

we are in the midst of a paradox; we have Fundamental Rights, we have limitations imposed upon them, and yet the Supreme Court and the High Courts say. "You shall not have any further limitations upon the Fundamental Rights."

Now comes the question; how does this result come to be? And here I come to the canons of interpretation which have been adopted in the United States and by the Supreme Court and High Courts in our country. As hon. Members who are familiar with the growth of the Constitution of the United States will know, although the Constitution of the United States is a bundle of bare bones, the United States Supreme Court has clothed it with flesh and muscle so that it has got the firmness of body and agility which a human being requires. How has this happened? This has happened because the U.S. Supreme Court, although it was the first Court in the world which was called upon to reconcile the Fundamental Rights of the citizen with the interests of the State, after a great deal of pioneering work came upon two fixed principles of the Constitution. One is that every State possesses what is called in the United States "police power", a doctrine which means that the State has a right to protect itself whether the Constitution gives such a right expressly or not. The "police power" is an inherent thing just as our Courts have inherent powers, in certain circumstances, to do justice. It is as a result of this doctrine of "police power" that the United States Supreme Court has been able to evolve certain limitations upon the Fundamental Rights of the United States citizens. The second doctrine which the United States Supreme Court developed and which it applied for purposes of interpreting the Constitution is known as the doctrine of "implied powers". According to the decisions of the Supreme Court if any particular authority has been given a certain power, then it must be presumed that it has got other powers to fulfil that power and if those powers are not given expressly then the Supreme Court of the United States is prepared to presume that they are implied in the Constitution.

Now, what is the attitude which the Supreme Court has taken in this country in interpreting our Constitution? The

Supreme Court has said that they will not recognise the doctrine of the “police power” which is prevalent in the United States. I do not wish to take the time of the House in reading the judgments of the Supreme Court, but those who are interested in it may find this matter dealt with in the case known as Chiranjit Lal Chowdhuri *versus* the Union of India otherwise known as the Sholapur Mills case. You find the judgment of Mr. Justice Mukherjee expressly rejecting this doctrine which in the text of the judgment which I have, occurs on page 15. They say they will not apply this doctrine. The reason why the Judges of the Supreme Court do not propose to adopt the doctrine of “police power” is this, so far as I am able to understand, that the Constitution has enumerated specifically the heads in clause (2) under which Parliament can lay restrictions on the Fundamental Right as to the freedom of speech and expression and that as Parliament has expressly laid down the heads under which these limitations should exist, they themselves now will not add to any of the heads which are mentioned in clause (2). That is in sum and substance, the construction that you will find in the case of Thaper’s judgment which was delivered by Mr. Justice Patanjali Sastri. He has said that they will not enlarge it and therefore as the Constitution itself does not authorise Parliament to make a law for purposes of public order “according to them Parliament has no capacity to do it and they will not invest Parliament with any such authority. In the case on the Press Emergency Laws also they have said the same thing—that *in* clause (2) there is no head permitting Parliament to make any limitations in the interests of preventing incitement to an offence. Since section 4 of the Press (Emergency Powers) Act provides for punishment for incitement to the commitment of any offence, Parliament has no authority to do it. That is the general line of argument which the Supreme Court Judges have adopted in interpreting the Constitution.

With regard to the doctrine of implied powers, they have also more or less taken the same view. Personally myself, I take the view that there is ample scope for recognising the

doctrine of implied powers, and I think our Directive Principles are nothing else than a series of provisions which contain implicitly in them the doctrine of implied powers. I find that these Directive Principles are made a matter of fun both by judges and by lawyers appearing before them. Article 37 of the Directive Principles has been made a butt of ridicule. Article 37 says that these Directives are not justiciable that no one would be entitled to file a suit against the Government for the purpose of what we call specific performance. I admit that is so. But I respectfully submit that that is not the way of disposing of the Directive Principles. What are the Directive Principles? The Directive Principles are nothing but obligations imposed by the Constitution upon the various Governments in this country—that they shall do certain things, although it says that if they fail to do them, no one will have the right to call for specific performance. But the fact that there are obligations of the Government, I think, stands unimpeached. My submission is this; that if these are the obligations of the State, how can the State discharge these obligations unless it undertakes legislation to give effect to them? And if the statement of obligations necessitates the imposition and enactment of laws, it is obvious that all these fundamental principles of Directive Policy imply that the State with regard to the matters mentioned in these Directive Principles has the implied power to make a law. Therefore, my contention is this, that so far as the doctrine of implied powers is concerned, there is ample authority in the Constitution itself to permit Parliament to make registration, although it will not be specifically covered by the provisions contained in the Part on Fundamental Rights.

