

*ON THE BOMBAY POLICE ACT AMENDMENT BILL : 1

Dr. B. R. Ambedkar (Bombay City): Sir, I beg to move the following amendment to the Bill placed before us:

After sub-section (2B) the following shall be inserted, namely :—

“(2C)(i) The Provincial Government may, if satisfied that the peace or public tranquility in the City of Bombay or in any part thereof is disturbed or is likely to be disturbed in consequence of a conflict between different communities or sections thereof or gangs or factions, declare, by proclamation (hereinafter referred to as “the proclamation of emergency”) in the *Official Gazette* that an emergency exists.

(ii) A proclamation of emergency—

(a) may at any time be revoked by a subsequent proclamation, and

(b) shall cease to operate at the expiration of one month, unless before the expiration of that period has been renewed.

(iii) After the Provincial Government has issued under clause (i) a proclamation of emergency, the Commissioner of Police, whenever it appears to him that the presence, movements or acts of any person in the City of Bombay is or are causing or calculated to cause danger or alarm, or that a reasonable suspicion exists that designs, calculated to disturb peace or public tranquility are entertained by such person, may by beat of drum or otherwise, as he thinks fit, direct such person so to conduct himself as he shall deem necessary in order to prevent the disturbance of the peace or remove himself to such place or places, by such route or routes, and within such time, as the Commissioner of Police shall prescribe

(iv) Any person aggrieved by an order made by the Commissioner of Police under clause (iii) may appeal to the Provincial Government within ten days from the date of such order.

(v) Subject to the appeal under clause (iv), an order made by the Commissioner of Police under clause (iii) shall be final.

(vi) Nothing hereinbefore contained in this section shall require any police officer to disclose to the person against whom an order is made under clause (iii) or to the Court the sources of his information or any fact

the communication of which, might, in the opinion of the Commissioner of Police, lead to the disclosure of the identity or name of any informant.

(vii) Any order passed by the Commissioner of Police under clause (iii) or by the Provincial Government under clause (iv) shall not have any effect after the proclamation of emergency has ceased to operate.”

After sub-clause (2), the following sub-clause shall be added, namely: —

(3) In sub-section (3) for the words, brackets, figure and letter “or (2A)” the following shall be substituted, namely : —

“(2A) or (2C)”.

Question proposed.

* * * * *

†*Dr. B. R. Ambedkar*: Sir, before I proceed to deal with the merits of the amendment which I have tabled, I think it would be desirable if I tried to show to the House the necessity of this amendment. The Honourable the Home Minister, in introducing the Bill, has stated that the City of Bombay and its citizens are a prey and a victim to certain undesirable characters who tyrannize and molest the weaker section of the community, and the weaker section of the community has neither the determination or the desire to go to a court of law and obtain a conviction and punishment of such dangerous characters ; and consequently, he thinks that it is necessary to arm the Commissioner of Police in the very interests of the people who are being molested by these dangerous characters, so that he should take action against him. Sir, I readily agree with what he said, that the danger to which he has referred is a very real one.

If the House would allow me to say so, I am very familiar with the kind of evil to which he has referred. I have spent a very great part of my life in what I may call the underworld of Bombay City. I have lived from 1911 to 1933 in the Improvement Trust chawls among labourers and the lower classes, and I know perfectly well, more than the Commissioner of Police or the Honourable the Home Minister, how these poor people are molested by what are called mavalis and dadas, how utterly impossible it is for these victims of their to obtain any redress, because they themselves, for fear of further molestation, would not go to court of law and seek to get a conviction. I therefore think that the Bill that has been brought forward is thoroughly justified by the circumstances of the case. But I felt that there was another danger to which the citizens of this city were subjected and for which he had made no provision in this Bill. Sir, the necessity to which I refer is the necessity arising out of what are called communal riots. I have here some figures relating to the communal riots that have taken place in the City of Bombay. Between the year 1851 and 1938, there have been altogether 9 communal riots in the City of Bombay. The first riot took place on the 17th October 1851. That riot was between the Muslims and Parsis. The second riot took place in the year 1874 ; that was also between the

†B.L.A. Debates, Vol. 3, pp. 2430-33, dated 27th April 1938.

