

(31)

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

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

“ That the bill further to amend the code of Civil Procedure, 1908, be taken into consideration. ”

It is a very simple measure. Hon. Members will recall that after the partition of India certain difficulty has arisen in the matter of serving summonses and processes by courts in India to persons resident in Pakistan and issued by courts in Pakistan to persons resident in India.

[PANDIT THAKUR DAS BHARGAVA *in the Chair*]

There are now two foreign territories and this matter has not been governed by any treaty so far. Consequently all processes had to be served through the post office which can never be depended upon as a sure method of communication. Recently an agreement has been made between India and Pakistan where both countries on a reciprocal basis have agreed that the processes issued by courts in one country may be sent to the courts in the other country and they will undertake to serve the summonses or the processes on the party resident there. The Bill seeks to give effect to this agreement. I might say that Pakistan has already given effect to this agreement and there is a law existing there. I hope the House will accept this Bill.

Mr. Chairman : Motion moved :

“That the bill further to amend the Code of Civil Procedure, 1908, be taken into consideration. ”

Shri Sidhva (Madhya Pradesh): This is a welcome measure. Many of the displaced persons who have come here and who have claims over persons in Pakistan are confronted

with the difficulty of not being able to recover the sums decreed on suits. I am glad that agreement has been arrived at between India and Pakistan and that Pakistan has also enacted a similar law. The question of serving a summons on the other side has been overcome. I want to enquire from the Minister in the event of a decree passed here against a person in Pakistan, is there any agreement arrived at by which they will see that it is executed and the amount is recovered and sent to the plaintiff in India. That is the main point involved in this question. Merely serving a summons will not do. The defendant may be indifferent and an ex-parte decree may be obtained. So long as there is no law regarding the execution of a decree why should the defendant spend money to engage a lawyer. Nothing is mentioned in that respect. I would like the Minister to enlighten us whether this question was considered in the discussion with Pakistan and if not, what will be the effect of the judgment of a court in India, which might pass a decree against a defendant in Pakistan? Without this provision the Bill will have no meaning.

Dr. Ambedkar: As a part of the comity of nations every country agrees to execute judgments given by courts in other countries. Of course different countries have different rules of procedure but there is no difficulty with regard to the enforcement of the judgments. Some evidence that the judgment is a true one may be required. Section 13 of the Civil Procedure Code regulates it.

Shri Naziruddin Ahmad (West Bengal): A foreign judgment cannot be executed in any country at all. The Civil Procedure Code does not provide for it. A foreign judgment gives only a right of suit and a fresh suit has to be instituted and a fresh decree has to be obtained.

Dr. Ambedkar: That is only a matter of procedure.

Shri Naziruddin Ahmed: The whole thing has to be fought out again. The point I am raising is that a foreign decree cannot be executed.

Shri Sidhva: I want your guidance. I remember a case filed in India against a defendant in England. The decree was passed here but they could not execute it. A fresh suit had to be filed in London. I wonder whether without any such agreement a decree will have any value.

Dr. Ambedkar: Section 13 of the Civil Procedure Code does deal with the matter. There is no question about the enforcement of a foreign decree. The question is what procedure each country may adopt.

Shri Sidhva: That has no meaning.

Dr. Ambedkar: What has no meaning? It may say just as in the case of an award you will have to file an application when only it becomes enforceable. In the same way, section 13 of our Civil Procedure Code says :

“A foreign judgment shall be conclusive as to any matter thereby directly adjudicated upon between the same parties or between parties under whom they or any of them claim litigating under the same title except—

(a) where it has not been pronounced by a Court of competent jurisdiction; ”.

The question of jurisdiction is always fundamental. It can never be stopped. It must be proved that the court which has given the decree had the jurisdiction to make the decree.

Shri Sidhva: That is all right.

Dr. Ambedkar: What is all right? If you go to a subordinate court and get a decree beyond its jurisdiction nobody can execute it because it is not valid.

Mr. Chairman : The question is :

“That the bill further to amend the Code of Civil Procedure, 1908, be taken into consideration.”

The motion was adopted.

Clause 2 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 be passed.”

Mr. Chairman: The question is:

“That the Bill be passed.”

The motion was adopted.

