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CONSTITUTION (THIRD AMENDMENT) BILL, 1954

* **Dr. B. R. Ambedkar (Bombay)** : Mr. Deputy Chairman, the Bill which is placed before this House raises two issues and it is desirable that the two issues should be considered separately. The first issue relates to the merits of the Bill, whether this Bill should be regarded as a good Bill on its own merits; and the second issue is, the manner in which this Bill is being carried through parliament. I shall say a few words on the merits of the Bill.

It is quite obvious that there is nothing new in this Bill. What the Bill seeks to do is to drop entry No. 33 in the Concurrent List and to substitute in place of that entry, the provisions contained in Article 369 as they stand now, with a small addition that is export of jute; otherwise, there is really no fundamental change at all and it is a mere substitution. Looking at it from this point of view, I cannot see how there can be any objection to the Bill as proposed by the Hon. Minister in charge of it. The only kind of dispute that could arise would be whether the provisions of Article 369 should be in the State List—List II—so that the States will have exclusive power or whether they should be placed in List I so that the Centre would have an exclusive power in dealing with these goods. The present position is this : According to Article 369 these matters or these goods are treated as though they are entered in the Concurrent List. That is the present position. In the Concurrent List, both the Centre as well as the States have the power to legislate. Therefore, looking at the present position as defined in Article 369 and entry 33, we find that both of them place these matters in the Concurrent List. It cannot be that the States can complain that any jurisdiction which was vested in them by the Constitution is being taken away by this amending Bill. The

* P. D., (R. S.), Vol. 7-B, 15th September 1954, pp. 2297-2303.

position, as I say, remains exactly the same : the only question is whether the legislative control vested in the Centre by Article 369—which was vested only for five years and no more—should now be continued for an indefinite period. Speaking for myself, I feel that that is a matter for the Administration to judge, whether the circumstances in which they are living now are so altered that the period of five years which was given to parliament to legislate over these items should be abrogated. On that point, speaking again for myself, I am quite prepared to submit to the decision of the Administration because they know far better than a Member of parliament can hope to do. “Therefore, Sir, so far as the merits of the Bill are concerned, I give my support to it.

The Hon. Minister in charge while speaking on the Bill, made some reference to consultations with the States. I heard him say that he consulted the opposite departments in the various States and that the consultation, so far as I was able to judge from the observation that he made, was, if I may say so, somewhat perfunctory. I think that this is a very grave matter for the simple reason that this Bill is not going to become law merely by the vote of the two Houses. The Bill will have to go through a further ceremony before it becomes law. In this connection, I would like to draw the attention of the Hon. Minister in charge to Article 368, particularly to clause (c) of the Proviso which says : “Provided that if such amendment seeks to make any change in—* * * (c) any of the Lists in the Seventh Schedule,* * * the amendment shall also require to be ratified by the Legislatures of not less than one half of the States specified in Parts A and B of the first schedule by resolutions to that effect passed by those Legislatures before the Bill making provision for such amendment is presented to the President for assent “Therefore, this is one of those amendments

Shri T. T. Krishnamachari : On a point of information. The first letter dated the 12th September 1953 was addressed to all the State Governments and the second letter dated the 20th August 1954 enclosing a copy of this letter was addressed

to the Chief Secretaries of all the States personally, not to the opposite departments of the Commerce Ministry.

Dr. B. R. Ambedkar : Well, I am sorry; I perhaps made a wrong statement and I stand corrected, but all the same I want to urge that my argument is very sound, for whatever may be the preliminaries that might have been negotiated between the Minister-in-charge and the State Governments, the fact remains that the consent of the States by resolutions will be necessary in order that his amendment may become law, and if my hon. friend had by courtesy and by discussion and by consultation already obtained the goodwill of the State Governments, the subsequent action by the State Governments, namely passing of resolutions, would have been a mere matter of form. But if they have not been satisfied with such consultations as the Minister has had, he may find that there is a hurdle which he may not be able to overcome. That is all I want to say.

Now I come to the manner in which the Government has been proceeding with the amendment of the Constitution. The Constitution is only about, I believe, four years old.

Shri B. K. P. Sinha (Bihar) : Four years and seven months.

Dr. B. R. Ambedkar : Well, not an adult yet—may not be a child, and in the four years and seven months of its life it has been amended three times; I believe this the third amendment of the Constitution. I do not know of any Constitution in the world which has been amended so rapidly and, if I may say so, so rashly, by the government in office.

