

far as the powers given in clause 19 are concerned, the wording is, "prescribe the power, duties and functions of the registering authority and the local limits of their jurisdiction." If a rule can be made that it will be the duty of the registering authority to look into the structure of the ship also, then I think this lacuna may be covered. But I leave that to the House to decide. If the hon. Minister wants to change the wording. I will certainly permit an amendment at this stage.

Shri S. C. Samanta (West Bengal): May I suggest that we say, "mechanically or otherwise defective"?

Shri Santhanam: You are making it more vague.

Pandit Munishwar Datt Upadhyay (Uttar Pradesh): If the word "mechanical" is dropped and only "defective" remains, then all sorts of defects can be covered by the rules.

The Minister of Law (Dr. Ambedkar): May I say a word as it strikes me? I have not seen the Bill and therefore I am speaking from such impression as I have formed. The main object of the Bill is to secure safety. Now, safety depends, so far as I understand it, upon the mechanical structure of the ship and not upon structure in the sense of its shape or size. Therefore a distinction, I think requires to be made between the two, the structural defect which has nothing to do with the ship, and the mechanical defect which has something, in fact greatly, to do with the safety of the ship. The object of the Bill is to secure safety and therefore emphasis must necessarily be laid upon the mechanical side of the ship and not so much upon the structural side. A man may have, for instance, an oblong ship; a ship may be something whose bottom may be very different from the others.

Shri Sidhva: That is a defect.

Dr. Ambedkar: What I want to know is, what is a structural defect? One man may say, "From my point of view it is a structural defect. It ought to have been in some other shape." Another man may say, "It ought to be of some other shape." The submission I am going to make is this, that the Bill aims at securing the safety of the passengers; the safety of the passengers essentially, mainly, fundamentally depends

upon the mechanism of the ship, and therefore what is necessary in the matter of giving a certificate by the surveyor is that he should see whether there is any mechanical defect. That is my submission.

Shri Venkataaraman: May I ask the Law Minister.....

Dr. Ambedkar: This is no question of law. I am only speaking as one of the Members of the House.

Shri Hussain Imam: Sometimes structural defects may endanger the safety of passengers. For instance, the railings on the deck may be so low that passengers may fall into the water. Again, if the blades are not properly screened passengers may fall on them and get crushed. Similarly, if the engine room is not properly protected you may have accidents. The word “structural” does not imply any defect in size and shape but should be included for the same purpose on which the Law Minister insists, namely, that it is the safety of passengers that we look to. We must trust our authority to so interpret the statute as not to make it inoperative. I consider “structural” is very essential.

Shri Sidhva: My friend Mr. Santhanam said that though my wording did cover the intention still there is vagueness in it, and my Hon. friend Dr. Ambedkar has stated that what we aim at is the safety of passengers. I am also for safety, but he has mixed up shape with safety. My hon. friend. Mr. Hussain Imam has come out with the correct instances. I can tell Mr. Santhanam that some of these shipowners deliberately put the railings very low and as a result many accidents have occurred.

An hon. Member: Why put it “deliberately” low?

Shri Sidhva: Because it cuts down the costs. The deck Passengers Committee has made structures on this practice. There are many other structural points, for instance, use of bad wood in construction. Those who have experience in this field have spoken in favour of my suggestion. Unfortunately, my friend Dr. Ambedkar.....

Dr. Ambedkar: I have travelled very much.....

(29)

SUPREME COURT ADVOCATES
(PRACTICE IN HIGH COURTS) BILL

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

“That the Bill to authorise advocates of the Supreme Court to practise as of right in any High Court, be taken into consideration.”

The Bill is a very simple Bill. The House will realise that we have now in India two different courts—the High Courts and the Supreme Court. The High Courts and the Supreme Court have independent jurisdictions in the matter of enrolling persons who as of right may practise before them. The High courts have their own rules for enrolment—of persons appearing in their courts. The Supreme Court has recently made its rules which are published in the Gazette according to which it is said that a person shall not be entitled to be enrolled as an advocate unless he possesses :

(1) (a) a degree in law of an Indian University, or

(b) is a member of the English Bar,

(2) has been for not less than ten years in the case of a senior advocate or seven years in the case of any other advocate, enrolled as an advocate in a High Court or a Judicial Commissioner's court in the territory of India.