(32)

* JALLIANWALA BAGH NATIONAL
MEMORIAL BILL

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

“That the Bill to provide for the erection and management of a National memorial to perpetuate the memory of those killed or wounded on the 13th day of April, 1919 in Jallianwala Bagh, be taken into consideration.”

The event which is known as Jallianwala Bagh is well-known to every Indian and I do not think it is necessary to say anything more about it. What is relevant for purposes of this Bill is that soon after the incident certain well-known Indians decided to perpetuate the memory of those who were killed and wounded on that particular day.

Dr. Tek Chand (Punjab): The session of the Indian National Congress held at Amritsar under the presidency of Pandit Motilal Nehru decided it.

Dr. Ambedkar: Yes, and they collected an amount of money—some ten lakhs, I understand.

Dr. Tek Chand: Yes, ten lakhs.

Dr. Ambedkar: Out of that they purchased two or three pieces of land as are mentioned in the Schedule, which are being held as part of this trust. There is already a trust and trustees, but they are of informal character. It is now proposed to give this trust a statutory basis and the proposal is this, that the trustees will fall into three different classes : certain trustees who are to be life trustees, another set of trustees who are to be *ex officio* trustees, and three other persons who will be nominated by the Central Government. They will hold the land and the properties mentioned in the first part of the Schedule and the cash and movable property which according to my calculation comes to about Rs. 3,13,757-1-0. The object of the trust is to maintain this Memorial and to see that it is kept up and looked after properly.

* P. D., Vol. 10, Part II, 20th April 1951, pp. 7179-81.

There is only one point that requires to be considered and that is that the original trustee mentioned in the Bill, the late Sardar Vallabhbhai Patel is now no more, and the House has to consider a substitute for him. The rest of the Bill is just as it was proposed by the original trustees who were acting as trustees for these purposes.

Mr. Chairman: Motion moved:

“That the Bill to provide for the erection and management of a National memorial to perpetuate the memory of those killed or wounded on the 13th day of April, 1919, in Jallianwala Bagh, be taken into consideration.”

Shri Kamath (Madhya Pradesh): It is in the fitness of things that a Bill of this nature has been brought before this House. It is over thirty years ago that this massacre at Jallianwala Bagh took place and hundreds of our countrymen and women were either killed...

Dr. Tek Chand : Two thousand—not hundreds.

Shri Kamath: Killed?

Dr. Tek Chand: Yes, two thousand killed.

Shri Kamath:thousands were either killed or wounded. The Congress, as the statement of objects and reasons shows, passed a resolution in 1919 proposing to acquire a piece of land and to build a memorial thereon to the martyrs of Jallianwala Bagh. We have not been told by the Law Minister who moved the Bill what amount exactly was collected for this purpose. He said “about ten lakhs”, but he has not got the exact figure with him.....

Dr. Ambedkar: I said about ten lakhs—I can give the exact figure later.

Shri Kamath :.....and how much of that amount has been utilised in acquiring the site whereon the proposed memorial is to be erected. It is wholesome that Government, the first Government of Free India, should take note of a resolution passed by the Congress many years ago and try to give effect to it. But, Sir, alongside of this certain other questions also arise. As I have already said, the Bill seeks to perpetuate the

memory of the martyrs of Jallianwala Bagh and to implement the resolution of the Indian National Congress of December, 1919. That marked the beginning of the Gandhian era in our politics, and during that period the Congress raised, or has raised, several funds of different kinds. An important point, therefore in connection with this Bill which has been moved by the Law Minister is, how far the Government will take note of or take cognizance of other funds also raised by the Congress for a specific purpose.

Shri Bharati (Madras): On a point of order, Sir, How far is that relevant to the Bill before us ? The hon. Member is referring to funds raised by the Congress for other purposes. Are we concerned with that in this Bill?

Shri Kamath: Of course, it is a resolution passed by the Congress that is the genesis of this Bill.

Mr. Chairman: There is no point of order. Let the hon. Member develop his argument.

***The Minister of Law (Dr. Ambedkar):** After the speeches which have been delivered by my hon. Friend Dr. Bakhshi Tek Chand, the Prime Minister and Pandit Thakur Das Bhargava, I do not think that there is any point left which requires any answer. They have dealt with all the questions that have been raised by the various speakers in the course of this debate, particularly with regard to representation of certain interests on this trust. I think they have been effectively answered and I have nothing more to add.