Now, Sir, I would like, in order to illustrate my point, to place before the House the provisions in the Constitution of the United States of America and the provisions in the Constitution of Australia for the purpose of amending the Constitution. Later on I will show what difference there is between our Constitution and these two Constitutions in the matter of the amendment of the Constitution. In the Australian constitution, Article 128 lays down this provision that the amending law shall be passed by both houses by an absolute

majority in each House. That is the first condition Secondly it shall be submitted to the electors to obtain their decision upon the amending law passed by the two Houses by absolute majority. If the two Houses are not unanimous in the proposed amendment then the Governor-General is empowered to put the last proposed law for amendment to the electors for their decision. And then these are the conditions. If in a majority of the States a majority of the electors voting in favour of the proposed law and if a majority of all electors voting also approve of the proposed law, then and then only the proposed law shall become part of the Constitution on receiving the assent of the King. The conditions are that in the first place both Houses must pass the proposed law by absolute majority, and if they do not agree, or are not unanimous, then the power is given to the Governor-General to refer the matter to the electors. Even in the first case the matter must be referred to the electors and even then it is not merely by the majority of the electors voting in favour of the Bill but majority of the States, a majority of electors and a majority of all the electors voting must approve the Bill before the Constitution could be amended.

Now let us take the Constitution of the United States. In the Constitution of the united States, article 5 which deals with the amendment of the Constitution provides thus : "When two-thirds of both houses propose an amendment, then and then alone further action could be taken." The first condition is that two-thirds of both houses must pass the amending Bill or two-thirds of the States may call their conventions, that is to say, a meeting of the electors who may propose constitutional amendments as suggested by the State Government. Such amendments then will become law provided it is ratified by three-fourths of the States or by the Conventions in three-fourths of the States. I have taken these two Constitutions merely for the purpose of illustration. Many other provisions would be found in other constitutions.

Now what is the basic principle underlying this provision relating to the amendment of the Constitution ? It seems to me that a student who scrutinises these two articles relating to the amendment of the Constitution in Australia and

America will find that there are two principles which underlie any action relating to the amendment of the Constitution. The first is this that there must be notice to the people. The people must know that the Government is going to undertake the amendment of the Constitution. The second principles is that there must be consent of the voters either directly as in America or indirectly by the States by ratifying resolution.

Now, Sir, is our Government observing these fundamental rules? It is quite true that our Constitution is a very fluid one. It is not as rigid, not half as rigid as the American Constitution or the Australian Constitution, and those who were in charge of framing the Constitution were fully conscious of the fact that the situation must be left fluid because it may be that circumstances would arise which would require amendment of the Constitution, and you cannot allow the Constitution to hold up the solution of social problems which are emergent. It was because of that that it was proposed that the provisions contained in Article 368 should suffice. We don't require except in certain cases reference back to the States or reference back to the voters, but I have not the least doubt in my mind that no one who had anything to do with the drafting of the Constitution ever thought that the government would rush in on the spur of the moment to amend the Constitution without giving notice to the voters. Notice to the voters, if I may submit, is a general principle of political life and party life. Even in England no party would undertake any piece of legislation which did not form part of its political programme for the election. Every party must have a mandate to do a certain thing. Without a mandate a party cannot do anything. You cannot take the voters by surprise and you cannot assume absolute authority to amend even the Constitution simply because you are elected. This is exactly what our Government has been doing. Simply because they have obtained a majority they assume that they have not only the power to make any law whatsoever relating to any of the entries which give them the power to make laws but they have also got the power, merely by being elected, even without notifying their intention to the people as such, to even amend the Constitution. Is the Constitution

not different in any sense from an ordinary law ? Is it merely a scrap of paper to be amended at the whim of anybody ? There is a saying in Marathi—I do not know whether I can translate it into English properly—and that saying is a very good one and very appropriate. We say, if the old woman dies it really does not matter very much but what we are afraid of is that *Yama* gets habituated to coming often and often and what we want to prevent is the *Yama's* invasion. It does not matter if the old woman is dead or snatched away. This is exactly what has been happening and I have been noticing the great contempt or the low regard or respect which the Government has for the Constitution. You may amend the Constitution; nobody has any objection to amending it but certainly you ought to treat the Constitution on a somewhat different footing, a better footing, a special footing. Tell the people what you are intending to do and then you may do it. Otherwise it might become necessary even to amend Article 368 in a manner so as to prevent this facile invasion of the constitutional provisions. This is all that I wanted to say.