We have, therefore, to-day two different sets of lawyers—one who are enrolled on the roll of the Supreme Court and another set who are enrolled on the roll of the High Courts. But the difficulty is this that those who are enrolled on the roll of the Supreme Court are not entitled to practise in the High Courts unless they are also enrolled on the various High Courts. It is felt that this causes a great deal of difficulty for clients. Let me illustrate the difficulty by a simple example. There is an appeal which comes, say for instance, from the

* P. D., Vol 10, Part II, 20th April 1951, pp. 7120-25.

Madras High Court to the Supreme Court. The client instead of employing a Madras advocate wishes to employ an advocate from U.P. which he is perfectly entitled to do provided of course that the U. P. counsel is enrolled in the Supreme Court. It may however, happen that the matter is not finally disposed of by the Supreme Court and the Supreme Court sends the case back to the original High Court from which it came up, for further evidence, or for the trial of some issues or for taking evidence or something like that. Now, the U. P. lawyer, who was originally engaged in the Supreme Court in the matter which came from Madras, while he can appear in the Supreme Court and conduct the case, argue the case and so on, he cannot be engaged when the case is remitted back to the High Court of Madras, as he is not an advocate of Madras, he is an advocate of U. P. Now this difficulty, it is felt, must be resolved, because it is in the interest of justice not merely in the interest of the client that a lawyer who has spent a large part of his time and energy in studying the case and understanding it should also be in a position to deal with it when it is remitted back to the original court.

Well, this difficulty could be solved in two different ways. One way to solve it would be to say that any particular lawyer who has been engaged in a particular case, when that case goes back, that particular lawyer would be entitled to appear in that case. The other is to have a general rule saying that all lawyers and advocates who have been enrolled by the Supreme court shall as of right be entitled to practise in any court. The original idea on which we were proceeding was the limited one. But subsequently on further consideration it was felt that it would be desirable to have a general rule permitting all advocates who are enrolled in the Supreme Court as of right to practise before any High Court, without any further procedure to be undergone. That is what this bill proposes to do. This as I said, is the general principle which the Bill embodies. To this principle, the Bill attaches two exceptions. One exception is this. A lawyer who is enrolled in the Supreme Court shall not automatically be entitled to practise in a High Court on the original side. He may practice on the appellate side without any further enrolment but not on the original

side. The second exception proposed to be made is with regard to a lawyer who was an ex-judge and has been enrolled, because before the Constitution came into existence there was no rule prohibiting judges, after retirement, from practice. They were free to practise and there are many cases where judges have been enrolled in the Supreme Court and are allowed to practise, but there are cases where persons, who, before the Constitution, were appointed to the High Courts and were required to give an undertaking that they would not practice in that particular High Court. Our exception says that if there is any advocate of the Supreme Court, who was an ex-judge of a High court and had given an undertaking not to practise in a particular High Court (which must be the High Court of his own province) then he shall not practise notwithstanding the provision contained in this Bill. These are the simple provisions of the Bill.

Shri C. Subramaniam (Madras): What is the reason for the first exception?

Dr. Ambedkar: The reason is this. Under the Bar Councils Act a special provision exists. I believe there are only now three courts which have got original jurisdiction. All other High Courts are only appellate High Courts and they have no original jurisdiction but they have been invested with special powers to make rules for the enrolment of persons on the original side. As it is not proposed to amend the Bar Councils Act, it is felt desirable to keep that provision intact. That cannot cause much difficulty, because after all when the matter is remitted back by the Supreme Court to the High Court it will in all probability and in most cases be dealt with by the appellate side of the High Court.

Shri S. N. Sinha (Bihar): Some of the High Courts have got original jurisdiction in cases like probate and company law. Even in these cases are you going to prohibit?

Dr. Ambedkar: Leave something for the local lawyers.

Mr. Chairman : Motion moved

“That the Bill to authorise advocates of the Supreme Court to practise as of right in any High Court, be taken into consideration.”

