult to believe that an hon. Member of Government should venture to bring forth such a Bill for no other purpose except the paltry purpose of benefiting one or two European dentists now in this country. It seems to me a most extravagant allegation.

Shri Kamath : I did not say it is the only purpose, it may be one of the purposes.

Mr. Speaker: But still, the suggestion is very uncharitable.

Dr. Ambedkar : On that point also I would like to point out to him, in answer to a question that he asked, namely, to state the present position, that all the States, who were written to in order to find out how much time they would find it necessary to prepare the Register, have replied that they would require not less than one year. And the Bombay Government which may be given the credit of having a more efficient administrative machinery than others, insisted that they should have two years. I think that in itself would suffice to dismiss the suggestion made by my friend Mr. Kamath that this Bill was intended to protect some Britishers in this country.

I do not think that there is any point which has been raised to which I have not adverted in the course of my reply. The Bill, as it is, is a very simple, non-controversial one. It has arisen not because of the fault of the Central Government but because of the other burdens carried on by the Provincial Governments, they could not find the time to bring a particular provision of the Act into operation. I do not know whether we can do nothing else except to help the Provincial Governments to give effect to this piece of legislation and bring the Dentists Act into operation as early as possible.

Mr. Speaker : The question is :

"That the Bill to amend the Dentists Act, 1948, be taken into consideration."

The motion was adopted.

Clause 2 was added to the Bill.

Clause 3 *(Amendment of section 46 and section 49, Act XVI of 1948)*

Shri Kamath : I beg to move :

"In clause 3, in the proposed amendment to sub-section (3) of section 46 and sub-section (1) of section 49 of the Dentists Act, 1948, for 'three years', substitute 'two years and six months'."

The present clause has been inserted so as to enable State Governments to complete their registers of dentists under sections 46 and 49 of the Act. This is a retroactive piece of legislation in as much as the words used in the clause are "and shall be deemed always to have been substituted." I for one cannot see why for registering a few hundred dentists such a long period is necessary. I do not know how many dentists there are in all the States .....

Dr. Ambedkar : This is a matter of opinion. My friend Mr. Kamath with his abundant energy and administrative experience no doubt thinks that six months would be more than enough for completing the register. That as I just now told the House, even a Government as efficient as the Government of Bombay asked for two years. I personally myself think that in view of the fact that the obligation of preparing the register rests upon the Provincial Governments, it is desirable that this House should follow what the Provincial Governments think is feasible in this matter. As a matter of fact we have curtailed the period to one year instead of the two years asked for by the Bombay Government. We have stuck to one year, which was the original proposal by the Government of Madras. I do not think it is possible for us with safety to curtail the period provided in this Bill.

Shri Kamath : I take it that the Hon. Minister has no figures with him.

Dr. Ambedkar : No figures.

Mr. Speaker : If the registers are incomplete, how can he give the correct figures ?

Dr. Ambedkar : There is no register and who knows who is a dentist and who not.

Mr. Speaker : The question is :

> "In clause 3, in the proposed amendment to sub-section (3) of section 46 and sub-section (1) of section 49 of the Dentists Act, 1948, for 'three years', substitute 'two years and six months'."

The motion was negatived.

***Dr. Ambedkar :** As my friend Mr. Sidhva, has said this amendment affects an important principle which underlies the provisions of this clause, namely that the registers should be operative on the same date throughout India. This is not a mere matter of academic interest....

Shri Sidhva : Is it laid down in the Act ?

Dr. Ambedkar : That is why we have said three or two years throughout. Otherwise we would have prescribed different dates for different States. It is necessary and desirable to preserve the principle of uniformity. The House will see that it affects eligibility for holding posts. It cannot be said that a person is eligible for holding a post in a particular State and not eligible in another State, simply because the State has not been in a position to prepare the register. Therefore, I think as it is desirable to preserve the principle I cannot accept the amendment of Mr. Sidhva After all the difference is only a matter of six months.

Shri Sidhva : I beg leave to withdraw my amendment.

The amendment was, by leave, withdrawn.

Mr. Speaker : The question is :

> "That clause 3 stand part of the Bill."