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UNTOUCHABILITY OFFENCES BILL 1954

***Dr. B. R. Ambedkar** (Bombay) : Mr. Deputy Chairman, I propose to speak on the Bill. I think it is impossible for me to remain silent during the discussion on this Bill, but I find that my hon. friend, the Minister-in-charge, has condescended to put me on the Select Committee on this Bill. There is a convention that a member who is on a Select Committee shall not speak or take part in the Debate on the motion for reference to a Select Committee. I do not know to what extent the rule has been observed in all its strictness.

Mr. Deputy Chairman : It has not been violated.

Dr. B. R. Ambedkar : I think in the other house it is not strictly observed and I understand that a member in such a position could speak. However, if the convention is a rigid one here I beg permission to withdraw my name, and I hope the Hon. Minister will concede.

Prof. G. Ranga (Andhra) : It is not a rigid one.

Mr. Deputy Chairman : Yes, it is a rigid one; we have been observing it.

Prof. G. Ranga : If either within the time

Mr. Deputy Chairman : It will be setting a bad precedent.

Prof. G. Ranga : There is no question of any bad precedent. What I understood always was that when other Members who are not Members of the Select Committee are anxious to speak, then the Members who are placed on the Select Committee are expected to give way, but it does not debar any Member of the Select Committee from exercising his privilege of speaking. Only if.....

* P. D., (R. S.) Vol. 7-B, 16th September 1954, pp. 2417-18.

Mr. Deputy Chairman : We have been observing the convention that the Members of the Select Committee

Prof. G. Ranga : We have not observed it that way. It is not rule; it is a convention.

Mr. Deputy Chairman : The convention should be interpreted in that manner because it has been observed that way.

Prof. G. Ranga : There is no definite rule on this point but the convention we have been following is that generally Members who are Members of the Select Committee do not speak.

Mr. Deputy Chairman : On two or three previous occasions I have refused the Members.

Shri Biswanath Das (Orissa) : Because they have got the chance to place their views before the Select Committee, it is felt not desirable to give them the necessary

Mr. Deputy Chairman : It will be setting a bad precedent.

Shri Biswanath Das : Therefore the non-Members in the Select Committee are given the chance to place their views so that the Select Committee may have the advantage of considering those views as well. There is, I submit, no rule and we should not have any rigid convention to make it binding on the Members of the Select Committee not to speak. I would therefore appeal to my hon. friend Dr. Ambedkar not to consider it in that light and think of withdrawing his name from the Select Committee which I consider will be most useful and helpful.

***Dr. B. R. Ambedkar :** Mr. Deputy Chairman, before I actually deal with the provisions of this Bill, I think it is desirable that I should draw the attention of the House to the responsibility created by certain articles in the Constitution and the responsibility placed upon the Government to give effect to those provisions.

I would first like to refer to article 13 of the Constitution. Article 13 says that all laws inconsistent with the Fundamental Rights are void from the date on which the Constitution comes into existence. That is a general provision which is laid down in article 13. It is, as a matter of fact, a general notice given to the public as well as to the Judges of the Court that if any question was raised before them which involved the adjudication of the Fundamental Rights, the court shall not give effect to any existing law that was in conflict with the Fundamental Rights. But the makers of the Constitution were not satisfied with the general declaration because they felt that it was too much to expect a common citizen to go to a court of law in order to get relief from the court for the invasion of his Fundamental Rights. That was too much of a *burden on the common citizen*. And, therefore, the Constitution enacted another article, which is article 372, sub-clause (2), which gives power to the Government to make modification and adaptation in existing laws in order that the laws may be brought in conformity with the Fundamental Rights.

If my hon. Friend will allow me to make a personal reference, I would say that when I was in charge of law, I immediately took up this question about adaptation and modification of the existing law in order to bring it in conformity with the Fundamental Rights. And I did succeed in getting repealed one of the most important pieces of legislation in the Punjab, called the Punjab Land Alienation Act, under which certain communities, or as the law speaks of them, certain tribes, were declared to be the only tribes which could hold property or acquire property in the Punjab. The law, in my judgement, was so iniquitous that a man who was actually an agriculturist, but whose community or tribe was not declared by the Government to be an agricultural tribe, was not entitled to get any land. But a person who was a barrister all his life, and never hoped to grow even two blades in a field, became entitled to acquire property, because the Government had chosen to declare his tribe to be an agricultural tribe. I succeeded in having the whole Act cancelled under the provisions of article 372, clause (2). There

