
Dr. Ambedkar: The reason is obvious. When you accept a man as a Judge you certainly accept him for your own convenience and you should be in a position to transfer him to some other court. For the benefit of and in fairness to that individual he should not be debarred from promotion.

Pandit Thakur Das Bhargava: Would you like the Prime Minister of India to be a non-national ?

Dr. Ambedkar ; We are dealing with these four exceptional cases. (*Interruption*). The provision is very clear and I do not think anybody can quarrel with it.

I believe I have exhausted all the points raised in the course of the debate. If anything remains I shall be prepared to deal with it when the Bill is taken up clause by clause.

CONSTITUTION (1ST AMENDMENT) BILL 1951

***Shri Jawaharlal Nehru:** Now, it has become a convention—I cannot immediately say whether it is anything more and whether it is in the Constitution itself—that anything coming under the concurrent list of legislation, any law passed by a State Assembly, has to come up here for examination and for the President's approval. Is that so?

An hon. Member: Not until this House has passed a law.

The Minister of Law (Dr. Ambedkar): If it is inconsistent.

An hon. Member: Not until this House passes a law.

Shri Jawaharlal Nehru: What I mean was, if there is obvious repugnance then, of course, it does not come into effect. That is obvious. But in order to examine that there is no repugnance, in order to see that it is what the legislative lists contemplate, it comes up here of the President's assent. Therefore, in effect

Shri Bharati (Madras): Not necessarily,

Shri Jawaharlal Nehru: I do not say it is necessary, in the sense that the law does not take effect. But I am told that it is practically automatic and anyhow it has been in practice automatic. And such laws have to come up here, every one of them, for they come up daily, first of all to the Home Ministry to examine and to the Law Ministry also to examine and it comes before the President to see whether he expresses his approval or not. So it can be taken for granted that, especially in a matter of this kind it must inevitably come. I go beyond that and if the House wishes I am perfectly willing to add that clause about the President's assent to article 19. It is for the House to decide.

* P. D., Vol 12, Part II, 31st May 1951, p. 9610.

***Dr. S. P. Mookherjee :** Before I take my seat, I once again request the Prime Minister to consider the main purpose of my two amendments with regard to the substitution of the word 'Parliament' in the place of 'State' or if that is not possible, at least to provide that the laws passed by the States in this behalf will be subject to the President's assent. If that is done, it will, to a great extent, remove the difficulties which stand in our way.

The Minister of Law (Dr. Ambedkar): My only excuse for intervening in this debate is to clear certain points which relate to the constitutional provisions which are necessarily involved in the amendments which have been tabled. In the first place, I propose to deal with the two amendments together: the first amendment is that Parliament should have the exclusive power to make laws under the provisions which are now being introduced in the proposed clause (2) of article 19 and the second is that, if that is not possible, the President should have the power to give his assent to any law made under this new proposed clause and unless that assent was given, that law should not be deemed to be valid.

With regard to the question of bringing in Parliament, there are two aspects to the matter which, I think, it is desirable to consider carefully. One is this: Is it possible to give exclusive power to Parliament to make a law in a field which is covered by the new clause (2)? On this matter, I should like to invite the attention of the House to article 368 which deals with the amendment of the Constitution. That article specifies certain classes of amendments to the articles "of the Constitution which would require the ratification of the States before the amendments could be deemed to have been validly passed. I do not propose to go over all the different categories that have been set out in article 368. I content myself by reference to only one and I refer to Chapter I of Part XL Article 368 says that if any article which forms part of Chapter I of Part XI is amended, then such an amendment will require the ratification of the State. It will be noticed that article 246 clause (3) falls in Chapter I of Part XI. That article says that

* P. D., Vol 12, Part II, 1st June 1951, pp. 9861-69.

the States shall have the exclusive power to make laws in relation to any entry in List II, which means that Parliament shall not have the power to make laws with regard to any item in List II. If Members of this House would refer to List II, they will notice that Entry 1 in that List refers to public order. Public order is one of the categories of heads of legislation which we are introducing for the first time in clause (2) of article 19, by this amending Bill. It is therefore quite clear that if you were to give Parliament power to make law in respect of public order which is included in List II, and which according to article 246(3) confers exclusive legislative jurisdiction upon the States, then it is obvious that such an amendment would require the ratification of the States. Now the intention of the Government as well as of this House, I think on this point is quite clear, namely, that we do not propose to make any amendment to any clause which would require the assent or the ratification of the States. From that point of view, I think, all those who have tabled this amendment would agree that it is not possible to accept that amendment without involving this particular Bill in a great difficulty which it would not be possible for this House to overcome within the time within which we propose to carry through this measure.