Muslims and the Parsis. The third riot took place in 1893 and it was between the Hindus and Muslims. The fourth was in 1929 that was also between the Hindus and Muslims. The fifth took place in 1932; the sixth in 1933; the seventh in 1936; the eighth in 1937; and the ninth on the 17th April 1938. All these were riots between the Hindus and Musalmans. In the riot of 1893, there were 80 persons killed, 60 temples were destroyed, 7 mosques were destroyed and 27 durgas were destroyed. I have not got the figures for the others. In the riot of 1929, 51 persons were killed; in the riot of 1932, 300 persons were killed and more than 300 were wounded. In 1936, 61 persons were killed and 550 were wounded. In the year 1938—I have not the exact figure—12 persons were killed and more than 120 were wounded. The rapidity with which these riots have taken place is also interesting and important which the House should bear in mind. As I told you, the first riot took place in 1851; the second riot took place within 23 years of the first riot; the third took place after 19 years of the second riot; the fourth riot took place 36 years after the third riot; the fifth riot took place within 3 years of the fourth; the sixth riot took place within one year of the fifth; the seventh riot took place within 3 years of the sixth; the eighth riot took place within one year of the seventh; and the ninth riot took place within less than one year of the eighth. Now, Sir, those of us who are conscious of these facts and who know the responsibility will agree that some remedy has to be found for this constant suspension of civilisation, the annual blood baths in which these two communities are indulging. I do not wish to enter into the reasons, the causes of these riots; whether they are political, whether they are religious or whether they are economic is a matter of no concern to us. The stark fact that a Muslim, without caring for anything goes and stabs a Hindu, and a Hindu, without caring for anything, stabs a Mahomedan is a calamity which we could never tolerate. I think the time has arrived when some measure ought to be forged whereby the authorities in the country will be able to deal with the menace effectively and expeditiously.

Referring to the merits of this amendment, the first thing I should like to draw the attention of the House to is that clause 3 of my amendment gives the Commissioner of Police the power to remove any person within the limits of the Bombay Presidency, if the Commissioner of Police has reasons to believe that the person is acting in such a manner that his presence, his movements, or his acts are responsible for the riot. That is the main aim of the Bill. Now, I fully agree that this clause in this Bill itself seems to impose a restriction upon the particular individual. But, Sir, I can say this. I come from a class which needs liberty more than any other class in society. I am by profession a lawyer and I understand the importance of liberty; but, with all that hankering for liberty, which is in me by reason of the interests of the class to which I belong and also by reason of the fact that I am by profession a lawyer, I cannot help saying that there are occasions when, in order to protect the liberty of the large mass

of the people, the liberty of the hooligans, the criminal sections in the society, can be suspended. I have no hesitation on the point. The only thing, therefore, which worries me and which ought to worry the members of this House is this. Are there any safeguards laid down in order to see that this arbitrary power which we are now giving to the Commissioner of Police will not be misused. That is the only question I submit with which this House, having regard to the necessity of the occasion, could be concerned.

Now, Sir, my submission to the House is that there are ample provisions of safeguard in this amendment. Therefore, I will briefly refer to those safeguards. The first safeguard is this. Under this amendment, the Police Commissioner could sever in practice, without the knowledge of the Legislature or the public at large, begin to exercise this arbitrary power. He can never do it, because, as honourable members will see, this power of the Police Commissioner will commence and will vest in him, so to say, only after the emergency proclamation is issued. Before the emergency proclamation is issued, or before the emergency has been declared, the Commissioner of Police will not be able to exercise this power. That is one thing we have got to bear in mind with regard to the provision contained in this amendment. These powers will become operative only after the emergency proclamation is issued and this has a certain advantage from the point of view of the Legislature. It is this. If the Government issued a proclamation of emergency without any justification, then this House will have an opportunity to move an adjournment motion and condemn Government for having wrongly issued the emergency proclamation. This, I submit, is a control which this amendment gives to the Legislature in order to see that this power is not abused. The second advantage which this amendment gives is this. It may be that Government issue the proclamation of emergency and refuse to cancel or revoke the proclamation of emergency so that the Commissioner of Police begins to use the powers and continues using them, notwithstanding the fact that the emergency has ceased to exist; as against this, there is a provision made in this to which I should like to call the attention of the House. By this very amendment, the proclamation will cease after one month, unless Government renew it, so that there is again an ample safeguard provided here that, after one month, the power shall cease to operate.

Another safeguard to which I should like to draw the attention of this House is sub-clause (vi). which is very important. Although this amendment gives the Commissioner of Police, the power to deport a person who, in his judgment, is causing communal riots, this order of deportation has a limitation to be appended, and that limitation is that as soon as the proclamation of emergency ceases to operate, the order automatically expires, so that a person who has been deported by the Commissioner of Police can return to Bombay. That again, I say, is a further safeguard.