Dr. S. P. Mookerjee (West Bengal): Even though they may become inconsistent with the provisions of the Constitution?

Dr. Ambedkar: That is a different matter.

Shri Kamath: That is a vital matter.

Dr. Ambedkar: What I am saying is this that the various provisos attached to the various fundamental articles need

not be interpreted as though they were matters of strait-jacket as if nothing else is permissible.

Shri Kamath: You yourself made it.

Dr. Ambedkar: The point that I was trying to make to the House is that on account of the declaration by the Supreme Court that this Parliament has no capacity to make a law in certain heads, the question before the House is this : can we allow the situation to remain as it is, as created by the judgments, or we must endow Parliament with the authority to make a law ?

At this stage I do want to make a distinction and I do so for the special reason that Dr. Mookerjee came and said that we were taking away the freedom which people enjoyed. I think it is necessary to make a distinction between the capacity to make a law and the enactment of a particular law. All these matters as to whether a particular law encroaches upon the freedom of the people is a matter which can be discussed when the law is being made. Today we are not dealing with a law ; we are only dealing with the capacity of Parliament to make a law.

[SHRIMATI DURGABAI *in the chair*]

Dr. S. P. Mookerjee : May I ask one question with regard to this point that you are only asking Parliament to endow you with power to make a law ? But according to the changes which have been proposed, all the laws which were invalidated will become valid retrospectively.

Dr. Ambedkar: I know that is a point on which my friend Pandit Bhargava laid great stress and it would be very wrong on my part to leave it unexplained.

Dr. S. P. Mookerjee : And the much-hated emergency laws will become good laws.

Dr. Ambedkar: It is not quite so.

Shri Kamath: Almost;

Dr. Ambedkar: So far I have dealt with two heads, namely, public order and the incitement to an offence. There

remains the third category, namely friendly relations. We have at present on our statute book a law enacted in 1932 dealing with friendly relations with the foreign States. It is true that that law has not come for any adjudication before High Courts or the Supreme Court and it has so far not been declared to be *ultra vires*. But the fact remains that in view of rules of interpretation adopted by the Supreme court that nothing is within the capacity of Parliament unless that particular head of legislation is mentioned in clause (2) and as “friendly relations with foreign States” is not mentioned in clause (2) I do not think it requires an astrologer to predict that when that question comes before the judiciary they will follow the same line of interpretation.

Shri Kamath: Dr. Ambedkar is quite enough for the purpose.

Dr. Ambedkar: And it is for that reason that we have thought it necessary to include in the new heads this head of friendly relations with foreign states.

My friend Dr. Mookerjee asked whether there was any country where such a law prevailed. Well, I have searched for a precedent and I can tell him that I find no country which has not such a law. In the case of England it is a rule of Common law. No statutory law is necessary. The Common Law is operative not only in England but in all the Dominions. Therefore that same rule prevails there. In fact, the common Law rule has been amended and made more stringent by a statutory provision in Canada.

Pandit Kunzru (Uttar Pradesh): Will my hon. Friend explain a little more the position in England?

Dr. Ambedkar: Yes, I will. I do not know—I must leave some time for the Prime Minister.

Hon. Members: Take your own time.

Dr. Ambedkar: There is some confusion. I think, in the minds of the people.....

Dr. S. P. Mookerjee: And the framers of the Bill.

Dr. Ambedkar: No, I do not think so. You will presently see that we have no such confusion. At any rate my mind is very clear about it.

Shri Kamath: Government as a whole, not you.

Dr. Ambedkar: What does maintenance of friendly relations imply ? Most Members are under the impression that if this category was added they would not be in a position to criticise the foreign policy of the Government. I like to say that that is a complete misunderstanding and a misconception.

Shri Kamath: That is your opinion.

Dr. Ambedkar: The underlying principle of this category, namely maintenance of friendly relations with a State, is nothing more than an extension of the principle of libel and defamation, that you shall do nothing, you shall say nothing, you shall circulate no rumour which will involve a foreign State in any kind of ignominy. Beyond that there is nothing in this category. Even the English Common Law is based upon this, namely that it is a part of the law of defamation—that you shall not defame a foreign State which has a friendly relation with this country. Now, I want to know from Dr. Syama Prasad Mookerjee whether he thinks that even asking him or others that they shall not defame a friendly nation is such a serious inroad upon the liberty of speech that it should be condemned.