Mr. Chairman: The question is:

“ That the Bill to provide for the erection and management of a National Memorial to perpetuate the memory of those killed or wounded on the 13th day of April, 1919, in Jallianwala Bagh, be taken into consideration.”

The motion was adopted

* P. D., Vol. 10, Part II, 20th April 1951, pp. 7229-33.

Shri J. R. Kapoor (Uttar Pradesh): (*English translation of the Hindi speech.*) I beg to move:

In clause 2, for “National Memorial” substitute “Rashtriya Smarak”.

My submission is that it is but in the fitness of things that the name of this National Memorial should be in the national language. We must give appropriate name to a thing and the name of the National Memorial which we are going to erect should be such as easily understandable to everybody in the country. By giving it a name in English, we shall be depriving a large number of people of easily understanding its importance. Therefore, I submit that it should be named Jallianwala Bagh Rashtriya Smarak. I hope and believe that the hon. Minister would agree to my humble request by accepting this amendment. I have nothing more to add in this connection.

Dr. Ambedkar: I am afraid I cannot accept this amendment.

Shri J. R. Kapoor: I do not want to press it. If the hon. Minister does not accept it, he may put this name within brackets as is also done with the name of our country Bharat which is also written within brackets.

Dr. Ambedkar: I am afraid, I cannot accept this.

Shri J. R. Kapoor: Then I do not press it.

Mr. Chairman: The question is.

“That clause 2 stand part of the Bill.”

The motion was adopted.

Clause 2 was added to the Bill.

Clause 3.—(*Objects of the Trust*)

Shri Kamath (Madhya Pradesh): I beg to move:

In part (c) of clause 3 for “raise and receive” substitute “raise, receive and administer”.

The sub-clause, as it stand, reads thus:

“ The objects of the Trust shall be—

...(c) to raise and receive funds for the purposes of the Memorial.”

It stands to reason that the Trust shall be formed not only for the purpose of raising and receiving funds but also for the purpose of administering them. Otherwise the enumeration

of its duties and functions would be incomplete. I therefore move this amendment and commend it for the acceptance of the House.

Mr. Chairman: I wish to know whether any other amendment is going to be moved.

Shri J. R. Kapoor: I beg to move :

After part (c) of clause 3, insert new part:

“ (d) to do any other thing in furtherance of the objects of the Trust ”.

So that, there will be one more object added to it, not of any specific nature but merely of a general nature so that the trust may not feel handicapped at any time in regard to anything that it may like to do. I am sure this will be readily acceptable to the hon. Minister in charge of the Bill. Such a clause is almost invariably to be found in other similar enactments.

Mr. Chairman: The wording of the amendment is self-explanatory and I do not think any further speech on it is necessary.

Sardar B. S. Man: I beg to move:

After part (a) of clause 3, insert new part and reletter subsequent parts accordingly:

“(b) to start educational, social or such other public institutions, or to create funds or scholarships for the benefit of the public generally, or for those or their dependants, who were killed or wounded on the 13th day of April 1919 at the site, or for such other people who served, died or were permanently disabled in the national cause. ”

The objects of the Trust as given in the Bill are merely, “to erect and maintain suitable buildings, structures and parks at or near the site of the Jallianwala Bagh in the city of Amritsar etc.” I feel that by the acceptance of this amendment it will be enlarging to scope and making it more a living memorial to the memory of those who have departed.

Mr. Chairman: May I know whether any of the amendments are acceptable to the Hon. Minister?

Dr. Ambedkar: I do not think I can accept any of them. Perhaps a word might be necessary as to why I do not accept them.

With regard to Mr. Kamath's amendment the addition of the word "administer" is unnecessary. Every trust carries with it the power of the trustees to administer whatever they receive and raise.

With regard to Mr. Kapoor's amendment "to do any other thing in furtherance of the objects of the Trust", that again is unnecessary. When the objects are stated it carries with it the implied power to do anything in furtherance of these objects.

With regard to Sardar Man's amendment, I think it is agreed that this body of trustees should not convert themselves into a social service league. Their purpose should merely be to maintain this national monument.