Shri Venkataraman (Madras): This Bill in so far as it tries to unify the bar of this country is most welcome. Not only after the establishment of the Supreme Court but even earlier, immediately after the establishment of the Federal Court, the lawyers' conference held in Madras year after year suggested by passing resolutions that the Bar in India should be unified and there should be an All-India Bar Council and the enrolment of and disciplinary jurisdiction over all these Lawyers should be brought under one central control, namely, the All-India Bar Council. Though this bill does not go so far as that, it certainly makes a beginning in that it says that the advocates who are enrolled in the Supreme Court will be entitled to practice in the High Courts notwithstanding the fact that they have not been enrolled in such High Courts themselves. The Minister unfortunately stopped short of the very ideal which he set before himself. He said that it was his intention that the advocate who is enrolled as a member of the Supreme Court Bar should be enabled to go and appear in the province from which the case emanated even though he was not enrolled as an advocate of that court. If you merely substitute for the word "Madras" in the instance which the Hon. Minister gave by the word "Bombay" and then apply all the process step by step, which he took us through, you will find that the object, when he says is embodied in this Bill, is not carried out. I will repeat the instance myself.

Suppose a case emanates from Bombay and if chances that an advocate from Madras is engaged to appear before the Supreme Court on an appeal. It is possible for the Supreme Court to remit the case not only to the appellate side of the High Court but even send it back for a finding to the original side of that court. That advocate who studied and prepared the case and spent a lot of time over it—the client too must have spent a lot of money, as the Minister said, in briefing and instructing that particular advocate—would be prevented from appearing on the original side, just because the exception has been introduced in the Bill. Let me look at the rationale of the exception introduced...

Dr. Ambedkar: There is no iogic in it I confess.

Shri Venkataraman : He has aken the argument out of my mouth.

Dr. Ambedkar: I do not accept logic ; I accept expediency.

Shri Venkataraman : 'So I shall proceed on the basis that there is no logic.....

Mr. Chairman : May I ask the hon. Minister if a question of fundamental rights under article 22 is not involved in this?

Dr. Ambedkar: We have just now heard from several Judges that they are prepared to make classifications.

Shri Venkataraman : Article 22 of the Constitution gives the right to legal practitioners to appear in all courts. This Act will certainly be challenged by some enterprising lawyer some day and there is no doubt about it.

Apart from that I want to bring to the attention of the Hon. Minister that he will lose nothing by deleting part (a) of the proviso to clause 2. I understand that in Bombay also they have abolished the distinction between the advocates of the original side and the advocates of the appellate side.....

Dr. Ambedkar: They allow them to go from one side to the other after a certain period.

Shri Venkataraman: The practice which was hitherto prevailing of practitioners on the appellate side not being entitled to appear in cases on the original side has gone and today the preactitioners on the appellate side can still appear on the original side as in the Madras High Court. So far as the Madras high Court is concerned there is no distinction between a practitioner on the appellate side and a practitioner on the original side. An advocate of the Madras High Court can appear on both the appellate and original sides.....

Dr. Ambedkar: They go without shoes also.

Shri Venkataraman: There are customs and customs. I can see quite a few of people here which would be appalling to my countrymen.

We are not concerned with footwear here but with the legal rights of the practitioners. A practitioner of the Bombay High

Court is also placed on the same footing. The difference between the Bombay and Madras High Courts consists in this : whereas in the High Court of Madras there is no dual system, an advocate need not necessarily be instructed by an attorney or solicitor for appearing on the original side, in the appellate side they have got that system in which the practitioner on the original side must be instructed by a solicitor or an attorney. I can understand solicitors and attorneys insisting on their privileges being preserved for them. So far as their rights are concerned, let them be preserved. Let any practitioner appear but let him be instructed or briefed by an attorney or solicitor. If that is the object it can very well be preserved and achieved by deleting the words “ to plead ”. Any practitioner of the Supreme Court can be prevented from going before the High Court of Bombay or any other High Court on the original side. This Bill as stands with part (a) of the proviso will make it impossible for a practitioner of the Supreme Court to appear on the original side notwithstanding the fact that he had appeared in that particular case itself before the Supreme Court and the case had been remitted to the original side of that court.

An Hon. Member : Let him continue tomorrow. It is five o'clock.

The House then adjourned till a Quarter to Eleven of the Clock on Friday, the 20th April, 1951.