Dr. S. P. Mookerjee: Why not specify it ?

Dr. Ambedkar: It is understood that this is so. I know my friend is a great reader, but if he were to read the debates that took place in this Assembly in 1932 when this law was enacted, if he will read the Statement of Objects and Reasons—which I have read—and also the Report of the Select Committee on that Bill he will find that in this particular law there is nothing more than what I have stated.

Shri Kamath: Is not the expression “running dog” used by the Peking Government libellous or slanderous ?

Dr. Ambedkar: There the Peking Government ought to make a law.

Shri Kamath: If someone retaliates here ?

Dr. Ambedkar: This policy of tit for tat is not good for the State.

Shri Kamath: What about reciprocity ?

Dr. Ambedkar: It may involve us in great deal of trouble. If we are responsible to our friendly neighbours that our citizens shall not defame them, in the same way the Chinese Government is responsible that the Chinese citizens shall not defame India and the remedy must be left for each Government to adopt in accordance with its own executive authority.

Prof. Ranga (Madras): And sense of honour.

Dr. Ambedkar: Yes, and sense of honour.

Shri Naziruddin Ahmad: But the present law of defamation will protect foreign States also.

Dr. Ambedkar: My friend has provoked me to do something more which I did not want to do ! Now, let me read to him—this is very important—the law in the United States. Incidentally I would like to remind my friend Dr. Syama Parasad Mookerjee who so vehemently asked ‘Is there any country which has such a law ?’, well, I point to the United States of America. I have got this big volume with me *Foreign Relations and Intercourse*.

Shri Frank Anthony (Madhya Pradesh): Is it part of the Bill of Rights.

Dr. Ambedkar: It says—this is an important point—“Notwithstanding the fact that the United States does not permit the Congress to make a law on this particular subject, the Supreme Court on the basis that every State has a police power to protect itself has permitted such a legislation to be on the statute book.”

Shri R. K. Chaudhuri (Assam): But not on the Constitution.

Dr. Ambedkar: “What is the law ?”—my hon. friend Mr. Naziruddin who asked the question may read it. It goes much beyond our Indian law. The first clause says that “anybody wilfully and knowingly making any untrue statement, either

orally or in writing, about any person shall be punished by imprisonment for not more than ten years and may, in the discretion of the court, be fined not more than five thousand dollars". I want him to compare the punishing clause of our law with the punishing clause of this law.

Shri Naziruddin Ahmad: I raised a different question.

Dr. Ambedkar: Let me read it again.

Mr. Chairman: Order, order ; I do not think that too many interruptions help the debate.

Dr. Ambedkar: I do not mind replying if I can understand what they ask.

Shri Naziruddin Ahmad: I raised a different question altogether. My question was whether our law of defamation does not protect foreign States also.

Dr. Ambedkar: It does not.

Shri Naziruddin Ahmad: I think it does.

Dr. Ambedkar: No, it applies only when one person defames another. That is the point. Then the second clause in that law is about "wrongful assumption of character of a diplomatic or consular officer". That also is made punishable under the law relating to foreign relations. One more important clause is about "conspiracy to injure property of a foreign Government". There again the punishment is imprisonment of not more than three years or fine of not more than five thousand dollars or both. Therefore, our law is a very mild one.

Shri Kamath : If all untrue statements are tabooed it will put an end to all diplomacy.

Dr. Ambedkar : We are talking of citizens doing harm to the Government of the foreign State.

Shri Kamath: Not Government-to-Government.

Dr. Ambedkar: With the explanation that I have given so far, Members of the House, I think will agree that there is a necessity for amending article 19 in the way in which sub-clause (1) of clause 3 of the Bill makes provision for it.

Some Hon. Members: No.

Dr. S. P. Mookerjee: If it is only for protection against defamation, why are you having it separately ?

Dr. Ambedkar: Sometimes it is better to separate a certain category.

Shri Kamath: Expediency.

Dr. S. P. Mookerjee: Which is the Constitution in the rest of the world where such a separate provision is made ? You contradicted me.

Dr. Ambedkar: The whole point is that the British Constitution is an unwritten Constitution and therefore nothing is necessary; Parliament is supreme.