remained another law or a custom which went along with the Punjab Land Alienation Act, and which referred to what is called the *shamilat* land, that is to say, the land held in common by the villagers. Under the customary Punjab law, the *shamilat* land could be shared only by those communities which were called zamindars, hereditary land-owning communities. The others were non-zamindars. They were called *kaminas*, that is to say, they belonged to a low class, and they were not entitled to share in the land. Consequently, they could not build their houses in a *pucca* form on the land on which they stayed. They are always afraid lest the zamindars of Punjab may, at any time, turn them out. And the people did not venture to build permanently. I left a note in the Law Ministry, when I left, that this matter should be taken up and dealt with by the *Government under the* provisions of article 372, sub-clause (2). I have no idea what the Law Ministry has done or what the Home Ministry has done. I believe, no action has been taken on that account so far. I had, for my own guidance; made a list of certain laws, which I felt it was absolutely essential to modify in order to bring them in conformity with the Constitution. The first that I would like to mention is Madras Regulation XI of 1816. This is a criminal law enacted by the East India Company. In that, there is a provision, I think, section 10, which says that if the offender belongs to the lower classes, then the punishment to be inflicted on him is to put him in the stocks. This punishment is not to be inflicted if the offender belongs to the higher classes. There can be no question, Sir, that this Regulation is a discriminatory Regulation, and should be repealed. Then the next item that I would refer to is the Bombay Municipal Servants Act V of 1890. Under that Act, it is provided—I think it is section 3—that if a municipal servant, whose duties fall within the Schedule attached to the Act, absents himself from work without permission, or resigns his office without at least giving three months' notice in writing, he shall be sentenced to imprisonment. It is a well-established principle now that a contract of employment is only a civil contract for which, if there is to be any punishment that punishment must be only damages and not imprisonment.

But this Municipal Law still remains on the Statute Book. The result has been that under this Act—if my hon. friend will refer to the Schedule, he will find that the Schedule practically mentions, although in terms of duty, people who are doing scavenging work or street-cleaning work, and things of that sort, and who *are* mostly Scheduled Castes or the untouchables—it has become quite impossible for them even to go on strike, because the terms of resignation must be three months' notice. Nothing has been done so far as that Act is concerned. I will take now another item, the U. P. Municipalities Act, II of 1916. I think it is section 85. Yes. There again, the provisions of that section are more or less similar to the provisions of the Bombay Municipal Servants Act. There again it is said that a sweeper employed by a Board who, except in accordance with the terms of a written contract of service, or without a reasonable cause, of which notice has been given, resigns or abandons his employment, shall be liable upon conviction, to imprisonment which may extend to two months. I think these laws, if I may say so, are absolutely uncivilised laws. No country in the world today regards breach of contract of service as an offence punishable with imprisonment or with fine. It is just damaging, but nothing has been done here.

Then, I will refer to three other Acts, one is the Bombay Hereditary Village Officers Act of 1874. Those who work or officiate under this Act are divided into two classes. My friend, Mr. Dhage, must be quite familiar with it, although the Home Minister himself may not be. I do not know what the system is in his province, but there the servants are divided into two classes, one class are called officers and the other are called village servants, although both are paid in the ancient form of payment, *viz.*, land assigned for service out of which they have to eke out their income. The land that has been assigned to them was in ancient times, probably during the time of Shivaji or during the time of the Peshwas. No addition has been made to the land then assigned. They have been cutting up and sharing their land into bits and bits, and probably no one individual owns more than one-hundredth of an acre of land, yet these poor people are sticking to that land. Now,

when the British came in they started a scheme of what is called commutation that is to say, releasing a person from the obligation of hereditary service and allowing him to retain the land provided he was prepared to pay what is called 'Judi' or land revenue, as the Government thought fit. That process has been going on for ever and many, many hereditary officers have been liquidated so far. Recently the Bombay Government took up on itself the responsibility of further commuting these village hereditary officers, but notwithstanding the incessant demand of the scheduled castes in the Bombay State that their workers and their hereditary officers should also be commuted so that they may be free from the obligation of service and be allowed to retain the land on payment of land revenue—they were very liberal and wanted to pay the full land revenue and did not want any concessions—the Bombay Government refused their requests. They confine their law to the commutation of officers other than the scheduled castes. This—I speak from experience—is one of the most cruellest pieces of legislation, because it is quite possible for the village who is an officer under this Act to require the whole body of the scheduled caste people to go and serve under him not merely for Government purposes but also for his private purposes. Any village *patel*, for instance, if there is a death in the family, would not send a postcard to his relatives informing them of the death in the family, because it is a derogatory method. He must insist upon one of his village servants, as they are called, to walk miles and miles to convey the message that a death has occurred in the house of the *patel*. If a married girl comes to the house of the *patel* and wishes to go back, he must insist upon one or two of the village servants to go along with her, accompany her, chaperon her, and to see that she has safely arrived at her father-in-law's house. If a marriage takes place, he must insist on the whole of people to go and break wood and do all services without paying them anything. If they refuse, he is competent to report to the Collector that his village servants are not doing their duty, and the Collector under the Act is able to fine them or to take away their land and dispossess them. I wonder whether this is not a piece of legislation which is fundamentally

opposed to the Fundamental Rights in the Constitution, and whether such a piece of legislation does not require modification at the hands of the Law Department or the Home Department.