As the Prime Minister said yesterday, all of us have sympathy with the proposal, namely, that if it were possible Parliament should be given the power to legislate. We have also sympathy with the suggestion that the President may have the right to give his assent before the Bill becomes law. But the question that has to be considered is, is such a thing necessary? Is it not contained in the very provisions of the Constitution? Now, let me refer hon. Members to the heads of legislation we are introducing in the present clause and the place, they have in the various entries in Schedule Seven.

Take the security of the State. There is no particular entry of this nature—security of State—for the simple reason that the security of the State can be affected by a variety of entries and the power is necessarily distributed under different heads. At the same time hon. Members will see that entry 1 of List

1 is a very relevant entry so far as the security of the State is concerned. Take the second head—friendly relations with foreign States. That is covered by entries 9, 10 and 14 in List I. Take the third head—public order, decency and morality. That is in entry 1 in List II.

Dr. S. P. Mookerjee: What entry?

Dr. Ambedkar: It is entry 1 in List II to some extent. And so far as newspapers, books etc. are concerned it is also related to entry 39 in List III. Contempt of court comes in entry 95 in List I and also in entry 14 in List III. Defamation is in entry 1 in List III. Incitement to an offence is in entry 1 in List III.

Now having had this information before the House, I think the House will understand that in the large majority of the cases since the entry either falls in List I or in List III, Parliament has in some cases the exclusive authority to make law, in some cases concurrent authority to make them.

Dr. S. P. Mookerjee: Will the Hon. Minister be more specific? Where is the concurrent power to pass laws regarding public order?

Dr. Ambedkar: With regard to public order, there is another entry—39 in List III—which speaks of books and newspapers. Newspapers are very much concerned.

Dr. S. P. Mookerjee: The Hon. Minister is arguing that with regard to certain matters—in fact with regard to all the matters either Parliament has concurrent jurisdiction or has exclusive jurisdiction. I would like him to be more specific.

Dr. Ambedkar: I am giving the entries.

Dr. S. P. Mookerjee: Public order?

Dr. Ambedkar: The large head for public order is entry 1 in List II. Newspapers may also come under public order.

Dr. S. P. Mookerjee: It is not.

Dr. Ambedkar: The point is this. Some law has to be related to some entry. How is the authority of Parliament or the authority of a State to be determined to make a law?

Dr. S. P. Mookerjee: Will the Hon. Minister admit that Parliament has no concurrent jurisdiction in respect of laws relating to public order except newspapers? Let us have it clearly.

Dr. Ambedkar: Yes.

Mr. Deputy Speaker: The Hon. Minister does not say that every item is in the Concurrent List.

Dr. Ambedkar: A large majority of them is exclusively in the jurisdiction of Parliament and in some cases the jurisdiction is also concurrent. Therefore my submission to the House is this—that nothing is necessary for the purpose of investing Parliament to make a law in the fields which are mentioned here as exclusive right of legislation. Parliament has, in certain cases, got also concurrent power so that it can check any abuse that the Provincial Legislatures may make of the power that we are conferring.

Dr. S. P. Mookerjee: What is the power regarding incitement to offence under the Concurrent List?

Dr. Ambedkar: It comes under the Penal Code. Incitement to offence is a specific offence in the Penal Code.

Dr. S. P. Mookerjee: The Hon. Minister should read to the House entry 1 of.....

Dr. Ambedkar : I cannot yield to him just like he did not yield to the Hon. Home Minister. This is not a lecture room and I am not lecturing to the students either. I am making my point. If my hon. friend wants an exposition we can meet somewhere in the Constitution Club—and I shall be prepared to lecture to him.

Mr. Deputy Speaker: All that I can say is the hon. Member contends that entry 1 in List II—State List—only relates to public order and this is not covered. Incitement to offence is in the Penal Code. If he is not satisfied, he can draw his own inferences.

Dr. Ambedkar: It is open to you to say that this does not cover public order.