* SUPREME COURT ADVOCATES
(PRACTICE IN HIGH COURTS) BILL—*concl'd.*

Mr. Speaker: We will now proceed to legislative business, namely: The further consideration of the motion moved by Dr. Ambedkar yesterday:

“That the Bill to authorise advocates of the Supreme Court to practise as of right in any High Court, be taken into consideration.”

Shri Venkataraman (Madras): Yesterday, I was submitting that this Bill is a welcome measure, but that the

* P. D., Vol. 10, Part II, 20th April 1951, pp. 7129-34.

proviso militates against the very object of the Bill. I was trying to show how.....

The Minister of Law (Dr. Ambedkar): To cut short the proceedings, I may say I am prepared to accept the amendment, subject of course, to other understandings.

Shri Venkataraman: I am very grateful to the hon. Law Minister for accepting the suggestion and so I whole-heartedly support the Bill without clause (a) in the proviso.

Pandit Thakur Das Bhargava (Punjab): I rise to support the Bill.....

.....With regard to proviso (b) I have a point to submit. Proviso (b) is to the effect:

“(b) to practise in a High Court of which he was at any time a Judge, if he had given an undertaking not to practise therein after ceasing to hold office as such Judge.”

I submit that the prohibition to practise in the High Court by a man who is an ex-Judge of that High Court should not depend on any undertaking. Public policy requires that an ex-Judge of a high Court should not practise in that Court, but the proviso makes it conditional upon an undertaking having been given. There are many High Courts where no undertakings have been taken. Therefore, if ex-Judges are to be prohibited from practising in the particular Court, it should be independent of any undertaking given. There is an Article in the Constitution prohibiting all ex-Judges from practising in any Court—not merely in the Court where he was a Judge but in all other Courts. I submit proviso (b) militates against that. This proviso would allow an ex-Judge to practise in a High Court if he has not given an undertaking. The Constitution, however, says that all ex-Judges are prohibited from practising in any High Court.

Dr. Tek Chand (Punjab): Judges appointed after the coming into force of the Constitution.

Dr. Ambedkar: Yes, that is the rule.

*** Mr. Chairman:** The question of amendments will come later. Perhaps it may be that after the Hon. the Law Minister has given his reply many of the doubts of the hon. members may be cleared up. Then we can think of the amendments.

Dr. Ambedkar: Most of the questions that have been raised in the course of speeches delivered by hon. Members have very little to do with the merits of the Bill. They deal with a subject which is more relevant to the unification of the Bar. As I said yesterday, this Bill primarily does not aim at the unification of the Bar. The aim of the Bill is a very limited one and is to remove the difficulties that are caused by enrolment of advocates by the High Court and by the Supreme Court in their independent jurisdiction. Clients have suffered on account of the fact that lawyers whom they engage in the Supreme Court are not permitted to appear in a High Court when the same matter is remitted by the Supreme Court to the High Court. That is the limited purpose of this Bill. But in view of the general desire that while achieving this limited purpose something might be done in the direction of unifying the Bar, I have accepted two proposals which really are outside the immediate object of the Bill.

One is to permit all lawyers who are enrolled in the Supreme Court to practise in all the high Courts which of course means right to practise in all courts subordinate to the -different High Courts.

The second point which I have accepted is to remove the restrictions originally placed in the Bill that the right to practise which is being given by this Bill to advocates enrolled on the Supreme Court shall be confined only to the appellate side. The clause is being deleted.

I have listened to the various speeches and all that I can say is that I realise the difficulties and I have a great deal of sympathy with the point of view that has been expressed by the various Members. When there is an opportunity and time the Government of India will no doubt consider this matter and bring forth a comprehensive measure which would

* P. D., Vol. 10, Part II, 20th April 1951, pp. 7140-42.

bring about the unification of the Bar in India which is a subject at the heart of many Members here. I will, therefore, not go into that aspect of the question.