Dr. S. P. Mookerjee: What about the American Constitution ?

Dr. Ambedkar: There are no Fundamental Rights in the United Kingdom. That is the difficulty.

Dr. S. P. Mookerjee: In any written constitution does a similar provision exist ?

Dr. Ambedkar: It does not, but in the United States of America according to the canons of interpretation adopted by the Supreme Court such a law is possible.

Dr. S. P. Mookerjee: That is a different matter.

Dr. Ambedkar: It is not different at all.

Now I come to clause 3, sub-clause (1)(b). This clause seeks to amend clause (6) of article 19 which deals with trade, profession, etc.

Shri Deshbandhu Gupta (Delhi): Before the Hon. Minister goes to clause 3(1)(b), may I ask him one question ? The words are “defamation or incitement to an offence” and all laws existing today will become.....

Dr. Ambedkar: I have not come to that.

Shri Deshbandhu Gupta: I want you to answer that.

Dr. Ambedkar : I will not answer it now. I will answer it at my own time. I have noted it and I think it is a question to which some answer should be given. There is no ground for running away from it. It may be that the House may not accept my explanation, but that I have no explanation to offer is not the presumption that should be made.

With regard to this clause it will be noticed that the latter part of clause (6) has been separated into two parts, one dealing with the qualifications for practising any profession, and the second part dealing with the actual carrying on of any trade etc. The important part of that second part lies in this that it permits the State to make a different classification between private members carrying on the trade and the State carrying on the same trade. This clause and the necessity for its introduction has arisen on account of the judgment of the Allahabad High Court reported in 1951 A.I.R. (Allahabad) 257, Full Bench, known as *Motilal versus the Government of Uttar Pradesh*. As hon. Members will remember, U.P. Government have introduced a scheme of nationalisation of motor transport. They were proceeding with their scheme piecemeal, territory by territory; certain territory they had said would be subject to their monopoly and that no private individual would be entitled to run their buses within that territory; certain territory which they thought in the beginning they could not cope with they left to private bus owners. In doing so, they said that it would not be necessary for the State to obtain a licence for the running of their buses within the territory that they had ear-marked for themselves, but required the private owners to obtain licences from the State. This question was raised before the Allahabad High Court on the ground that they involved discrimination. It seems to me that if nationalisation is a desirable thing and in the best interests of the country, then it must also be admitted that it may not be possible for the State to undertake nationalisation all throughout the country at one and the same time. It involves administrative problems; it involves many other problems and consequently, in order to fully carry out the scheme and to consolidate it, it may be necessary for the State to define a territory and to leave others to carry

on for the time being. Such a process should not be hampered by the doctrine of non-discrimination. It is to get rid of this doctrine of non-discrimination in the matter of nationalisation that this particular amendment has been introduced and I do not think that the House will very seriously object to this kind of doing.

An Hon. Member: The same thing from the High Court.

Dr. Ambedkar: Now I come to clause 3, sub-clause (2) about which.....

Dr. S. P. Mookerjee: Why have you omitted the word 'reasonable' from the existing clause ?

Dr. Ambedkar: The word 'reasonable' was not there. That is a matter which may be discussed. (*An Hon. Member* ; In the Select Committee.) In the House, everywhere.

Now I come to clause 3, sub-clause (2). In order to understand what this amendment precisely does, I think it is necessary to go back to article 13. It is only in the light of article 13 that one can have a clear idea of this particular sub-clause 31. As hon. Members know, article 13 declares that if any law is inconsistent with the Fundamental Rights, that law shall be declared to be void and inoperative. As I have shown in the course of my observations, certain provisions of laws, such as sections 153A and 124A of the Indian Penal Code, certain provisions of the Press (Emergency Powers) Act and the Public Safety Acts have now been declared to be void by the Supreme Court and by the various High Courts. In view of this, what are we to do ? It seems to me that there are three alternatives which we could pursue. The first alternative is to refuse to amend the constitution and to let the void provision remain as it is. I do not think that any Member of this House would like this alternative. (*An Hon. Member* : It would be disastrous). The second alternative is to amend the Constitution, and then under this, there are two courses open. The first course open to us is to re-enact this law in consonance with the amended article. That is one way. Parliament and the various State Legislatures should call in their sessions and tackle with these laws once

again. The second course is to revive these laws and to say that the revival of these laws shall be subject to the provisions contained in the amended Constitution. I cannot see what else one can do. The Bill adopts the second course. The Bill says: let the laws which have been declared by the Supreme Court and the High Courts to be null and void be deemed to be alive, but subject to one proviso, and that proviso is that they shall not be alive in their original body and flesh but they shall be alive only in such degree and in such manner as may be consistent with the amended article 19. That is the position. Now, I would like to ask the House whether they will seriously contemplate the possibility of either this Parliament or the various Legislative Assemblies in the Provinces to again sit and re-enact these laws.