Mr. Deputy Speaker: All that the Hon. Minister wants to show is that with respect to the majority of the offences, they are either in the Union List or in the Concurrent List. The minority may be more important than the majority.

Dr. S. P. Mookerjee: The Hon. Minister stated that incitement to offence comes under entry 1 in the Concurrent List but that item reads like this :

“Criminal law, including all matters included in the Indian Penal Code at the commencement of the Constitution but excluding offences against laws with respect to any of the matters specified in List I or List II and excluding the use of naval, military or air forces or any other armed forces of the Union in aid of the civil power ”.

Dr. Ambedkar: I will not give in. I would like to finish my speech before one o'clock

Dr. S. P. Mookerjee: It means that there will be no incitement to any offence which comes under public order in List II.....

Dr. Ambedkar: I am not running away from that point. I am very much interested in it.

Dr. S. P. Mookerjee: I know you are.

Dr. Ambedkar: Yes, I am.

I now come to the President's assent. Under article 200 of the Constitution the Governors or the Rajpramukhs of the different States are empowered to withhold their assent from any particular Bill and refer it to the President. That provision already exists. Naturally the Governor has to act on the advice of his Minister and if he felt that a measure should be reserved for the consideration of the President, the power is already there. No new power is required. But it may be argued that this power is in a sense nugatory, because it depends upon the advice given to him by the Ministry and the Ministry which has been a party to a measure cannot be expected to give their advice to the Governor to refer the matter to the President.

There is also another article 254 which deals with the laws in the concurrent field and that article says that if there is any inconsistency between any law made by Parliament and a similar law on the same subject made by a State Legislature,

then to the extent of the repugnancy and inconsistency the law of the State shall be void. There is in addition to that a further provision in clause (2) of that article that if such a law, which is inconsistent with the law made by Parliament on the subject, is reserved for the assent of the President and the President gives his assent, notwithstanding the repugnancy the law shall remain void so far as that State is concerned. So far as our experience in the Law Ministry goes almost every State has got the fear that their law may be declared to be inconsistent and hence void. In order to prevent this contingency the States have always taken the safest course to refer all these measures to the President for his consideration and assent and his assent has generally been given either in the form in which the Bill stands or with some modifications. Therefore my submission is that so far as the Constitution is concerned articles 200 and 254(2) contain enough safeguards to see that such measures do reach the President and receive his consideration and assent.

Shrimati Durgabai : Under what procedure ?

Dr. Ambedkar: I was just referring to it. Under article 254(2).....

Shrimati Durgabai : How ?

Dr. Ambedkar: I know some people have got a bee in their bonnet. On all these three counts I submit that all these amendments are quite unnecessary.

I propose to deal with some of the points raised by my friend Pandit Kunzru. So far as his amendment dealing with change of words is concerned, his words I suppose are merely poetical alliterations and I do not think there is any substance in them, whether you call it friendly relations or by some other words : the substance and the head of legislation remaining what it is. I am therefore not prepared to spend my time in dealing with them.

But he has been making a great deal of capital with regard to the American case which he can never forget namely *Near versus Minnesota*. It is true that the U. S. Supreme Court

nullified a law which had made previous restraint as unconstitutional. But with regard to that case I think it is not desirable to fix our banner and standard by the decision that was given, because I would like to draw my learned friend's attention to some of the incidents with regard to that particular case. I have a book with me and I shall give the name. I know that Dr. Mookerje is very careful in pursuing these matters. The book is *Free Speech in the United States*. There are various other books also which he must have known. Now with regard to this particular case the first point which the American writers have themselves noted is that it is a decision which was arrived at by a bare majority of one single judge ; it was a decision which was given by five to four. The second thing is that at page 380 the writer himself has said that on account of this very narrow majority—

“The Near case had no immediate effect beyond voiding the Minnesota statute, which is said to have grown out of a nasty local situation.”

I would also like to read to him a portion of the judgment delivered by the chief of the dissenting judges which I think is worth quoting. This is what Mr. Justice Butler who headed the minority said:

“It is well knownthat existing libel laws are inadequate effectively to suppress evils resulting from the kind of business and publications that are shown in this case. The “doctrine that measures such as the zone before us are invalid as previous restraints exposes the peace and good order of every community and the business and private affairs of every individual to the constant and protracted false and malicious assaults of any insolvent publisher who may have purpose and sufficient capacity to contrive and put into effect a scheme or programme for oppression, blackmail, or extortion.”