Another safeguard to which I should like to draw the attention of the House is that as against the order of the Commissioner of Police there is

an appeal provided to the Provincial Government. I agree that there may not be much in this, but still, as far as it goes, there it is.

Now, with regard to the other amendments that have been moved, just one or two things I should like to say. I think my honourable friend the Home Minister will agree that yesterday, when we drafted clause (i) of this amendment, it was agreed on all sides that this section was not to be used for labour troubles or for any other troubles, except those arising out of disturbances caused by communities in the sense of religious communities, or sections of communities having religious differences, or factions. All this, in my judgment, was confined to purely communal riots. And I am perfectly prepared to be satisfied with the assurance given by the Honourable the Home Minister that it is intended not to be applied to any other. But if gentlemen in this House desire that there should be no lacuna left, no loophole left for the executive to use the provisions of this section for any other purpose than those for which it is intended, I am perfectly with them in order to make the meaning clear.

With regard to the word “presence”, I must say that I cannot support the amendment that the word “presence” should be omitted. The word “presence” must remain. I will give an illustration. A sadhu comes to Bombay; he is a persona grata with one community, he is not a persona grata with another community. A fakir comes to Bombay; one section venerates him, another section repudiates him. A communal riot starts on that account. Would it not be necessary that the very presence of this man should be removed from the City of Bombay in order that the riots may be quelled? This, no doubt, may be an extreme illustration, but an extreme illustration is the only way of testing the validity and the effect of the power we give. Therefore, I submit, Sir, that the word “presence” is very necessary and should be retained in the Bill.

With regard to the other amendments, I have an open mind, because our intention is that the Bill should not apply to any riots other than communal. With these words, I move my amendment, and I hope the House will accept it.

* * * * *

†*Dr. B. R. Ambedkar (Bombay City)*: Sir, I am very glad to find that the amendment which I have moved has found support from many honourable members of the House who have spoken on the first reading of the Bill. I do not think the Honourable the Leader of the Opposition opposed my amendment although he had a great deal to say with regard to the Bill itself. My honourable friend, Rao Bahadur Chitale, has supported the amendment and the opposition of my friend Mr. Jamnadas Mehta, if I may say so, was not fundamental, but was tactical. In view of this, it is not necessary for me really to make any very lengthy reply to the comments that have been made, but there are only two matters to which

†B.L.A. Debates, Vol. 3, pp. 2471-73, dated 27th April 1938.

I would like to refer. This is admittedly an emergency measure and as an emergency measure, it does involve a considerable amount of restraint upon the liberty of the individual.

Sir Ali Mahomed Khan Dehlavi: I wish to correct the honourable member. I do not know what authority the honourable member has to say that this is an emergency measure, which is not admitted by the Honourable the Mover.

Dr. B. R. Ambedkar: I am only replying with respect to my amendment. My amendment is an emergency amendment and, as I have admitted in my speech, it does involve a restraint on the part of the individual. I would like to submit in connection with this that if those gentlemen who have spoken in regard to my amendment enlarging and emphasising the fact that it does involve restriction, I would respectfully invite their attention to refer to the Defence of the Realm Act that was passed in the time of war in England and to the Defence of India Act that was passed in India. Both of them were emergency measures and if any one of those gentlemen were to refer to the provisions of the Act, I am sure they will find that this amendment is a very mild amendment and let it be remembered further that this emergency legislation, for instance, the Defence of the Realm Act and the Defence of India Act lasted for over four years. The Defence of Realm Act in England was passed in 1914 and was not repealed till 1919 and the powers given to the police officers—I happened to be in England then as a student—were certainly much vaster than the powers that are given under this amendment. Therefore, having regard to the emergency, I submit that the powers that are given to the Police Commissioner cannot be said to be unduly wide.

Now, with regard to the other matters, namely, that this is a permanent measure, I would like to draw the attention of the House to the provisions contained in section 102 of the Government of India Act and which are very pertinent and very relevant on this occasion. Sir, section 102 of the Government of India Act is exactly what this amendment proposes to do. There too, the Governor-General has been given the power in his own discretion to issue a proclamation of emergency and during the period of that proclamation, the Governor-General is entitled to pass whatever law, by means of ordinances that may be necessary for the maintenance of peace and order

Sir Ali Mahomed Khan Dehlavi: Which the country does not approve of.