The motion was adopted.

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* P. D. Vol. 4, Part II, 11th August 1950, pp. 863-64.

Clause 3 was added to the Bill.

*** Clause 4** (Amendment of the Schedule, Act XVI of 1948)

(Mr. DEPUTY SPEAKER *in the Chair*)

Shri Tyagi (Uttar Pradesh) **:** My amendment reads as follows :

> In clause 4, for the proposed item (2A) of Part I of the Schedule to the Dentists Act, 1948, substitute :
>
> "(2A) Any other institution imparting education or giving practical training in dentistry which the Central Government may in consulation with the Central Council of Dentists, recognise for this purpose and on such conditions as the Government may deem fit to prescribe therefor."

I wish to confess that Dr. Ambedkar is a hard nut to crack ..... I don't want to make any aspersions on the institution. I don't know what its standard is, I have no personal knowledge of it, and therefore I don't want to damage the reputation of the institution. But as an enquiry is going on, I think that instead of committing the whole Parliament to recognising that institution, it is better that the Government had reserved the right in their own hands to decide....

Dr. Ambedkar : We are not affecting the institution in any way. We are dealing with the degrees granted by that institution in 1940—eight years ago.

Shri Tyagi : Dr. Ambedkar expects me to believe that the degrees of an institution may be recognised without the institution itself being recognised. The degrees of the Calcutta University granted in such-and-such a year may be recognised for purposes of the I.C.S. or I.A.S., but that does not mean that the Calcutta University is recognised! What an argument ! Here I am giving him more powers. What I am suggesting is that he may even recognise that institution. I want Government to have powers to recognise any institution .....

Dr. Ambedkar : That powers exist in section 10(2).

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* P. D., Vol. 5, Part II, 11th August 1950, pp. 864-65.

*** Mr. Deputy Speaker :** May I know the reaction of the Hon. Minister to this amendment ?

Dr. Ambedkar : This clause is a clause which really gives effect to the suggestion made by the West Bengal Government. Personally I myself feel, however much sympathy I may have with my friend Mr. Bhargava, it involves the question of the assessment of the qualification of the dentist as distinguished from a person who makes a denture. I thought he was rather eloquent on the man who makes a denture. A person may make a denture without being a dentist. We are talking of a dentist, which is a very different profession.

Pandit Thakur Das Bhargava : But he has got a degree of L.D.Sc.

Dr. Ambedkar : The point is this. When the Act was passed, this institution was not deemed to be worthy of recognition. Subsequently there has been a considerable degree of agitation and the West Bengal Government decided to examine the position as to whether any of the persons qualified by tuition in this college were worthy of recognition. They came to the conclusion that before 1940 the standard observed by this institution was something which could be considered for the purpose of recognition. But there again they said that although there was a standard maintained it was also known that many boys merely attended and filled in certain terms without learning anything. Therefore, the two additional qualifications were introduced that he should not only have obtained his diploma before 1940 but in the course of being a student in that college he should have filled in certain terms. It is to make the qualification a real one, worth of recognition, that these limitation were put in. I am personally prepared to place myself in the hands of the West Bengal Government who know the matter better, rather than substitute my own judgment, however great sympathy I may feel with the dentist themselves.

* P. D., Vol. 5, Part II, 11th August 1950, pp. 867-68.

Mr. Deputy Speaker : Does the hon. Member want me to put his amendment to the House ?

Pandit Thakur Das Bhargava : Yes, Sir, it may be put to the House.

Mr. Deputy Speaker : Amendment moved :

***Dr. Ambedkar :** I explained the position to you some time ago. The provision in Section 10(2) says 'where the institution grants a qualification'—but we are dealing with qualifications that have already been granted. The word there is 'grant', but here it is different. Therefore, this has to be dealt with by statute.

Mr. Deputy Speaker : I shall now put the amendment to vote.

The question is :

"In clause 4, in the proposed item (2A) of Part I of the Schedule to the Dentists Act, 1948 omit all the words occurring after 'March, 1940'."

The motion of Pandit Bhargava was negatived.