That also is a demand which must be taken into consideration in dealing with the liberty of the press. The other thing which my friend has been harping upon all along is the phrase used by Justice Holmes in dealing with cases relating to freedom of speech which is called “clear and present danger”. I have been trying to find out whether that is a very new doctrine so far as we are concerned. I suppose our judges also adopt the same doctrine. Supposing, for instance, a professor delivered a lecture on Communism in the Delhi University

to the students. I do not suppose, although he may mention to them the violent methods that the communists adopt in order to achieve their object that anybody would hold that merely because he delivered a lecture to the students he was guilty of any offence. There was no “clear and present danger” and I have no doubt about it that our judges also would uphold the same line of reasoning. Therefore, as I said, I do not understand why our friends are abiding so much by certain catch phrases and certain decisions of the courts in the United States.

I will now deal with the question of confining “incitement” in violence and I want my friends, Dr. Shyama Prasad Mookerjee and also Pandit Kunzru to pay some attention to what I am saying—and I will take some very particular cases. First of all, I would like to know whether they are in a position to give a precise definition of the meaning of the word “violence”. What is “violence”? Is it to be confined merely to physical violence?

Dr. S. P. Mookerjee: Violent words are excluded.

Dr. Ambedkar: I am not talking of violent words. Have they been able to give us any precise definition which would enable the legislature and the court to know that this is violence and this is not violence? I cannot find any.

Shri Kamath: Put it as “as defined by law”.

Dr. Ambedkar: It is only postponing the trouble. Some day when we make the law we shall have to give the definition of “violence”.

I come now to specific instances. Supposing, for instance, there is trouble—I am giving some concrete cases which have happened—and there is trouble between the Scheduled Castes and caste Hindus in a particular village and the caste Hindus conspire together to proclaim a social boycott on the Scheduled Castes, preventing them from obtaining any kind of supplies, preventing them from going into the fields, preventing them from going into the jungles to collect fuel, then I want to know from Dr. Syama Prasad Mookerjee and Pandit Kunzru whether they want this, as an offence, to be regarded by the State as such or not.

Shri Naziruddin Ahmad : Doctors differ in this respect.

Dr. Ambedkar: I shall give another illustration which was recently reported in Bombay. In a place near Thana there was trouble going on between caste Hindus and the Scheduled Castes over the taking of water from a particular well. With the help of the police the Scheduled Castes there were able to secure their right to take water from that well along with the caste Hindus. The caste Hindus did not like the matter. They wanted the well to be exclusively used by them. Two days ago there was a report in the Bombay Press wherein it was stated that some caste Hindus incited some of their men to drop into it some kind of poisonous weeds. The result was that the whole water was poisoned and some of the Scheduled Caste people who drank the water suffered from the effect of the poison. I want to ask both of them whether they would limit their definition of incitement to violence, or whether they would extend it to cover where one community does something in order to harm and injure another community.

Dr. S. P. Mookerjee: In such a case you and I will go there to prevent it.

Dr. Ambedkar: You and I cannot go everywhere. You will be engaged in fighting the elections and I may be doing something else and we will have no time to go to the rescue of those people. It is no use taking the responsibility on our shoulders. It is much better that the law provides for it.

Then with regard to particular laws, I and my colleagues or the Treasury Benches have been shouting time and over again that in this Bill what we are doing is to merely confirm capacity on Parliament to make laws for certain purposes. We are not enacting particular laws. We are not even protecting the laws as they exist today. But somehow Members who are determined to oppose. Members who are determined to take the opposite view—if they will forgive me—out of pure obstinacy are not able to make this distinction between capacity to legislate and making a particular law.

Dr. S. P. Mookerjee: The obstinacy is yours not to understand.

The House then adjourned till Half Past Three of the Clock.

The House reassembled Half Past Three of the Clock.

[PANDIT THAKUR DAS BHARGAVA *in the Chair*]

* **Shri Hussain Imam:** I wish to draw the attention of the House that no zamindar in his senses objects to the dictum laid down by the Constitution or by the Hon. the Prime Minister. The whole quarrel arises whether the intention of the Constitution is carried out or something is being foisted on us in the name of the Constitution which is not covered by the terms of the Constitution as embodied in the Constitution Act. And secondly.....