Then there remains only one question which was raised by my friend Pandit Thakurdas Bhargava which also, I think, is quite outside the merits of the Bill. There is no doubt about it that anything that we do here in Parliament must always be subject to the provisions of the Constitution. If article 22 of the Constitution permits a legal practitioner to be engaged by an accused person to defend himself and if by the rules of enrolment enforced either by the High Court or by the Supreme Court a certain person does not become a legal practitioner within the meaning of the Constitution, in my mind there can be no doubt that the rules made by the High Court or by the Supreme Court would be at variance with the Article of the Constitution and the Constitution would prevail. At this moment all I would like to say is that I am not quite certain in my mind in what sense the term 'legal practitioner' is used in the Constitution. Whether it is used in the general popular sense that anybody who can go to a court of law and appear in any matter is a legal practitioner, or whether the Constitution uses the term in the technical sense that a legal practitioner means a person defined to be a legal practitioner either in the Legal Practitioners Act or in the rules made by the High Court or the Supreme Court, is a matter on which I do not propose to express any opinion. My friend Pandit Thakur Das will also realise that even the Legal Practitioners Act does not give the general right to practise to all those who are defined as legal practitioners. There are fields which are earmarked or rather which are limited to certain classes. For instance the pleaders and the *mukhtiar*s are no doubt legal practitioners within the meaning of the Act, but as he knows they have no general right to practise, nor is their right to practise a permanent one. Their certificates are annual certificates and when these certificates are exhausted they cease to be legal practitioners. All these things to my mind are quite irrelevant for the purposes of the Bill and they will no doubt take care of themselves when the matter is raised before a court of law. I do not think there is any other thing that calls for any explanation.

Mr. Chairman : The question is:

“ That the bill to authorise advocates of the Supreme Court to practise as of right in any High Court be taken into consideration.”

The motion was adopted.

Clause 2.—(*Right to practise in any High Court*)

Mr. Chairman: May I know whether the Hon Minister, is accepting any of the amendments?

Dr. Ambedkar: I am not accepting any amendment except No. 7 by Shri Ahmed Meeran to delete part (a) of the Proviso. But of course my friend will realise that some little redrafting will be necessary because if (a) goes (b) will have to be renumbered.

* **Mr. Chairman :** I think the Hon. Minister wishes to reply so far as this part of the question is concerned.

Dr. Ambedkar: My hon. Friend has really explained the position and I do not think I have very much to add : but to make it simpler than he has done, the position is this. Article 220 of the Constitution applies to future Judges who have taken the position of High Court Judges after the commencement of the Constitution. Their going to practise either before the Supreme Court or before any Court, whether a High Court or subordinate court, cannot arise at all.

Dr. Tek Chand: In India.

Dr. Ambedkar: Yes, in India. Because, article 220 specifically says so. We are really dealing with the case of High Court Judges who were Judges before the Constitution came into existence. As my hon. friend pointed out, those Judges of the High Court before the commencement of the Constitution may be divided for the purpose of argument, into two classes: those who had given an undertaking that they will not practise in their Court and those who had not given an underaking. All that this proviso seeks to do is to bind down those High

* P. D., Vol. 10, Part II, 20th April 1951, pp. 7147-49.

Court Judges who had already given an undertaking. That is the simple position. Of course, it would be perfectly possible for this House to widen the scope of the proviso and to say that no High Court Judge even though he may not have given an undertaking should be permitted to practise; that is within the power of the legislature. But, the point is this. Those people accepted the positions on the definite understanding that they will be permitted to practise after their retirement and it would be wrong and unfair now for us to make a retrospective piece of legislation and say that even though they did not give an undertaking, they will still be bound down to this new rule, namely, that they shall not practise. That is why sub-clause (b) is so restricted and is made applicable only to those who have given an undertaking. Therefore, it creates no kind of injustice.

Shri Naziruddin Ahmed: May I point out that the proviso (b) is not confined to those Judges who were Judges before the Constitution? The proviso says “to practise in a High Court of which he was at any time a Judge....., and not before the Constitution.

Dr. Ambedkar: The point is, the other question does not arise because it has been dealt with categorically by the constitution.

Shri Naziruddin Ahmed: That is what I say.

Dr. Ambedkar: Why do you want to do something that the Constitution has done? There is no question of undertaking as such. That matter has been finally settled by the Constitution both in the case of the Judges of the Supreme Court and in the case of the Judges of the High Courts. We are dealing with a pass which was uncovered by law and was regulated only by promises, conventions and undertakings.

Mr. Chairman : Would the Hon. Minister clarify one point more? Were those Judges who wanted to get their right of practice after the Constitution was passed, given an option to resign and cease to be Judges?