There are two other Acts which are, so to say, correlative to this Bombay Hereditary Village Officers Act. One is the Bombay Revenue Jurisdiction Act, and the other is the Pensions Act. (*Seeing the Home Minister rising from his seat*) My hon. Friend finds it too hot perhaps.

Dr. K. N. Katju : I find it too cool on the other hand.

Dr. B. R. Ambedkar : It will be hotter as I go on.

Both these Acts prevent access to the judiciary for any wrong that may have been done by the officers, the Director, or the Commissioner or the Minister. No relief can be had from the courts, because the Revenue Jurisdiction Act says that the courts shall not have any jurisdiction either to alter or to modify or to revise the decision of the Collector, who is an executive officer. The Pension Act says that no one who has any kind of *inam* shall be entitled to go to court and the court shall not exercise any jurisdiction unless it obtains a certificate from the Collector that the case may be tried by the court. It is quite impossible, therefore, for these poor people to have any kind of remedy against the many injustices which are being practised under the name of this particular Act. If I had remained as Law Minister, it was my intention to carry out these reforms, but I think it is the duty of any Law Minister and particularly of the Home Minister to look into our laws and to find out to what extent the laws are in conflict with the Fundamental Rights. I am sorry to say, Sir, that both these departments are the most laziest departments that I have ever seen. They have neither the zeal nor the urge or the conscience to move in this matter. They have no idealism either. I hope that, after what I have said, they will be spurred to some kind of action in this matter and to see that relief is given where relief seems necessary. Well, Sir, this is what I wanted to say by way of preliminary observations. I will now turn to the Bill itself.

I would like to say a word about the title of the Bill. It is not a very important point, but I think the name does matter. Shakespeare has said that rose smells as sweet whether it is called rose or by some other name. I disagree with that statement of Shakespeare. I think that name is a very important matter, and I think that a good law ought to have a good and succinct name. What is the name of this Bill ? 'A bill to provide punishment for the practice of untouchability or the enforcement of any disability arising therefrom'. I personally think that it is a very clumsy name and very mouthful. What really should be the name of the Bill may be a matter of dispute but I personally think that it ought to have been called 'The Civil Rights (Untouchables) Protection Act' After all, what you are doing is nothing more than protecting their civil rights. The emphasis ought to have been therefore on civil rights. I venture to tell my friend incharge of the Bill if he had referred to the case of the Negroes in the United States or to the Civil War, he would have found that the Bill that he is now proposing to be passed by Parliament has had its predecessor in the United States and that Bill, if he will refer to it he will find, is simply styled Civil Rights Protection Bill. Even the word 'negro' is not mentioned in it. I don't know why he should keep on repeating untouchability and untouchables all the time. In the body of the Bill he is often speaking of scheduled castes. The Constitution speaks of the scheduled castes and I don't know why he should fight shy of using the word scheduled castes in the title of the Bill itself. Personally for myself, I would be quite happy with the name Untouchables Civil Rights Protection Bill or Scheduled Castes Civil Rights Protection Bill. I hope my friend will take this into consideration.

Now, Sir, I find there are certain very grave omissions in the Bill and it is to these omissions that I propose to draw the attention of the House. There is really, as a matter of fact, no provision for the removal of any bar against the exercise of civil and constitutional rights. No doubt the ultimate result of the Bill would be freedom to exercise civil and constitutional rights but I personally think that it would

have been much better if my friend had expressly stated that the Bill was intended to remove any kind of a bar against the exercise of any civil and constitutional rights. I would just like to read to him a provision from the Civil Rights Bill as they call it in the United States. This is how the provision reads. Don't read the title page of the book—it will hurt you. It is the United States Constitution Amendment XIV taken from Government of Ireland Act, 1920 and also Professor Keith's Command Paper. This is how that provision reads. I have of course converted it to make it applicable to the untouchables but the original is taken from the text of the Civil Rights Bill :

“All subjects of the State are equal before the law and possess equal civil rights. Any existing enactment, regulation, order, customs or interpretation of law by which any penalty, disadvantage, disability is imposed upon or any discrimination is made against any subject of the State on account of untouchability, shall, as from the day on which this Constitution comes into operation, cease to have any effect”.