An hon. Member: We are amending the Constitution.

Shri Hussain Imam: No. What we are doing is, according to the Prime Minister to carry out the intentions of the Constitution which our wording had failed to do. And there I am at one with him, that as a member of the Constituent Assembly, I am as much a party in this—though I was not present on that day—as anybody else is. There were two cardinal principles of the Constitution—firstly about the Acts which are passed after the Constitution came into effect and those Acts which were passed upto 18 months before the Constitution was brought into effect. Now I ask you, the House and the Law Minister to certify that the eleven Acts are covered by these two categories. Only four Acts come under the category that are passed after the Constitution and had received the assent of the President. Seven Acts are not covered by this.

Dr. Ambedkar: They were assented, I understand.

Shri Hussain Imam: None, except the four. They are the Bihar Act, U. P. Act, Madhya Pradesh Act and the other Act. All the rest have not been assented to.

Shri Bharati (Madras): Madras Act has been assented to.

Shri Hussain Imam: Madras Act I of 1950 has been assented to, not the 1948 Act. I refer to this fact because in the beginning I spoke on the subject and suggested that ample time should be given to the House and to the Select Committee to examine these thoroughly

The other thing to which I would like to draw attention is to the dictum laid down by the Hon. Prime Minister that we must pay fair, adequate compensation and not too much and I agree with that dictum. But do consider the things as they are existing. I am one with the Government in abolishing zamindari but on fair terms.

Dr. Ambedkar: The words 'fair compensation' do not appear in article 31.

Shri Hussain Imam: It was the wording of the Hon. Prime Minister. As far as article 31 is concerned, my charge is that the seven Acts that you are thrusting down our throats are not covered by the original provisions of article 31.

Dr. Ambedkar: They are governed by new article 31A.

Shri Hussain Imam: I was referring to the fact that we must face the facts. The Socialist party says that they are not going to honour the instalments that are going to be fixed by the Congress Government. The Communists have declared from the housetops that they are not going to honour it. Why be in a fool's paradise and believe that it will be paid in 40 years? Half a loaf is better than nothing and if you have to give you should give now. You should realise the plight of small landholder of zamindar who has an income of 500 or 600 or 1,000 rupees. He is not a bloated capitalist. I aver that at least the lower income group should be given compensation in lump sums so that they may start some business.

***Dr. Ambedkar:** As to my own amendment I do not think that any argument is necessary in, order to support the same. The amendment is merely an amplification as to the meaning of the word "estate". Some people felt that while we had taken note of the laws that prevail in Part A States with regard to the definition of the word "estate", we had not taken sufficient notice of the definition of the word "estate" operating in Part B States. In order to remove that doubt I felt that it was necessary to take note of it and to amplify the definition of the word "estate", which I propose to do by my amendment.

* P. D., Vol 12, Part II, 1st June 1951, pp. 9912-15.

My principal ground for rising to take part in the debate is to deal with the point that was raised by my hon. friend, Ch. Ranbir Singh. His argument, if I understood it correctly, was this that while in some States in India the word "estate" is used in a limited sense so as to include only what we call intermediaries but not to include what we call the *ryotwari* estates, that is, people holding it in their own right without there being any intermediaries between them and the State, it is quite true that there are some States where the definition of the word "estate" is a wide one and might possibly include holders under *ryotwari* or occupants under the Bombay Land Revenue Code, or *ryots* in other parts of India. At one time I thought that it might be possible to give a limiting effect to the word "estate" by the addition of an explanation, but on further consideration I find that it is more or less impossible to give an explanation which would cover the point. But I would like to say this, that there is no intention on the part of Government that the provisions contained in article 31A are to be employed for the purpose of dispossessing *ryotwari* tenants.

Shri Hussain Imam: However big they might be?"

Dr. Ambedkar: Well, that is a different matter. We are making a distinction between intermediaries and *ryotwari* holders.