Shri Kamath: May I not ask whether the word "receive" also is unnecessary? Whatever is raised must be received by the Trust. Therefore "received" may be deleted.

Dr. Ambedkar: That may be so, but I think "administer" is quite superfluous.

Mr. Chairman: I would like to know whether hon. Members are pressing their amendments.

Sardar B. S. Man: I am not pressing my amendment.

Shri J. R. Kapoor: No.

Shri Kamath: Well, it may go.

Mr. Chairman: Does he want it to be put or not put?

Shri Kamath: It need not be put.

Mr. Chairman: The question is:

"That clause 3 stand part of the Bill."

The motion was adopted.

Clause 3 was added to the Bill.

Clause 4.—(*Trustees etc.*)

Shri Sidhva (Madhya Pradesh): I have an amendment.

Mr. Chairman: Is Dr. Ambedkar going to move any amendment?

Dr. Ambedkar: Mr. Sidhva is moving.

Shri Sidhva: I beg to move:

In part (b) of sub-clause (1) of clause 4, for the name of Sardar Vallabhbhai Patel substitute the name of Dr. Saifuddin Kitchlew.

It is self-explanatory and I do not want to speak on it.

Mr. Chairman : Amendment moved:

In part (b) of sub-clause (1) of clause 4, for the name of Sardar Vallabhbhai Patel substitute the name of Dr. Saifuddin Kitchlew.

Is it acceptable to the Hon. Minister.

Dr. Ambedkar: I accept the amendment.

***Giani G. S. Musafir:** (*English translation of Urdu speech*)
I wanted to move:

After part (e) of sub-clause (1) of clause (4) insert new part and reletter subsequent parts accordingly:

“(f) the president of the Punjab State Congress.”

I have already said more than enough on that subject. Unfortunately for me the Prime Minister does not agree with me on this point. What is still more unfortunate is that he has already delivered his speech so that even those members who had promised to support me have become silent. Therefore, I feel it would be no use pressing it any more. Hence, I am not moving it. I do not agree, however, that the inclusion of the President of the Punjab Congress would turn this Trust into a party Trust.

Mr. Chairman: May I know whether the hon. Minister accepts any of those amendments?

Dr. Ambedkar : I cannot accept any of these amendments.

Shri Kamath: I want to press all the amendments.

Mr. Chairman: I will put all these amendments to the House.

Shri Kamath: One by one.

* P. D., Vol. 11, Part II, 21st April 1951, p. 7237.

Mr. Chairman : The question is:

In part (b) of sub-clause (1) of clause 4, for the name of Sardar Vallabhbhai Patel substitute the name of Kumari Maniben Patel.

The motion was negatived.

*** Dr. Ambedkar:** The only amendment that I can accept is No. 79 seeking to omit the word “for” in part (f) of sub-clause (2).

Mr. Chairman: Does Mr. Kamath press the other amendments?

Shri Kamath: I press amendment No. 82 relating to penalty.

Mr. Chairman: The question is:

(i) In part (f) of sub-clause (2) of clause 9, for “injury” substitute “damage”.

The motion was negatived.

Shri Kamath: I do not press my second amendment.

Mr. Chairman : The question is:

(iii) In part (f) of sub-clause (2) of clause 9 omit “for”.

The motion was adopted.

Mr. Chairman : The question is:

(iv) In sub-clause (3) of clause 9, for “fine which may extend to one hundred rupees” substitute :

“imprisonment for a period not exceeding six months or with fine which may extend to one hundred rupees or both.”

The motion was negatived.

Mr. Chairman: The question is:

“That clause 9. as amended, stand part of the Bill.”

The motion was adopted.

Clause 9. as amended, was added to the Bill.

Clause 10 was added to the Bill.

The Schedule was added to the Bill.

Clause 1. (*Short Title*)

Amendment moved:

In clause 1, for “ 1950 ” substitute “ 1951”. [*Dr. Ambedkar*]

Mr. Chairman : The question is:

“That clause 1. as amended, stand part of the Bill.”

The motion was adopted.

Clause 1, as amended, 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. Chairman : The question is:

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

The motion was adopted.

The House then adjourned for Lunch till Three of the Clock.