Dr. S. P. Mookerjee: Why not ?

Dr. Ambedkar: Is there time for it ?

Dr. S. P. Mookerjee: What is happening ?

Dr. Ambedkar: I do not know what time it might take. But I am sure about that if my hon. friend Dr. Mookerjee were to be a member of the Bengal Legislative Assembly, he will prevent such a law being passed there for at least six months. His argument, his eloquence, all that would stand as a formidable Chinese Wall against any re-enactment of these laws. Therefore, it seems to me not to be a very unnatural presumption that in the present circumstances in which this Parliament is situated or the local Legislative Assemblies are situated, you cannot presume that there would be immediately the time available for the re-enactment of these laws. I cannot think of it myself. We have so much legislation here.

Shri Sarangdhar Das: Why not the new Parliament ?

Dr. Ambedkar: If it is the new parliament, it means that for six, seven or eight months on a year, there will be no law for public order; there will be no law for incitement to an offence and no law for friendly relations with foreign States. If Members of Parliament can contemplate such a contingency, they are welcome to it.

Ch. Ranbir Singh (Punjab): The new Parliament can repeal these laws if they so want.

Dr. Ambedkar: I have dealt with article 19.

Dr. S. P. Mookerjee: Why are you *giving* retrospective effect ?

Dr. Ambedkar : Unless you give retrospective effect, these laws cannot be revived.

Shri Shiv Charan Lal (Uttar Pradesh): Is that legal ?

Dr. Ambedkar: Why not ? If these laws are to be in operation, they must be in operation *on* the date when this law comes into existence. You can give it a new beginning if you can re-enact; but I do not see how you can re-enact.

Shri Deshbandhu Gupta: Because the Hon. Law Minister is going to another article, may I ask a question with regard to this article ? The power sought to be conferred refers to incitement to an offence. Section 4 of the Press (Emergency Powers) Act, to which the Hon. Law Minister has referred, involves incitement to murder or to an offence involving violence. I want to know.

Dr. Ambedkar: Do you want to advocate it ?

Shri Deshbandhu Gupta: No. I want to know whether under the wide powers that are sought to be taken, it is not possible to advocate even non-violent disobedience to any order which may be against the liberties of the people, and which will constitute an offence under other enactments. I want an explanation. For instance, section 144 prevents the holding of a meeting for unlawful purposes. Some district magistrate issue an order. A newspaper, tomorrow, advises the people that this order is absolutely obnoxious and it may be disobeyed. Will it or will it not constitute an offence although it is neither an incitement to violence nor incitement to murder ?

Shri Rajagopalchari: May I submit that such extensively detailed discussion may be reserved for the Select Committee. The principles have been explained. Otherwise, we will have no time.

Shri Deshbandhu Gupta: If the Hon. Minister gives an assurance that it will be modified, it is enough.

Mr. Chairman: Whatever it may be, the hon. Members who are frequently interrupting, I think, have had their say already, and their points of view have been taken note of. Now, let the Hon. Law Minister, who is now speaking have his say.

Shri Kamath: Does it mean that those who have not had their say can interrupt?

Mr. Chairman: No ; that does not mean that. Most hon. -Members will do well to take note of this.

Shri Shiv Charan Lal: Only one question. Will it be legal to give retrospective effect ?

Dr. Ambedkar: Oh yes ; undoubtedly.

Pandit Thakur Das Bhargava: May I ask one direct question ? Is the Hon. Law Minister satisfied with the terms of article 19(2) as he seeks to amend it ?

Dr. Ambedkar: I have explained the principle. If as I said, the language requires to be modified to give effect to the principle, there can be no objection. But, the principle is that they shall be revived.

Shri Deshbandhu Gupta: The Hon. Minister has not thrown any light on the removal of the word 'reasonable'.

Dr. Ambedkar: It is not removed; it was not there.