Now, that is certainly not the intention of the Government: I know that friends who are interested in this matter would hardly be satisfied with any expression of intention on the part of Government, but I think there is much more than mere intention in the Bill itself. If my friend Ch. Ranbir Singh, would refer to the proviso attached to article 31A which requires that every such Bill shall be reserved for the consideration of the President, I think he will see that there is a certain amount of safeguard in it, and, as I hope the Prime Minister in his speech in reply to this debate will also make it clear, there is no such intention on the part of Government and I believe that whenever any such measure before the President for consideration, the undertaking given in this House would be binding upon the President in giving his

sanction so far as any such measure is concerned. Therefore, I submit there is no ground for any fear of any such thing happening and I believe that there is also no justification for any kind of propaganda that may be carried on by interested parties that this Bill proposes to give power to Government to expropriate everybody including the *ryotwari* tenants. I hope that this will satisfy my friend, Ch. Ranbir Singh.

With regard to the question that has been put to me by Durgabai...'

Shri R. K. Chaudhuri (Assam) : Shrimati Durgabai.

Dr. Ambedkar: These encumbrances I do not think are very necessary. I feel terribly embarrassed when somebody calls me *Shri*. *Shri* means wealth—I have none of it.

Shri R. K. Chaudhuri: May I mention that sufficient mischief has been caused by my friend, Dr. Ambedkar, calling me by my short name the other day ?

Dr. Ambedkar: I thought you agreed, that that did not change your sex?

Shri R. K. Chaudhuri: That is how jealousy has been created in the minds of some sections of the House.

Shrimati Durgabai: At least not in my mind.

Dr. Ambedkar: Now with regard to that, the relevant provision in the Madras Act is section 45. That section 45 deals with impartible estates. It does not deal with ordinary estates and the provision, so far as I understand it, is that the matter of deciding whether and how the compensation is to be distributed is left to a tribunal. This Bill does not add to the powers of the tribunal; this Bill does not take away any of the powers that are given to the tribunal for that particular Act. I think within that ambit things will proceed in the way the Madras Act has determined.

Dr. Deshmukh: May I ask a clarification of the Hon. Law Minister? The Hon. Doctor has told us that there is no intention to dispossess or limit the *ryotwari* tenures. There are six Acts of Bombay in the Schedule. If any of these Acts

do limit the *ryotwari* tenure, how far would it be proper to add those to the Schedule and how far does it cover the intention of Government not to bring in the ambit of this amending Act the *ryotwari* tenure or to limit their extent?

Dr. Ambedkar: I know something of these Acts, coming from Bombay as I do and having practised in the High Court. Having had to deal with many cases, I have no doubt about it that the Khoti Abolition and other Acts to which my hon. friend has referred deal only with what we call intermediaries.

Shri Jawaharlal Nehru : My colleague the Law Minister has dealt with many of the points that have been raised,

*** The Minister of Law (Dr. Ambedkar):** On listening to the debate I believe the House desires that the powers of adaptation vested in the President should continue and that it is a very useful instrument which has been forged by the Constitution for the purpose of bringing the laws already passed into conformity with the provisions of the Constitution. On that, I do not see any kind of difference of opinion. The only question that has been raised is this : why is it that the President has not been able to make modifications in the laws that appear to be inconsistent with the provisions of the Constitution during the period that has elapsed between now and the passing of the Constitution and why is it that further time is necessary. That seems to be the only point which requires clarification.

It has been stated that the Law Department has been very lax. Some friends have said that it has gone to sleep.

Babu Ramnarayan Singh (Bihar): That is right.

Shri Hussain Imam (Bihar): Dozing.

Dr. Ambedkar: I do not know whether such statements are mere matters of imagination or whether there is any

* P.D., Vol 12, Part II, 2nd June 1951, pp. 10007-13.

substance behind them—I think all hon. Members will agree that the Law Department is the smallest Department in the Government of India.

Babu Ramnarayan Singh: Why ?

Shri T. Husain (Bihar): There is the Department of Parliamentary Affairs.

Dr. Ambedkar: The Department of Parliamentary Affairs has nothing to do with the Law Ministry ; it is quite separate from it.

I should like to say that in the Law Ministry there are only three draftsmen. I have pressed on the Finance Ministry the necessity of increasing the number of draftsmen ; but I have failed.

Shri Kamath: A Deputy Minister ?

Dr. Ambedkar: A Deputy Minister cannot do anything in this matter, because no Minister can do drafting.