(33)

The House re-assembled after Lunch at Three of the Clock.

[PANDIT THAKUR DAS BHARGAVA *in the Chair*]

***CONSTITUTION (FIRST AMENDMENT) BILL**

**The Prime Minister and Minister of External Affairs
(Shri Jawaharlal Nehru):** I beg to move.

“That the Bill to amend the Constitution of India be referred to a Select Committee consisting of Prof. K. T. Shah, Sardar Hukam Singh, Pandit Hirday Nath Kunzru, Dr. Syama Prasad Mookerjee, Shri Naziruddin Ahmad, Shri C. Rajagopalachari, Shri L. Krishnaswami Bharati, Shri Awadheshwar Prasad Sinha, Shri T. R. Deogirikar, Dr. B. R. Ambedkar, Shri V. S. Sarwate, Shri Mohanlal Gautam, Shri R. K. Sidhva,- Shri Khandubhai K. Desai, Shri K. Hanumanthaiya, Shri Raj Bahadur, Shrimati G. Durgabai, Shri Manilal Chaturbhai Shah, Shri Dev Kanta Borooah, Shri Satya Narayan Sinha and the Mover with instructions to report on Monday the 21st May, 1951.”

This Bill is not a very complicated one ; nor is it a big one. Nevertheless, I need hardly point out that it is of intrinsic and great importance. Anything dealing with the Constitution and change of it is of importance. Anything dealing with Fundamental Rights incorporated in the Constitution is of even greater importance. Therefore, in bringing this Bill forward, I do so and the government does so in no spirit of light-heartedness, in no haste, but after the most careful thought and scrutiny, given to this problem.

I might inform the House that we have been thinking about this matter for several months consulting people, State Governments, Ministers of Provincial Governments, consulting, when occasion offered itself, a number of Members of this House, referring it to various Committees and the like and taking such advice from competent legal quarters as we could obtain, so that we have proceed with as great care as we could

* P. D., Vol. 12, Part II, 16th May 1951, pp. 8814-15.

possibly give to it. We have brought it forward now after that care, in the best form that we could give it, because we thought that the amendments mentioned in this Bill are not only necessary, but desirable, and because we thought that if these changes are not made, perhaps not only would great difficulties arise, as they have arisen in the past few months, but perhaps some of the main purposes of the very Constitution may be defeated or delayed. In a sense this matter of course, has been mentioned rather vaguely and has been before the public for some time. But in the precise form that it has been raised in this Bill, it came up only when I introduced this Bill in the House a few days ago.

* **Pandit Kunzru** (Uttar Pradesh): The Bill before us seems to be very simple, but it is nonetheless of a very far reaching character. It affects not merely the Constitution but also the spirit in which the Constitution is to be dealt with. A measure of such importance requires careful consideration and I think that we ought, all, to welcome the scrutiny to which it has been subjected by previous speakers. In order to justify the important changes that are sought to be made in the Constitution, Government should have taken care to supply us with full information on every point to tell us exactly why each particular amendment was needed. The Prime Minister spoke at considerable length but dealt, generally speaking with principles. When he dealt with specific matters he was very tantalizing; he did not throw much light on the reasons for the specific measure that the Government have placed before us. In view of this some other Member of the Government should have given us fuller information than the Prime Minister gave. Perhaps my hon. friend. Dr. Ambedkar would have been the fittest person to explain to us in detail the provisions of the Bill, particularly those which relate to the amendment of article 19 and the insertion of two new articles 31A and 31B. I have no doubt that he will take part in the debate. He will probably get up in the end in order to have the last word on the subject.

* P. D., Vol. 12, Part II, 17th May 1951, p. 8896.

The Minister of Law (Dr. Ambedkar): No, no.

Pandit Kunzru: That may suit him and the Government of which he is an important member, but it is most unfair to the House that it should be called upon

Shri Sidhva (Madhya Pradesh): What is the unfairness ?