Dr. Ambedkar: They knew the position and some of them, when the Constitution was on the anvil.—I know two or three

gentlement—resigned, because they would not accept that position. Everybody knows that.

Shri J. R. Kapoor: May I say for the information of the House that Judges were given the option to resign and there have been some cases of resignation. There was one in Allahabad. One of the Judges of the Allahabad High Court resigned merely because of this new article.

Mr. Chairman: There was one in Calcutta High Court also.

Dr. Ambedkar: For the information of the House. I might mention that every Judge of a High Court now who has retired has given an undertaking not to practise. There are only two gentlemen, fortunately they are alive, who have not given that undertaking (*An hon. Member:* One is here) The scope of what was called a trouble is so limited.

Mr. Chairman: Mr. Meeran may move the amendment.

Dr. Ambedkar: That has already been moved.

Shri Venkataraman: I only spoke on it in the general discussion.

Mr. Chairman : May I know whether hon. Members agree that this bill could be put through in five minutes?

Several Hon. Members: Yes.

Shri J. R. Kapoor: I would like to have a couple of minutes while clause 1 is taken up, because I have strong feelings on the subject.

Mr. Chairman: The House will stand adjourned to 2-35 P.M.

The House then adjourned for Lunch till thirty-five Minutes Past two of the Clock.

The House reassembled after lunch at Thirty Five Minutes passed two of the Clock.

(PANDIT THAKUR DAS BHARGAVA IN THE CHAIR).

***Mr. Chairman:** And so only two amendments have been moved. I shall now put them to vote.

Shri Meeran : And No. 7 may be put before No. 6.

Shri Kapoor: With your permission, and if the Law Minister agrees, may I suggest that the “explanation” may be deleted ?

Dr. Ambedkar: No, the explanation is necessary. I will explain why it is necessary later, when Mr. Kapoor moves his amendment to another Bill.

Clause 2 as amended was added to the Bill.

****Mr. Chairman:** Does the hon. Minister want to reply ?

Dr. Ambedkar: A reply is unnecessary.

Mr. Chairman : The question is:

“ That clause 1 stand part of the Bill. ”

The motion was adopted.

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, as amended, be passed.”

The motion was adopted.

(30)

***CODE OF CIVIL PROCEDURE
(AMENDMENT) BILL**

The Minister of Law (Dr. Ambedkar): I beg to move for leave to introduce a Bill further to amend the Code of Civil Procedure, 1908.

Mr. Speaker: The question is:

“That leave be granted to introduce a Bill further to amend the Code of Civil Procedure, 1908.”

The motion was adopted.

Dr. Ambedkar: I introduce the Bill.

****CODES OF CIVIL AND CRIMINAL PROCEDURE
(AMENDMENT) BILL**

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

“That the Bill further to amend the Code of Civil Procedure, 1903, and the Code of Criminal Procedure, 1898, be taken into consideration.”

This Bill seeks to make a change in the jurisdiction of the subordinate judiciary. As the House knows the Constitution gives courts in India the right to declare whether any particular law made by the legislature, Central or provincial, is *intra* or *ultra vires* of that legislature. This power is now being exercised by all the subordinate judges and members of Parliament must have been aware that some very curious decisions have been given by various subordinate courts holding certain laws to be *ultra vires*. It is felt that it would not be right to leave this power of declaring whether the laws made by the State are *intra* or *ultra vires* to the subordinate judiciary.

First of all, without meaning any offence to members who are holding it, the subordinate judiciary cannot be said to be

* P. D., Vol. 7, Part II, 18th December 1950, pp. 1834-35.

** P. D., Vol. 10, Part II, 20th April 1951, pp. 7153-76.

****Ibid.*, pp. 7153-54.

qualified to deal with problems involving *intra vires* or *ultra vires* of a law. Secondly, the Bar which appears generally before the subordinate courts cannot also be said to be competent to help the courts to come to a correct decision on such points. It is therefore felt that in the interest of uniformity of decision on questions of constitutional importance it is right that the power to declare any law *ultra vires* should be withdrawn from the subordinate judiciary. The Bill follows the procedure which exists in some of the States in the U.S.A., where also by law the subordinate judiciary is prevented from giving judgments on questions of constitutional importance.