The House also will remember the amount of legislation that is being put forth before it ever since the Constitution came into existence. I believe, I am speaking from memory, that in each session there are something like 30 or 40 Bills which are presented. Some of them are (carried) through and some of them are left over. Out of those that are left over, some are converted into Ordinances and the House again sits to convert the Ordinances into laws. Now, it might well be imagined whether it is possible for three draftsmen to draft 40 or 50 Bills for each session, and yet have spare time for doing something else. That is a point which I think the House should consider in judging the work.

Shri P. Y. Deshpande (Madhya Pradesh): Who is responsible for there being only three ?

Shrimati Durgabai: May I ask a question ? Is it only a question of drafting or changing the substance of the laws ?

Dr. Ambedkar: I am coming to that; please do not be in a hurry.

Therefore, the normal work of the Law Ministry is so heavy and it is very difficult to cope with it. The adaptation work

is something abnormal and something that is new that has been thrown upon the Law Ministry. There has been no expansion of the staff to cope with this new work. That is one point which I think the House will remember when criticising the Law Ministry for not completing the work of adaptation.

The work of adaptation obviously fails into two categories. There are adaptations which are merely of a formal character. For instance, in the existing laws, the expression used is 'Provincial Government'. Today, the expression that is used for the corresponding purpose is "State Government". These are formal amendments. These amendments have already been carried out and I do not think any part of that work remains. But, the other part of the adaptation work, namely, making substantial modifications in the existing laws in order to bring them into conformity with the provisions of the Constitution is a totally different business from the formal kind of adaptation to which I have referred.

Now, let us consider how it is possible to proceed methodically with regard to making modifications of a substantial character in the existing laws of the country, in order that they may be brought into conformity with the provisions of the Constitution. Obviously there must be some officer somewhere at the Centre whose duty it would be to, what we call, note on the Acts in the various States and Acts made by the Centre, in order to ascertain for himself whether there is anything in any of the existing laws—whether they are made by the Centre or by the Provinces—which he thinks at the initial stage requires consideration from the point of view of adaptation. After that work is done, the matter may come to the Law Ministry for further examination whether there is any substance in the note made by that particular officer. There again the matter cannot end. Obviously, there must be further correspondence between the Law Ministry and the Law officers in the States in order to find out whether they agree with the view that certain of their laws are inconsistent with the provisions of the Constitution. If they agree, well and good; action may be taken. But, if they do not agree, then, obviously, the matter has to be referred to the Advocate

General of the State and also the Attorney-General of the Government of India, because, in this matter, they are the final advisers of the Government and on whose advice alone the Government could act. The number of Acts in the Provinces are legion : the number of Acts made by the States are equally large. One can well imagine the amount of time which would be necessary in order to go through the process which I have detailed here before the Central Government could come to the conclusion that a particular law must be declared to be null and void or must be modified in certain parts in order that it may be brought into line with the Constitution and the President may accordingly issue an Order. It is therefore not quite so easy as some people in the House seem to think. It is a very elaborate and labourious process.

After all, what is the President in this matter? The President is a law making authority. His authority is practically *co-extensive* with the authority of Parliament. But, in order that it may be done in an expeditious manner, we have vested the President with this particular power. I am sure that so important and so crucial a power of law-making practically could not be exercised in a hurried manner and to make some kind of a change may be absolutely inappropriate and quite unjustified. These are the reasons why it has not been possible for the Law Ministry to complete the task and why the Law Ministry thinks that perhaps one more year may be necessary. It should also be remembered in this connection that the Law Ministry has been now for the last three months practically busy with the work of elections, preparing the two Representation of the People Bills, delimitation of constituencies, considering the amendments that are coming to the Order of the President delimiting the constituencies etc. They will also be busy with making rules and all sorts of other things relating to the elections and these are matters which are now outstanding before the Law Ministry. And especially in view of the limited staff of the Law Ministry, I cannot see how any spare staff can be found or how time can be found to be devoted exclusively for the purposes of carrying out the object laid down in article 372. Therefore,

further time is necessary. And that is the reason why this amendment has been moved.