Pandit Kunzru: If Mr. Sidhva will have a little patience he will realise that every Member is not as enlightened as he is and that most of them require a little more instruction than he has ever done or ever will do

***The Minister of Law (Dr. Ambedkar):** In the course of the debate yesterday, my friend Pandit Hirday Nath Kunzru said that Government had done great injustice to the House by not explaining the necessity and the purposes of the various clauses in this Bill and that some one on the side of Government—and he referred particularly to me—should have got up to discharge that duty to the House. I do not know that any Member of the House will believe that a person of the intelligence of my hon. friend Pandit Hirday Nath Kunzru is one who requires an explanation of this Bill. My friend Dr. Syama Prasad Mookerjee evidently did not require any explanation of the Bill. As soon as the Prime Minister finished, he stood up and opened his fire. And I do not think that my friend Pandit Kunzru is less intelligent than my friend Dr. Mookerjee. However, as Pandit Kunzru expressed the wish of many Members of this House, I thought it incumbent on my part to intervene in this debate and to clarify the position so as to dispel the two arguments which had been used in the course of the debate, that there was no necessity for the amendment of the Constitution, and secondly, that Government could wait and give the country and the public larger and longer time and should not rush through this measure. In the observations that I propose to make, I will take the Bill clause by clause and try to explain the necessity for making the changes which the Bill proposes to make.

* P. D., Vol. 12, Part II, 18th May 1951, pp. 9004-32.

I will begin with clause 2 of the Bill. Clause 2 of the Bill proposes to amend article 15. The necessity for the amendment of article 15 has arisen on account of the judgments recently-delivered by the Supreme Court in two cases which came up before them from the Madras State. One case was *Madras vs. Shrimati Champakam Dorairajan* and the other was *Venkatraman vs. the State of Madras*. In the case of *Venkataraman* the article involved was article 16, clause (4) and in the case of *Shrimati Champakam* the article involved was article 29, clause (2). In the one case the question involved was the reservation for backward classes in public services and in the other case, the question involved was the reservation for backward classes in educational institutions. The question turned upon what is known in the Madras Presidency and elsewhere as the Communal G.O. The argument on which the Communal G.O. of the Madras Government was declared to be void and invalid was this. It was said by the Supreme Court that article 29, clause (2), did not have a saving clause like clause (4) attached to article 16. As the House will remember under clause (4) of article 16, a special provision is made that article 16 shall not stand in the way of the Government making a suitable provision for the representation of backward classes in the services. Such a provision of course is not to be found in article 29. With regard to article 16, clause (4), the Supreme Court came to the conclusion that it involved discrimination on the ground of caste and therefore it was invalid. I have carefully studied both these judgments of the Supreme Court and with all respect to the judges of the Supreme court I cannot help saying that I find this judgment to be utterly unsatisfactory.

Shri Naziruddin Ahmad (West Bengal): Sir, on a point of order. Is it in order for any Member to express disrespect to the highest judiciary in the land? It is the custom in Parliament not to speak disparagingly about the courts.

Dr. Ambedkar : There is no disparagement of the learned Judges at all.

Mr. Speaker: I myself felt that the word should not have been used but I think what the Hon. Law Minister meant

was that judgment was unsatisfactory from the point of view of what the Government proposed to do.

Dr. Ambedkar: The judgment does not appear to be in consonance with the articles of the Constitution. That is my point.

Mr. Speaker: I am afraid the Hon. Minister will not be in order to pass any such structures on any judgment expressed by the Supreme Court.

Dr. Ambedkar: I am very sorry.

Mr. Speaker: I was thinking whether what he expressed was not capable of a different interpretation *viz.* that the judgment was unsatisfactory from the point of view of what the Government proposed to do.

The Minister of Home Affairs (Shri Rajagopalachari):

Will the hon. Speaker forgive my intervention? I think really what the Hon. Law Minister meant is that a doubt has arisen on account of the judgment.

Mr. Speaker: Let us now proceed.

Dr. Ambedkar: My view is that in article 29, clause (2), the most important word is 'only'. No distinction shall be made on the ground only of race, religion or sex. The word 'only' is very important. It does not exclude any distinction being made on grounds other than those mentioned in this article and I respectfully submit that the word 'only' did not receive the same consideration which it ought to have received.