I think such a positive statement was necessary. It is no doubt contained in article 13 but there can be no harm in repeating the whole of that article 13 with such amendments as are necessary in this Bill. I don't know why the Bill is silent. The Bill seems to give the appearance that it is a Bill of a very minor character, just a *dhoby* not washing the cloth, just a barber not shaving or just a *mithaiwala* not selling *laddus* and things of that sort. People would think that these are trifles and piffles and why has Parliament hothered and wasted its time in dealing with *dhobies* and barbers and *ladduwalas*. It is not a Bill of that sort. It is a Bill which is intended to give protection with regard to civil and fundamental rights and therefore, a positive clause, I submit, ought to have been introduced in this Bill, which the Bill does not have now in its present form. That is one omission which I think requires to be made good. The other omission, which, I find, is of a very grave character, is that there is no provision against social boycott. Now I feel from my experience that one of the greatest and the heinous means which the village community applies in order to prevent the scheduled castes from exercising these rights is social boycott. They boycott

them completely. It is a kind of non-co-operation. This is not merely my opinion but it is the opinion of a Committee that was appointed by the Bombay Government in order to investigate into the conditions of the scheduled castes and also of the depressed classes and aboriginal tribes. I might mention to the House that the late Thakkar Bapa was a member of this Committee and he had signed this report. I will just read only, one para from the report of that Committee which relates to the question of social boycott. It is paragraph 102. This is what the Committee said :

“Although we have recommended various remedies to secure to the depressed classes their rights to all public utilities, we fear that there will be difficulties in the way of their exercising them for a long time to come. The first difficulty is the fear of open violence against them by the orthodox classes. It must be noted that the scheduled castes form a small minority in every village opposed to which is a great majority of the orthodox who are bent on protecting their interests and dignity from any supposed invasion of the depressed classes at any cost. The danger of prosecution by the police has put a limitation upon the use of violence by the orthodox classes and consequently such cases are rare. The second difficulty arises from the economic position in which the depressed classes are found today. The depressed classes have no economic independence in most parts of the presidency. Some cultivate the land of the orthodox classes as their tenants at will. Others live on their earnings as farm labourers employed by the orthodox classes, and the rest subsist on the food or grain given to them by the orthodox classes in lieu of service rendered to them as village servants. We have heard of numerous instances where the orthodox classes have used their economic power as a weapon against those depressed classes in the villages when the latter have dared to exercise these rights and have evicted them from their land and stopped their employment and discontinued their remuneration as village servants. This boycott is often planned on such an extensive scale as to include the prevention of the depressed classes from using the commonly used paths and the stoppage of the sale of the necessities of life by the village *bania*. According to the evidence, sometimes small causes suffice for the proclamation of a social boycott against the depressed classes. Frequently it follows on the exercise by the depressed classes of their right to the use of the common well; but cases have been by no means rare where stringent boycott has been proclaimed simply because a depressed class man has put on the sacred thread, has bought a piece of land, has put on good clothes or ornaments, or has carried a marriage procession with the bridegroom on the horse through the public street. We do not know

of any weapon more effective than this social boycott which could have been invented for suppression of the depressed classes. The method of open violence pales away before it, for it has the most far-reaching and deadening effect. It is more dangerous because it passes as a lawful method consistent with the theory of freedom of contract. We agree that this tyranny of the majority must be put down with a firm hand if we are to guarantee the depressed classes the freedom of speech and action necessary for their uplift."

This is the conclusion of a committee which was specially appointed to consider the condition of the scheduled castes. I do not find any provision to deal with this point of social boycott.

I may draw the attention of the hon. Member to the Burma Anti-boycott Act of 1922, if he thinks that it is difficult to put the matter in express words which can be legally of use to the courts. I say he can copy the provisions contained in this Burma Anti-boycott Act of 1922. It gives us the most valuable definition of a difficult matter, namely, social boycott. That will be found in section 2 of that Act. This Burma Act not only creates social boycott an offence, but it also creates the instigating of social boycott an offence. It also creates the threatening of social boycott an offence, in phraseology as precise as any meticulous lawyer would want to have. My hon. Friend has tried, I think, in sub-section (2) of section 8, to have some kind of a garbled version of it for defending a Hindu who does not wish to practise untouchability but whose caste-fellows compel him to do so. I believe they can only do that in two ways, either by committing violence against him or by organising social boycott. As the Committee has said, the village communities most often prefer the social boycott because it is an act behind the curtain and appears to be perfectly in consonance with the terms of the law of contracts, to violence which, as I have said, becomes an offence under the Indian Penal Code. Therefore, instead of going round about and bringing about a haphazard result, why not proceed directly and recognise social boycott as an unlawful means of compelling the scheduled castes not to exercise their rights? After all, what can be the objection to social boycott? I say, in legal terms, social boycott is nothing else than a conspiracy, which is an offence recognised by the Indian Penal

Code. If two people engage themselves in doing a wrong to a third person, well, that is conspiracy, This social boycott is brought about by the concurrence of the majority of the people and is also a conspiracy and could be recognised as an offence. I do not know why my hon. friend forgot that very important fact in this matter.