With regard to the point made by my friend Ch. Ranbir Singh relating to the declaration that the Punjab Land Alienation Act is invalid and inconsistent with the provisions of the Constitution, I should like to say this. The point that he raised was that it was wrong on the part of the Government of India to have abrogated the whole of that legislation that has been operating there. Well, this matter also was considered in the Law Ministry, whether it was possible to modify some of the provisions of that Act and leave the rest intact. But I should like to tell the House that with all the goodwill in the world, so far as that Act was concerned, both the Attorney-General here and, if I remember correctly, the law officers of the Punjab Government agreed that every one of the provisions of that Act was inconsistent with the Constitution. Therefore we had no remedy left except to declare the whole Act invalid.

Now, I have given the justifications to the House why this amendment is necessary and I hope the House will be satisfied with the explanation that I have given.

Shri Kamath: What about the suggestion to have a Committee of this House to help the Law Ministry ?

Dr. Ambedkar: Yes. With regard to that, there again, as I said a Committee of the House might help at a much later stage. But unless I am in a position to place before any Committee of this House material which has already been examined by somebody, the Committee, in my judgment, could not come to any conclusion. Preliminaries will be necessary and I myself have got an idea in my mind that it may be desirable to appoint a small Committee of some retired High Court judges to examine the matter and report to us as to what are the laws which require consideration from the point of view of article 372.

Shri Kamath: Members of the House ?

Dr. Ambedkar: I thought my friend said lawyer Members. Yes, they may be co-opted. After the report is received, they may be taken into confidence and the matter may be decided.

Shrimati Durgabai: I would like to get one point cleared by the Hon. Law Minister. We have been told that whenever a law is made by a State Legislature on any item in the Concurrent List, it would come to the Centre automatically for consultation, advice and all that. I would like to know when such a proposed legislation is sent to the Centre, whether the matter is left to the draftsmen to decide whether the law is inconsistent or not? What is the procedure?

Dr. Ambedkar: The lady is thoroughly confused. I am sorry to say.

Shrimati Durgabai: That does not matter. The Law Minister may clear up the confusion.

Dr. Ambedkar: Adaptation applies to existing laws. It does not apply to future laws. All the laws that come to us for such consultation are future laws. The article deals with the existing laws which were made when there was no Chapter on Fundamental Rights anywhere in the Government of India Act and which have now become subject to the Fundamental Rights, and therefore inconsistent. So the inconsistency has to be removed.

Mr. Deputy Speaker: The point is, with respect to any law that is being now made. If it is in the Concurrent List, it is reserved for the President's consent. When such a law comes up, it is left to the draftsmen to find out whether it is inconsistent or not?

Dr. Ambedkar: The draftsman certainly plays his part; but the Law Ministry takes the responsibility and the Cabinet also takes the responsibility.

Shri Husain Imam : May I know what is the position with regard to those Acts that are in the Schedule? Have they been adapted or are they proposed to be adapted? For instance the Bombay Act LXVII has certain reservations on the lines of the Punjab Land Alienation Act which has been declared *ultra vires*. Do Government propose to modify this Act? It is item 2 in the Ninth Schedule. The Bombay Tenancy and

Agricultural Lands Act, 1948 does not deal with abolition of zamindaries, but says that transfer shall not take place between certain classes.

Dr. Ambedkar: The answer of the House is that these Acts shall be validated by the Constitution without the necessity of adaptation. I am bound by the decision of the House. This point should have been raised yesterday.

Shri Naziruddin Ahmad: I raised that very point yesterday, but you rejected it.

Shri Rajagopalachari: Further questions may be postponed to the interpellation programme, and the present clause may be got through.

Mr. Deputy Speaker: We have had sufficient discussion.

The question is:

“That clause 12 stand part of the Bill.”

The House divided: *Ayes, 232: Noes, 9.*

* **Prof. S. L. Saksena:** It hurts me very much that this amendment should be made to our Constitution. After all, when we framed our Constitution we were very careful to see that our judiciary is above suspicion and that it is independent and able to interpret the Constitution in the best manner possible. Still we have found the Law Minister accusing the Supreme Court the other day of having wrongly interpreted the purpose of one of the provisions. The Prime Minister also has been saying that the intention of the makers of the Constitution has not been brought out by the interpretation of the judges of the Supreme Court and of the High Courts. I think this is a very unfair criticism : if the Supreme Court judges who have given these rulings were foreigners probably there might have been some suspicion, that they were not patriotic and therefore did not interpret our laws correctly. I personally feel that if you...

* P. D., Vol 12, Part II, 2nd June 1951, pp. 10020-21.