Then with regard to article 16, clause (4), my submission is this that it is really impossible to make any reservation which would not result in excluding somebody who has a caste. I think it has to be borne in mind and it is one of the fundamental principles which I believe is stated in Mulla's last edition on the very first page that there is no Hindu who has not a caste. Every Hindu has a caste—he is either a Brahmin or a Mahratta or a Kunby or a Kumbhar or a carpenter. There is no Hindu—that is the fundamental proposition—who has not a caste. Consequently, if you make a reservation in favour of what are called backward classes

which are nothing else but a collection of certain castes, those who are excluded are persons who belong to certain castes. Therefore, in the circumstances of this country, it is impossible to avoid reservation without excluding some people who have got a caste. On these points I do not think personally that the judgment is a very satisfactory judgment. In this connection I would like to state, notwithstanding what the House and some Members are saying, that I have often in the course of my practice told the presiding judge in very emphatic terms that I am bound to obey his judgment but I am not bound to respect it. That is the liberty which every lawyer enjoys in telling the judge that his judgment is wrong and I am not prepared to give up that liberty. I have always told the judges before whom I practised that that is my view of the matter. Now the point has to be borne in mind that in article 46 of the Directive Principles an obligation has been laid upon the Government to do everything possible in order to promote the welfare and the interest of what are called the weaker sections of the public by which I understand to mean the backward classes or such other classes who are for the moment not able to stand on their legs—the scheduled castes and the scheduled tribes. It is therefore incumbent not merely on the Government but upon this Parliament to do everything in its hands to see that article 46 is fulfilled and if that fulfilment is to come, I cannot see how one can escape an amendment so as to prevent article 29, clause (2), and article 16, clause (4) being interpreted in the way in which it has been interpreted and being made to block the advancement of the people who are spoken of as the weaker class. That is the necessity for amending article 15.

I now come to the provisions of article 19, an article which gave rise to great excitement among the Members of the House. I first propose to take clause (3) (1) (a) of the Bill which amends the original clause (2) of article 19. As Members will see this sub-clause proposes to add three heads:

1. Relations with foreign States,
2. Public Order,
3. Incitement to offence.

A question was asked as to what was the necessity for introducing three new heads. The necessity has arisen out of certain judgments which have been delivered by the Supreme Court as well as by the Provincial High Courts. I would like to refer in this connection to the judgments of the Supreme Court in Ramesh Thapar's case and in Brij Bhushan's case. These are the two judgments of the Supreme Court. Then I come to the judgments of the State High Courts.

The following judgments of the Punjab High Court may be taken into consideration:

1. Master Tara Singh's case.
2. Amarnath Bali *versus* the State of Punjab.

There are two judgments of the Patna and Madras High Courts :

1. Shilabala Devi *versus* the Chief Secretary of Bihar.
2. Bynes *versus* the State of Madras.

In Ramesh Thapper's case what was involved was the validity of the Madras Maintenance of Public Order, 1949. Brij Bhushan's case involved the validity of the East Punjab Public Safety Act, 1949. Master Tara Singh's case involved the validity of sections 124A and 153 A of the Indian Penal Code. Amarnath Bali's case involved the validity of section 4 of the Indian Press (Emergency Powers) Act of 1931. Shilabala Devi's case also involved the validity of section 4 of the Press Act and the same was involved in the case of Bynes *versus* Madras State.

All these cases have resulted in the decision that they are void laws, that is to say, in view of the provisions contained in clause (2) of article 19, the courts have held that all these Acts, however valid they might have been before the Constitution came into existence, are bad laws now, because they are inconsistent with the Fundamental Rights.

What I want to ask the House to consider is, what is the effect of these decisions of the Supreme Court and the various High Courts in the States ? In order to give the House a very clear idea I can read many of the sections of the Acts which have been declared to be null and void but in view of the

shortness of time I would content myself by reference to the Press Act, section 4, which has been called in question. This is what section 4 of the Press Act says:

“Whenever it appears to the Provincial Government that any Printing Press, in respect of which any security has been ordered to be deposited under section 3 is used for the purpose of printing or publishing any newspaper, book or other document containing any words, signs or visible representations which”—I want the House to mark these clauses carefully—

- “(a) incite to or encourage, or tend to incite to or to encourage, the commission of any offence of murder or any cognisable offence involving violence, or
 - (b) directly or indirectly express approval or admiration of any such offence or of any person, real or fictitious, who has committed or is alleged or represented to have committed any such offence.
- or which tend directly or indirectly.
- (c) to seduce any officer, soldier, etc.....