The third omission—I do not know whether it is an omission or not, I speak subject to correction. I wish the Law Minister was here because it is purely a legal matter. But there is no doubt about it that our Home Minister was a Law Minister in the beginning and certainly has been a practising lawyer and he could not be unfamiliar with what I am saying. Now the question that I ask myself is, are these offences mentioned in this Bill compoundable or non-compoundable? The Bill says nothing about it. It is completely silent. The other day when we were discussing the Report of the Commissioner for the Scheduled Castes and Scheduled Tribes, hon. Members will recall that the Commissioner drew pointed attention to the fact that the untouchables were not able to prosecute their persecutors because of want of economic and financial means and consequently they were ever ready to compromise with the offenders whenever the offenders wanted that the offence should be compromised. The fact was that the law remained a dead letter and those in whose favour it was enacted are unable to put it in action and those against whom it is to be put in action are able to silence the victim. That has been the conclusion of the Commissioner for Scheduled Castes and Scheduled Tribes. Such a situation is not to be tolerated. The offences must not be made compoundable if the offence is to be brought home to the guilty party. If the guilty parties by compounding the offence either by payment of a small sum or something like that are able to get away they can continue their career of harassment of the untouchables until the moon and the sun are there and untouchability would never end.

Therefore, compounding of the offence is a grave matter and a grave issue and it must have been expressly dealt with. I do not know what the intention of my hon. friend is but in order that we may be able to judge by reference to other provisions in other laws, I shall refer to section 345 of the

Criminal Procedure Code which defines what offences are compoundable and what offences are non-compoundable. My hon. friend will remember that there are altogether 511 sections in the Indian penal code, of them, 108 are taken up with purely declaratory matters, punishments, where the law would apply, general exceptions to the law, costs and so on and so forth. So, we shall cancel or deduct 106 out of 511. The sections which actually define offences are grossly about 400. Four hundred offences, acts and omissions are made offences by the Indian Penal Code. Out of this 400, how many are compoundable? That is a matter which we must consider because under that lies the principle which is of importance. As I said, the only provision which defines what offences are compoundable or not is section 345 of the Criminal Procedure Code. I have made a little calculation—I am rather weak in mathematics but I believe I cannot be very far wrong in saying—that only 44 offences are compoundable out of the 400. The rest are non-compoundable. From this position, I deduce the conclusion that the principle of the criminal law is that an offence shall ordinarily not be compoundable and that these 44 are merely exceptions to the general rule. Out of the 44, 24 are compoundable without the permission of the magistrate and 20 are compoundable with the permission of the magistrate. So, really speaking, only 24 are compoundable offences. Now, are these offences indicated in this Bill compoundable or not? The Bill itself does not say so. I think there ought to be an express provision to this effect that any offence under this Bill, shall be non-compoundable. If my hon. friend does not propose to accept this suggestion, what would be the result? The result would be this, that most of these offences will be offences in which hurt or grievous hurt would be caused. They could not be mere offences of show of force or anything less than that; they would be offences involving hurt, grievous hurt, *violence* and things of that sort. Now, if a magistrate were to apply sub-sections (1) or (2) of section 345—I do not want to weary my hon. friend by reading the two sub-sections of section 345 which define offences of this sort—he will find that the offences involve hurt. He will also see that a large majority of them which are made compoundable

either with the permission of the magistrate or without the permission of the magistrate are offences which involve hurt, grievous hurt, confinement of a person or kidnapping his relation or something like that. All of them are compoundable, absolutely, every one of them. Therefore, it follows that unless you make a specific and express provision in this Bill, all the offences, if they involve social boycott—this is not mentioned in the Penal Code at all and it is not an offence except conspiracy—and such other acts which involve hurt or violence, so far as section 345 is concerned, will become compoundable and the Bill will be reduced to a complete nullity. It would be a farce. Therefore, my hon. Friend will look into this matter and see—he would be entitled, of course, to take the advice of the Law Ministry—whether within the terms of section 345 of the Criminal Procedure Code these offences would be compoundable, and if so, whether it is not necessary to make an express provision in this Bill to say that offences involving untouchability shall not be regarded as compoundable.