Besides this there is nothing very special in this Bill. We propose to amend by this Bill section 113 of the Civil Procedure Code by the addition of a proviso whereby the subordinate judge is required, in case he is of opinion that any particular law is *ultra vires*, to refer the matter to the High Court and to await the decision of the High Court. It is also proposed to amend section 432 of the Criminal Procedure Code requiring a magistrate also to refer the case to the High Court if the magistrate thinks that the Act is *ultra vires*.

This is all there in this Bill, which I commend to the House.

Mr. Chairman : Motion moved :

“That the Bill further to amend the Code of Civil Procedure, 1908, and the Code of Criminal Procedure, 1898, be taken into consideration..”

***Dr. Tek Chand :**I submit that this Bill is based on very sound principles and that it should be passed without further discussion.

I have to say a word with regard to the observations made by my hon. friend Shri Shiv Charan Lal. He thinks that after the words “Act, Ordinance and regulation,” which are already in the Bill, should be added the words “rules or orders”, that is to say, when a question relating to the validity of a particular rule or particular order passed under an Act, Ordinance or regulation arises and this should also be referred to the High Court in the same manner as the Bill provides

* P. D., Vol. 10, Part II, 20th April 1951, pp. 7172-76.

for points relating to the validity of an Act, Ordinance or Regulation itself. With respect, I would say that it is not necessary nor desirable that every little case in which is involved the validity of an order passed by a Collector or some other officer to whom power has been delegated to frame a rule or pass an order, be sent to the High Court. This will unnecessarily swell the number of cases in which references are to be made to the High Court. What the bill proposes to take there are three cases of major importance : (i) Act of the Central Legislature or Act of one of the State Legislatures, and (ii) Ordinances which stand on the same footing as Acts of the legislature and (iii) Regulations. It is not every Regulation but only those passed in Bengal, Bombay and Madras, or Regulations as defined in the General Clauses Act of 1897. These are Regulations of old days, promulgated before legislatures had been established but which have been retained on the Statute Book and, therefore, they have the same force and are on the same footing as Acts and Ordinances; as for instance Regulation III of 1818. The Bill, therefore, applies to those cases only in which the validity of an Act of a Legislature is involved and not the validity of an order passed by a Collector or by a Secretary to Government or some other officer, acting under power delegated to him. These do not come within the purview of the Bill and rightly.

Sir, I think this is a salutary provision and the Bill should be passed as it is.

Dr. Ambedkar: May I be permitted to adopt the observations of my hon. friend Dr. Tek Chand in view of the fact that there is very little time and also because there is very little that I need say in addition to what he has already said here? We discussed these questions and he has now expressed what I would have expressed if I had the chance. I think that should suffice. If there is any point arising out of any amendment or things like that, then certainly I shall deal with them.

Mr. Speaker: The question is :

“That the Bill further to amend the Code of Civil Procedure, 1908 and the code of Criminal Procedure, 1898, be taken into consideration.”

The motion was adopted.

Clause 2.—(*Amendment of Act V of 1908.*)

Shri Shiv Charan Lal: I have an amendment to this clause which I shall move, in case the Hon. Law Minister is willing to accept it. Otherwise I will not move it.

Dr. Ambedkar: No, it is not the intention to accept it.

Shri K. Vaidya: Sir, Rule 2 of Order XLVI and Rule 5 of the same Order seem to be inconsistent and I would like to have some clarification of the position from the Hon. Law Minister. I am referring to my amendments Nos. 2 and 3 of List No. 3. Amendment No. 1 I am not moving. I had already raised this point before and I would like to hear what the Hon. Law Minister has to say.

Dr. Ambedkar: I am not prepared to accept the amendments proposed by my hon. friend because I do not think it is right and proper that all the proceedings in a case should be stayed.

Mr. Speaker: But Mr. Vaidya is not moving his amendment No. 1 asking for that.

Dr. Ambedkar: Yes, Sir, but the other amendments he refers to are consequential to his amendment
4-00 p m No. 1. If that is not moved then there is no substance in the other amendments.

Shri K. Vaidya : They are not consequential because.....

Mr. Speaker: Let him explain the position first.