Pandit Thakur Das Bhargava: But the other things were there. You have taken away all those safeguards.

Dr. Ambedkar: That is a different matter. That will be considered by the Select Committee.

Now, I come to clause 4 of the Bill. This clause introduces a new article 31A. Let us understand, first of all, what this article does. What this article does is to permit a State to acquire what are called estates. Secondly, it says that when any legislation is undertaken to acquire estates, nothing in the Fundamental Rights shall effect such a legislation. The merits

of this article, I think have to be judged in the light of one question, and it is this. Is there anything revolutionary in this article ?

Shri Frank Anthony: It is reactionary.

Dr. Ambedkar: Is there anything in this article which is not to be found in article 31 ? It is from this point of view that I want the House to consider this question. The House would remember that later clauses of article 31 provided that certain laws which were then on the anvil and had not been passed, shall not be questioned on the ground of compensation if a certificate was issued by the President. That is the gist of those clauses of article 31. The new amendment to article 31 not only removes the operation of the provision relating to compensation, but also removes the operation of the article relating to discrimination. In this amendment, I am emphasising the word 'estate'. The new article is a very limited one. It does not apply to the acquisition of land. It applies to the acquisition of estate in land which is a very different thing. What is an estate has been defined in this particular article namely, the right of a proprietor, sub-proprietor, tenure-holder, or other intermediary. Of course, the terminology is different in different provinces. It does not refer to the acquisition of land. That is a point to be borne in mind. Therefore, all that article 31 A does is this. When any law is undertaken with regard to the acquisition of property, two questions can properly arise. One is the amount of compensation ; the second is discrimination as between the various proprietors as regards the amount of compensation. These are the only two questions that can possibly arise and give rise to litigation. With regard to one part of it, dealing with compensation, we have already excluded the acquisition of proprietary and zamindari interests by the original article 31. By this article, we are excluding the operation of the discriminatory provision. That is all what we are doing by this article.

It seems to me that we really cannot adopt the said two articles of the Fundamental Rights relating to compensation and discrimination with regard to this land question. I have

paid considerable attention to this subject. I may say that I have studied with great care the situation in Ireland, a country which resembles very closely our own. In Ireland, the peasantry is hungering for land. Land in Ireland has been unevenly distributed. Some have very large estates ; some have very small. There are many who are landless. What has the Irish Constitution done ? I want the Members who are representing the landed interests to consider this case in a comparative manner. Now, so far as the Irish constitution is concerned, property in land particularly is not a Fundamental Right. Article 43 of the Irish Constitution clause (2), states that the exercise of the right mentioned, that is the right on land, should be regulated by the principles of social justice. It does not say that land shall not be taken except on the basis of full compensation or without any discrimination as between landlords. What the Irish law does is this. They have appointed what is called the "Congested Board", as they call it, or congested Areas board. It is a separate organisation created by law and this Board has been *given* the power to acquire land, to break up holdings, to equalise land, to make uneconomic holdings economic ones by taking land from a neighbouring owner and the right of assigning compensation has been given to this Board of congested areas. There is no judicial authority to interpret the action of this board.

An hon. Member: And no appeal?

Dr. Ambedkar: And no appeal at all. Some people have of course, taken appeals to the courts, but the courts have held that no appeals lie with any court.

Now, I can, speaking for myself, say without any hesitation that I am not at all an admirer of the new schemes that have been drafted by these States who have acquired land. It is, in my judgment, not a very good thing to create peasant proprietors in this country. Our difficulty in this country has arisen by reason of the fact that we have small landlords holding half an acre of land or an acre or two acres, with no money, no measure, no bulls, no bullocks, no implements, no seeds and no arrangement for water. And yet they are the landlords and the holders of the land. Looking at the future,