Mr. Deputy Speaker : The question is :

"That clause 4 stand part of the Bill".

The motion was adopted.

Clause 4 was added to the Bill.

Clauses 5 to 7 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. Deputy Speaker : The question is :

"That the Bill be passed."

The motion was adopted.

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*P.D., Vol. 5, Part II, 11th August 1950, p. 871.

(18)

RESOLUTION RE : MAKING OF LAWS BY PARLIAMENT WITH RESPECT TO CERTAIN MATTERS IN STATE LIST FOR ONE YEAR.

***Mr. Speaker :** The point, as I have understood it, seems to be–apart from the words 'particularly'—that the President has got the power to make adaptations only with reference to the provisions of the Government of India Act, 1935. Perhaps the Law Minister may like to say something on this.

The Minister of Law (Dr. Ambedkar): The wording of the article is that "the President may, for the purpose of removing any difficulties, particularly etc." "Particularly" does not mean that he has not got the general power.

Mr. Speaker : As I have understood the point of order of the hon. Member, apart from the words "any difficulties" and "Particularly", he seems to construct article 392 as empowering the President to make adaptations only for purposes of transition from the provisions of the Government of India Act to the provisions of the Constitution. That is substantially the point.

Dr. Ambedkar : That cannot be because it is a wrong construction. The point raised by my hon. friend is that under article 392 the only power which the President possesses is confined to an adaptation of any section of the Government of India Act, 1935, so as to bring it in line with the provisions of the Constitution. My submission is that that is not correct, because the opening words in article 392 are quite general, namely. "The President may, for the purpose of removing any difficulties" and then "Particularly etc." comes in.

*P.D., Vol. 5, Part II, 12th August 1950, pp. 935-38.

Suppose you were to drop the words "particularly in relation to the transition from the provision of the Government of India Act, 1935, to the provisions of this Constitution" the wording would, "The President may, for the purpose of removing any difficulties, by order direct.... etc".

Shri Meeran (Madras) **:** May I say something with regard to this point ? If you remove the words "particularly in relation to the transition from the provisions of the Government of India Act, 1935" it would read "The President may, for the purpose of removing any difficulties *to the provisions of this Constitution,* by order direct....etc." "Particularly" is something like an instance and it is a smaller provision. The wider provision is the giving of powers to remove any difficulties to the provisions of this Constitution.

Mr. Speaker : I would just seek clarification on one or two points which may dispose of the matter, without entering into the niceties of interpretation. Am I right in my interpretation that the Constituent Assembly of India (Legislative) was functioning as a result of the Adaptation of the Government of India Act ?

Dr. Amedkar : Yes, the Independence Act was an amendment of the Government of India Act, 1935.

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(19)

*ADMINISTRATION OF EVACUEE PROPERTY (AMENDMENT) BILL

The Minister of Law (Dr. Ambedkar) : At the outset I would like to say that the point which has been raised, namely, whether the Parliament can by law repeal a State law in the concurrent field, seems to me to have been raised at a very late stage. This Parliament has passed, I am sure, very many laws which contain a provision whereby Parliament has specifically repealed a State law in the concurrent field. My friend Mr. Jain referred to one of them, which is the last one which Parliament has passed, namely, the Merged States Act (Act LIX of 1949). If my friends interested in this subject were to refer to the provisions of this particular law, they will find that there are very many laws which fall into the concurrent field and which were enacted by the states which have been repealed by this particular Act. Therefore, so far as practice is concerned, I do not think there is anything novel in the proposal introduced in this Bill. Of course, it might be contended that this practice is not in keeping with the provisions of the Constitution and that it has no warrant in the Constitution. I think that this practice is perfectly in consonance with the Constitution.

My hon. Friend Mr. Ananthasayanam Ayyangar has very rightly referred to the proviso to sub-clause (2). The importance of this proviso, in my judgment, lies in this, namely, that it is possible and open to Parliament to make a law not only amending, varying, or adding to any law made by the State in the concurrent field, but it has also the power to *repeal* that law. I think this is quite clear from the proviso. So far as this proviso is concerned, the power is specific that Parliament can repeal a law made by the State in the concurrent field. But my hon. Friend Mr. Ananthasayanam

*P.D., Vol. 5, Part II, 21st November 1950, pp. 339-41.