Dr. Ambedkar: As I understand it, the position is this. It is suggested that when a reference is made by the subordinate court to the High Court, all further proceedings in the matter should stay. That is the fundamental point of the hon. Member. That Court should do nothing until the High Court returns the papers with its interpretation. With that position I entirely disagree for this reason that a case might involve one issue of a constitutional nature and many other issues which may have nothing to do with the Constitution. And I do not understand why a magistrate who is required under this Bill to make a reference to the High Court on one of the many points which are involved in the case should be

debarred from proceeding further with the other issues. Therefore I am not prepared to accept his first amendment whereby he wants :

That in part (i) of clause 2, in the proposed Proviso to section 113 of the Code of Civil Procedure, 1908, the words “and shall stay the further proceedings in the case” be added at the end.

The rest of them are purely consequential.

Shri K. Vaidya: They are not, I submit, consequential because Rule 2 of Order XLVI as well as Rule 5 of Order XLVI relate only to cases where judgments are given and in a case where an issue has been referred to the High Court there will be no judgment. Under Rule 4 of Order XX the issue should be decided and only then can there be a judgment, and Rule 2 of Order XLVI refers only to cases in which judgment is given. Rule 5 also refers to cases where judgment is given. Therefore these two rules are inconsistent or inapplicable to this Bill.

Dr. Ambedkar: I would point out that it is left to the discretion of the subordinate judge. He may make an order staying proceedings or he may not. My hon. friend wants that the discretion of the subordinate judge should be taken away and in all cases he should make an order staying the proceedings. Therefore I am not going to accept his amendment.

Mr. Speaker: Is the hon. Member keen on moving his amendment ?

Shri K. Vaidya: No, Sir.

Mr. Speaker: Then I shall put clause 2 to vote. The question is :

“ That clause 2 stand part of the bill.”

The motion was adopted.

Clause 2 was added to the Bill.

Clause 3.—*Substitution of new section : Amendment made:*

In clause 3 for the words “said Code” substitute the words and figures “Code of Criminal Procedure, 1898”.

—[Dr. Ambedkar]

Shri Shiv Charan Lal: So far as the Civil procedure code is concerned, an Order has not got much importance. But so far as the Criminal Procedure Code is concerned, Orders have the same force as an Act. I may point out that under the Defence of India Act, so many orders were passed by the different state Governments and these orders had the force of law. So if you are placing the words “Act, Ordinance and Regulation”, then the word “Order” also must be there, because in the Criminal Courts, these Orders have the force of law. I do not mean the ordinary Orders, but Orders like the Cotton Yarn and Cloth control Order, the Sugar Control Orders and other such orders which have the force of law. They are sometimes challenged in the courts whether those orders are valid or not. Simply putting the word “Act” before will not do.

The other amendment of mine is that in sub-clause 2 of section 432 along with presidency magistrate if the words ‘sessions judge are added that will give a great scope for the Sessions Judge’ also to refer the matter to the high court. If the Minister accepts the amendments I will move them, otherwise not.

Dr. Ambedkar: With regard to the first amendment to clause 3 introducing the words “or order” the position is that an order is generally issued under a law made by the legislature. If the contention of a party is that the law under which the order is issued is *ultra vires*, then obviously the matter will have to be referred by the judge to the High Court, if he is satisfied with the contention. But if the contention of the party is that the law is valid but the order is not, then it is the deliberate intention of this Bill that such a matter should be decided by the subordinate judge or magistrate, because we do not propose to overburden the High Court with all kinds of litigation which can be easily determined by the subordinate judge and it does not affect the generality of the public but the particular individual affected by that legislation.

With regard to the last amendment seeking to extend the privilege or the opportunity given to the presidency magistrate, to sessions judges, if he will refer, for instance, to sections 436,

437 and 438 of the Criminal Procedure Code there is ample power given both to the magistrate and the sessions judge to deal with cases of this sort to correct the error or refer the matter to the high court to get the error corrected. There is ample provision already.

Mr. Speaker: The question is:

“That clause 3, as amended, stand part of the Bill.”

The motion was adopted.

Clause 3, as amended, was 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 as amended be passed. ”

Mr. Speaker: The question is :

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

The motion was adopted.