I feel very aghast as to what is going to happen to this country and its national production of food, if this kind of agricultural system continues. I would have very much liked if the State had acquired all these properties and kept the land as State land and given it on permanent tenancy to cultivators so that the State would have had the right to create collective farming and co-operative farming on the basis of supplying the materials and so on and so forth. But now we have a large 'number of landless labourers in this country, and I think their number will exceed even five crores. But when you make these laws, making the tiller of the soil the owner of it, what provision can you make for the welfare of these landless labourers? They will remain where they are—high and dry—notwithstanding the abolition of the *zamindars*. I am, therefore, not very happy at what is being done. But that is a different question altogether. The question we are considering now is whether the intermediaries should be allowed to continue. That is the point, and on the point, I think there can be no dispute that the intermediaries should be liquidated, without any kind of interference from the Fundamental Rights either on the ground that there is no adequate compensation or that a discrimination has been made. I have got with me a very interesting paper which I secured from the Government of West Bengal. Hon Members will remember that there was a Commission called the Floud Commission, appointed for the purpose of liquidating the *zamindars* in Bengal. After that Commission had reported, the Government of Bengal appointed a special officer in order to find out how effect could be given to the recommendations of the Floud Commission and that officer has made a very interesting report. I have got a copy, but as I said, I have not got the time now to go through the whole of it. But that officer himself recommended that equality of compensation would be wrong. It would be neither just nor equitable, though it may be administratively smooth. He has worked out a scheme of compensation which is very interesting, and the scheme is one of graded compensation. In the case of profits up to Rs. 2,000 the compensation should be fifteen times the net profit. From Rs. 2,000 up to Rs. 5,000 it should be twelve times but not less than the maximum

amount given under the previous item. From Rs. 5,000 up to Rs. 10,000, the compensation should be ten times but not less than the maximum under the Rs. 2,000—Rs. 5,000 category and for profits above Rs. 10,000 it should be eight times but not less than the maximum under the last-mentioned category. It is all a graded thing. And I am afraid that we should not get mixed up with this question of compensation which is a very ticklish problem. If you want the betterment of agriculture, I am convinced that these intermediaries must be liquidated. The original article exempted compensation for the acquisition of *zamindari* rights. We are now dealing with exemption from discrimination. I do not see why article 31 should now continue to operate, when there is a law for the purpose of acquiring these estates.

Shri Shiv Charan Lal: What about article 14 about discrimination ?

Dr. Ambedkar: The whole chapter is excluded from operation.

Shrimati Renuka Ray (West Bengal): When the Hon. Minister is prepared to go far, why does he not go further ?

Dr. Ambedkar: I am not revolutionary enough.

Shrimati Renuka Ray: But you yourself suggested that the State should acquire the land?

Dr. Ambedkar: Yes, but I am a progressive radical.

Now, I come to article 31 B. This article enumerates in the Ninth Schedule certain laws which have been passed. Great objection has been taken that this is a very unusual procedure. *Prima facie*, it is an unusual procedure. But let us look at it from another point of view. What are these laws ? What are the principles on which these laws are made which are being saved by the Ninth Schedule. All the laws that have been saved by this Schedule are laws which fall under article 31A. That is to say, they are laws which are intended to acquire estates. And when we say by article 31A that whenever a law is made for the acquisition of an estate, neither the principle of compensation nor the principle of

discrimination shall stand in the way of the validity of it. I admit that sentimentally there may be objection. But from the practical point of view. I do not understand why we should not declare them valid pieces of legislation.

Shri Naziruddin Ahmad: They are bad laws and so they have to be declared valid!

Shri Syamnandan Sahaya (Bihar): May I enquire whether these laws that are now sought to be validated will cover, only land reforms or whether there will be interference with other laws like the Transfer of Property Act and other Act? Has this aspect of the matter been investigated by the Government?

Dr. Ambedkar: I shall be quite frank about it. The only
11-00 AM other method to adopt would be to give power to the President to revise these laws and to reconstruct them and to bring them strictly in conformity with the provisions of article 31.

Pandit Thakur Das Bhargava: Under article 31 we decided that if President certifies certain laws, they will be valid. Now that safeguard has been taken away.

Dr. Ambedkar: The reason why that has not been done is this. Just imagine the amount of burden that would be cast upon myself, on the Law Ministry, the Food and Agriculture Ministry and other Ministeries involved if we were to sit here and examine every section of each one of these Acts to find out whether they deviate. I think that is impossible.

Shri Kamath: Appoint a Committee for the purpose

Dr. Ambedkar: That will mean postponement of this Bill.

Now I come to clause 6 which seeks to amend article 85. In article 85 the word used is 'summon'. This word has given rise to some difficulty. The word 'summon' has a technical meaning, *viz.* sitting of Parliament after a prorogation or dissolution. It does not cover the case of the sitting of Parliament after adjournment. The result is that although Parliament may sit for the whole year adjourning from time

to time, it is still capable of being said that Parliament has been summoned only once and not twice. There must be prorogation in order that there may be a new session. It is felt that this difficulty should be removed and consequently the first part of it has been deleted. The provision that whenever there is a prorogation of Parliament, the new session shall be called within six months is retained. That is the difference between the old article and the new, *viz.*, the summoning has been dispensed with. Parliament may be summoned once and it may continue to go on after short adjournments from time to time.