The important point to which I wish to draw the attention of the House is (a) “incite to or encourage, or tend to incite to or encourage, the commission of any offence of murder or any cognisable offence involving violence.” It means that under the decisions of the Provincial High Courts to which I had referred it is now open to anybody to incite, encourage, tend to incite or encourage the commission of any offence of murder or any cognisable offence involving violence.

The one question that I would like the House to consider. is this. Is it a satisfactory position that any person should now be free to incite or encourage the commission of offences of murder or any cognisable offence involving violence? I want the House to consider the matter dispassionately. Is it a desirable state of affairs (*Several Hon. Members*: No. no.) that our Constitution should leave us in this desperate position that we could not control the right of free speech which has been granted by clause (1) of article 19 and it should be so unlimited that any person should be free to preach murder or the commission of any cognisable offence. I have tried to put the matter in a nutshell. That is the position.

The same thing has now occurred with regard to the public safety laws or the laws made by the various States for the

maintenance of public order, because they also have been held by the Supreme Court to be not open to any limitation by virtue of the Constitution. The Supreme Court has made a distinction between the security of the State and the maintenance of public order. They say that it may be open for Parliament to make a law for the security of the State but it is not open to parliament to make a law for the maintenance of public order. There again I wish the House to consider the matter seriously. Is the House prepared to allow the right of freedom of speech and expression to be so untrammelled, to be so unfettered, that any man can say anything and go scot-free, although such speech creates public disorder? If the judgments of the Supreme Court and the High Courts stand as they are, then the only consequence that follows is that we shall never be able to make a law, which would restrict the freedom of speech in the interests of public order and that we shall never be able to make a law which would put a restraint upon incitement to violence. I want my friend Dr. Mookerjee who—as coming events cast their shadow—played the part of a leader of the Opposition, whose business undoubtedly, from a party point of view is to oppose every thing to consider whether the void created in our legislation by the decisions of the Supreme Court and the Provincial High Courts should be allowed to remain in the name of freedom of speech. That is the simple question. I am sure in my mind that if my friend Dr. Mookerjee were to study the different decisions of the Supreme court and the Provincial High courts in the light of the observations I have made he will beyond question come to the conclusion that this is a situation which must be remedied and cannot be allowed to go on.

Pandit Thakur Das Bhargava (Punjab): He wants detention laws to be used for the purpose.

Dr. Ambedkar: Detention laws are something quite different. That is in a nutshell (*Shri Kamath:* What a poor nutt!) the case for amending article 19 of the Constitution.

It is next important to consider why the Supreme Court and the various State High Courts have come to this conclusion.

10-00 A.M. Why is it that they say that Parliament has no

right to make a law in the interests of public order or in the interests of preventing incitement to offences ? That is a very very important question and it is a question about which I am personally considerably disturbed. For this purpose I must refer briefly to the rules of construction which have been adopted by the Supreme Court as well as by the various State High Courts, but before I go to that I would like to refer very briefly to the rules of construction which have been adopted by the Supreme Court of the United States—and I think it is very relevant because the House will remember that if there is any Constitution in the world of a country of any importance which contains Fundamental Rights it is the Constitution of the United States, and those of us who were entrusted with the task of framing our own Constitution had incessantly to refer to the Constitution of the United States in framing our own Fundamental Rights. There are many Members I know, who are familiar with the Constitution of the United States. How does the Constitution of the United States read ? I think hon. Members will realise that apparently there is one difference between the Constitution of India and the Constitution of the United States so far as the Fundamental Rights are concerned. The Fundamental Rights in the Constitution of the United States are stated in an absolute form; the Constitution does not lay down any limitation on the Fundamental Rights set out in the Constitution. Our Constitution, on the other hand, not only lays down the Fundamental Rights but it also enumerates the limitations on the Fundamental Rights, and yet what is the result ? It is an important question to consider. The result is this, that the Fundamental Rights in the United States, although in the text of the Constitution they appear as absolute, so far as judicial interpretations are concerned they are riddled with limitations of one sort or another. Nobody can in the United States claim that his Fundamental Rights are absolute and that the Congress has no power to limit them or to regulate them. In our country I find that