Now, Sir, I come to the question of certain defective provisions. I have said about omissions and I want to say something about the defective provisions. The first such provision to which I shall refer is the clause relating to punishment, which is clause 8. The punishment prescribed in the Bill is six months' imprisonment or fine which may extend to Rs. 500 or both. My hon. Friend was very eloquent on the question of punishment. He said that the punishment ought to be very very light and I was wondering whether he was pleading for a lighter punishment because he himself wanted to commit these offences. He said, "Let the punishment be very light so that no grievance shall be left in the heart of the offender". I suppose his primary premise is that the offenders who offend the untouchables are really very kindly people, overwhelming with love and kindness and that this is merely an errant act which really ought to be forgiven. It is a matter of great solace to me that he has not prescribed the punishment of being warned and then discharged. That I think would be the best section 561 of the Criminal Procedure Code. Yes, that would be the best; if our object is

to make the offender a loving person; well, let him be warned and discharged. He will continue to love and no soreness will remain in his heart. Why should he have that ? Unfortunately, my hon. friend has thought that that could not be and therefore, he has suggested this punishment.

Now, Sir, having had a little practice in criminal law, I think the rules on which punishment is based are two mainly. One is to deter the offender from repeating his offence. That, I think, is the primary rule of criminal jurisprudence. Punishment is necessary; otherwise the offender may go on repeating his offence. It is to prevent him that there must be a punishment. The second object of punishment is to prevent a man from adopting a criminal career. If a man once begins a criminal career then he may continue to do so unless there is some deterrent punishment to prevent him from adopting that career.

Now, Sir, if you accept these two principles, is the punishment proposed by my hon. friend adequate for the purpose of the Bill ? In the first place the six months' imprisonment is really the maximum and a magistrate may only inflict one day's imprisonment and let the man be off. There is no minimum fixed that the imprisonment shall not be less than six months or three months or whatever it is. The whole matter is left in the hands of the magistrate. What sort of a magistrate he may be, it may be quite possible and I can quite imagine that he may be a Pandit from Kashi sitting in judgement in the magistrate's chair. What conscience would he have in the matter of administering this law?

Shri Basappa Shetty (Mysore) : Kashi or Kashmir ?

Dr. B. R. Ambedkar : Oh, Kashmir Brahmins are not true Brahmins, I understand. They are meat *khao*, *machli khao*, as they say. Therefore they are not Brahmins.

Now, as I said, in this case if you want to see that the law is observed, there ought to have been a minimum punishment below which the magistrate could not go. Secondly the punishment is alternative, imprisonment or fine. The magistrate may very well inflict the alternative punishment

of fine and there might be an offender who might be prepared even to pay the five hundred rupees in order to escape the clutches of the law. What good can such punishment do? The Indian Penal Code prescribes a variety of punishments, a variety of them in section 53: death, transportation, imprisonment, forfeiture of property, fine, whipping, detention in reformatory. There are seven offences for which the Penal Code fixes death penalty; for 50 offences the punishment is transportation; for 21 offences—simple imprisonment; for 12 offences—fine. In all other cases the imprisonment is rigorous. Why my friend has thought so little of this Bill as not to prescribe adequate punishment, it is very difficult for me to understand, I mean, the least that one can expect from him is to prescribe a minimum, may be three months, it does not matter, a minimum of three months' imprisonment and fine if he wants to fix fine—I am not for inflicting a fine because that only benefits the treasury, but if you say that the fine will go to the victim, I am for fine also. Otherwise I do not want fine.

Shri B. B. Sharma (Uttar Pradesh): Why not the maximum penalty of death?

Dr. B. R. Ambedkar: Well, if you like it, have it—I am not so cruel as that and I do not think you are sincere in suggesting it, and, as I said, there are not cases in the Indian Penal Code where minimum punishment has not been prescribed or rigorous imprisonment has not been prescribed. There are three sections here which prescribe rigorous imprisonment, sections 194, 226 and 449. Then the Penal Code has prescribed the minimum period of imprisonment in sections 397 and 398. I do not see why, when there is the precedent, the precedent should not be

Dr. K. N. Katju: What is 397?

Dr. B. R. Ambedkar: Dacoity. That is worse than dacoity. I think, to starve a man and not to allow him to take water, I think, it is almost causing death. That is, I think, one drawback in the Bill. Then, Sir, the second drawback in the Bill is that there is no provision for taking security for good behaviour. The Criminal Procedure Code has got four sections,