Another difficulty with regard to clause (2) is—it was contended by some that according to the letter of this article it is necessary that both Houses should be prorogued simultaneously and not at different times. That certainly was not the intention of the Constitution. The Constitution intended that one House may be summoned at one time, another may be summoned at another time, one may be prorogued at one time and another may be prorogued at another time. It is to make this possible that clause (2) has been amended.

With regard to article 87, which is sought to be amended by clause 7, the position is this. Under the old article the provision was that whenever Parliament was summoned, there was to be an address by President. Now as Parliament will be summoned only once and it will continue either by prorogation or by adjournment, it is not necessary to retain this provision. Similarly

Shri Kamath: How can it continue after prorogation ?

Dr. Ambedkar: If it is prorogued, then it will be summoned. If there are two summonings, the address by President will be only once. With regard to precedence for debate, that also has been deleted—not that there will be no time given but for the simple reason that there may be some urgent business which may require to be disposed of earlier

Shri Syamnandan Sahaya: Supposing the President wants to address the House, this will be a limitation imposed on him.

Dr. Ambedkar: Now I come to articles 341 and 342. As the House knows, to-day the power of issuing scheduled castes and the scheduled tribes order so far as part A and Part B States are concerned is given only to the President while the power to issue such orders with regard to Part C States is given to Parliament. That position is now being altered and the power is given to President even to make an order with regard to scheduled castes and scheduled tribes in respect of Part C States also.

Then article 372 invests the President with the power to make adaptation in existing laws in order to bring them in conformity with the provisions of the Constitution and that power is given only for two years. This House will remember on account of the pressure of other business it has not been possible for Government to examine all the existing laws in order to find out how many of them are inconsistent with the provisions of the Constitution. It is therefore felt that the President's power to make such adaptation in the existing laws in order to bring them in conformity with the Constitution be extended by one more year so that means may be adopted in order to find out which laws are inconsistent and a consolidated order may be issued thereafter.

Shri Kamath: The article also provides that once Parliament is elected under the new Constitution, the President shall not exercise this power.

Dr. Ambedkar: If this article gives the power, then that of course overrides.

Shri Kamath : How can that be ?

Dr. Ambedkar: Then I come to article 376, clause 13. A good deal of objection was taken to this particular clause. It deals with the appointment of persons who are not citizens of India to the posts of Chief Justice and Judge of any High Court. The position is this. Article 217, clause (2) says that a Judge of the High Court must be a citizen of India. Article 376 provides that existing Judges including Judges who were not citizens on the date when the Constitution came into operation shall continue as Judges if they so choose. Now it

so happens that we have in our country some four High Court Judges who were on the date of the Constitution, Judges of Certain High Courts but were not citizens of India. They chose to remain at their posts and did not retire. We were therefore bound to carry them over under the provisions of article 376. A question has arisen and it is this. Can such a person be appointed as a Chief Justice either in the Court in which he is serving or in some other Court ? Another question that has arisen is this. Can such a Judge be transferred to another High Court, the point being whether the appointment of a Chief Justice or the transfer of a Judge from one High Court to another High court is a new appointment ? If it is a new appointment, obviously the provisions of article 217(2) would apply. This was felt as a great difficulty, because it could not be presumed that parliament intended merely to continue them but their prospects should be blocked. Such evidently was not the intention. Consequently the President under the powers vested in him under article 392, clause (1) for the purpose of removing difficulties, issued an order regularising the position. That order in some quarters has been questioned as being outside the power of the President, there being no difficulty whatsoever. In order to remove these doubts it is thought better to make a provision in the Constitution itself and that is why clause 13 is included in this Bill.

Mr. Chairman: Will the Hon. Minister explain why was not originally the transfer contemplated ? Is it not a new situation created by this clause ?

Dr. Ambedkar: That is what I interpret to be the intention of article 376 *viz.*, that once they were carried over, they were carried over for all purposes, either transfer or promotion.

But some people have found this difficulty

Pandit Thakur Das Bhargava: The idea was that the Chief Justice shall not be a non-national. What is the reason now ?