Ayyangar's point was that this proviso is related only to sub-clause (2). Now I think that if he will apply his mind to the necessities mentioned in sub-clause (2) he will find why the Constitution thought it enough to attach the proviso to sub clause (2) and did not feel it necessary to extend it to sub-clause (1). As my friends will see, sub-clause (2) of article 254 refers to a law, which—if my friends will allow me-I would call as a 'protected law', that is to say, a law which is not only passed by the State Legislature but a law which was reserved for the consent of the President and to which the President has given his consent. That is the law which is referred to in sub-clause (2). Now, it was felt that it might be argued that in the case of a law which, though passed by a State Legislature relating to the concurrent field, nonetheless was reserved for the consent of the President and to which the President had given his consent—obviously on the advice of the Central Government which represents the wishes of Parliament—the Central Government may be deemed, I am putting the argument, to be 'estopped' from doing any further thing by way of injuring that particular Act either through amendment or otherwise. It was to eliminate this kind of argument that once the law having been protected the Central Government—to use the term in the Evidence Act—was estopped, so to say, from taking any further action that the proviso was introduced. It was felt not necessary to extend this proviso to sub-clause (1) because the expression 'to make a law' is itself so wide that it could cover even the repealing of a law.

What does 'making of a law' mean? The making of a law, in ordinary terms, means: to enact an enactment where none exists; or, where an enactment exists; to add to it, to vary it, to amend it, or to repeal it. All that is covered in the broad parase 'making a law' Therefore, as making a law included making a law repealing an earlier Act or creating another Act, it was felt that such a prevision as contained in the proviso was unnecessary in respect of sub-clause (1) of article 254. Therefore, article 254 carries the general implication involved, in the phrase 'making of the law' which includes repeal of the law. As sub-clause (2) of article 254 was felt not to carry that implication,—because

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of its protected character,—the proviso was added to it. Therefore, my submission is that there is nothing unconstitutional in Parliament making a law repealing a law made by the State Legislature in the concurrent field.

With regard to the other point whether you can make a general omnibus law repealing certain laws, it seems to me that there again there is nothing improper in that. What are we doing by having this omnibus law? What we could have done was to have hundreds of Acts, each one dealing with a specific law, saying that we repeal this Act; another Act saying that we repeal that; and a third Act saying that we repeal a third one. Instead of doing this kind of thing, we did it in a collective manner.

Shri M.A. Ayyangar : You could have added a schedule here.

Dr. Ambedkar : That also might have been done. There are various ways of doing it. I do not deny that some ways, in some cases, may be better than others, but so far as the general principle involved in the Bill is concerned, I do not think that there is anything unconstitutional or contrary to the practice of the Draftsman. My friends will see that I have, for instance, introduced a Bill called the 'Part B states Bill' in the present session, to which there is a schedule attached. Every one of the Acts is mentioned there. The reason is, as I will explain when the matter comes up, that certain laws could not be applied without certain adaptation. Therefore, a schedule had to be introduced that this law shall become operative subject to this adaptation. There are certain others such as Cooch-Behar where no such schedule exists, because adaptation requirements are not necessary. That might come up today or tomorrow. We, therefore, have a general clause and I do not think that there is anything unconstitutional or improper in the sub-section which is contained in my hon. Friend's Bill.

***Mr. Speaker :** As I said I was not present in the House yestarday, but I have read the proceedings..... Does the Hon. the Law Minister wish to say anything further? I do not think it is necessary now.

Dr. Ambedkar : I have already made the position clear, Sir.

Mr. Speaker : Then I will put the amendment to the House.

The question is :

> "In clause 2 in sub-section (2) of the proposed section 58 of the Administration of Evacuee Property Act, 1950, for the words "corresponding: to this Act", substitute the words, brackets and figures "which corresponds to this Act and which is not repealed by subsection (1)".

The motion was adopted.

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*P.D., Vol. 6, Part II, 21st November 1950, pp. 342.43.