Dr. B. R. Ambedkar: Well, it is contained in the Government of India Act. Similarly, there is a provision in the same section that the emergency proclamation shall last for six months. I will read the relevant provisions :

“Notwithstanding anything in the preceding sections of this chapter, the Federal Legislature shall, if the Governor-General has in his discretion declared by Proclamation (in this Act referred to as a ‘Proclamation of Emergency’) that a grave emergency exists whereby the security of India is threatened, whether by war or internal disturbance, have power to

make laws for a Province or any part thereof with respect to any of the matters enumerated in the Provincial Legislative List.”

Sub-clause (4) says :

“A law made by the Federal Legislature which that Legislature would not but for the issue of a Proclamation of Emergency have been competent to make shall cease to have effect on the expiration of a period of six months after the Proclamation has ceased to operate, except as respect to things done or omitted to be done before the expiration of the said period.”

Therefore, my submission to the House is that we are really not doing anything that is unusual having regard to the Defence of the Realm Act and the Defence of India Act and having regard to the provisions contained in section 102.

There was one comment which my honourable friend Mr. Jamnadas Mehta made that although my desire was to confine these emergency powers to communal conflicts and communal riots, the language used in this amendment is not such as would, in the end, confine the operation of this amendment to communal riots. His argument was that the word “community” does not necessarily mean religious community and that it is used as commercial community, industrial community and labour community and secondly, the Government will use its powers for the purpose of invoking this legislation even in labour disputes.

Now, my first submission on that point is this, that this part of the proclamation is certainly not going to be the subject of bearing the interpretation because it is a matter to be determined by the Government in its own discretion. It is not going to any court and the emergency proclamation is not going to be a question in a Court of Law as to whether it has been properly invoked or not, all that the court will be concerned in finding is whether a proclamation has been issued. Whether the proclamation has been properly issued or not would be a matter for Government and this Government would be amenable to this House if the Government uses its power to make a proclamation for purposes which are not intended either by Government or myself or any members of the Opposition.

The other thing that I would like to submit is this that I admit that the word “community” is used popularly in a wide sense, but before I came here I did refer to the Oxford Dictionary in order to satisfy myself, because I am myself more anxious than Mr. Jamnadas Mehta is, that this measure should not be extended to labour disputes.

Mr. Jamnadas M. Mehta: As anxious, not more.

Dr. B. R. Ambedkar: If you will allow me to say, I am more anxious. Therefore, I say that if you can suggest a better language I am perfectly prepared to accept any change that you propose, but so far as I am able to understand the word and so far as any help can be derived from a standard dictionary, I have no doubt in my mind that the word “community” does mean basically—apart from the extended use to which

every word becomes subject—I have not the least doubt in my mind that the word “community”, etymologically and basically is used only in the sense of religious community. The derivation seems to be those who are in communion. Communion is a religious word. A person ceases to be in communion when he is ex-communicated by a religious authority, he ceases to be inside the community. That is the origin of the word. I am perfectly satisfied that this is not a word which can be so used as to bring in labour or strike or other situation. As I say if my learned and honourable friend thinks that this is not enough and, that another word is necessary, I am perfectly prepared to help him in that matter.

With these words, I sit down.

* * * * *

†*Dr. B. R. Ambedkar*: Sir, I find that my amendment as has been submitted does not contain a very material part which I intended to be a part of it, because I was proceeding on the draft that was given to us at the time of the conference. If you will allow me to supplement my amendment, it will be complete. The amendment is as follows:

In clause 2, sub-clause (1)(i). substitute the following for sub-clause (a) beginning with the words “that the presence”, etc. namely: —

“(a) that any person within the limits of the city of Bombay is by habit engaged in unlawful activities which are a menace to the residents of the city and who is so desperate and dangerous as to render his being at large in the City hazardous and who is habitually engaged in the commission of offences involving force or violence or any offence punishable under Chapter XII, XVI or XVII of the Indian Penal Code, and when in the opinion of the Commissioner witnesses are not willing to come forward to give evidence in public against such person ; or.”

* * * * *

‡*Dr. B. R. Ambedkar*: Sir, before I say what I have to say in support of the amendment which I have moved, it is perhaps necessary for me to make two preliminary observations. The first observation that I would like to make is this. The reason why I support the Bill brought forward by my honourable friend the Home Member, seeking to amend section 27 of the Act, is this. Much has been said in the course of the debates yesterday that the amendment gave more powers to the Commissioner of Police than the original section 27 did. Now having applied the Bill as a whole, I have not the slightest doubt in my mind that the amended section 27 will be of a much milder character than the section 27 as it stands today.

Therefore, I agreed to the suspension of the orders and to help the Honourable the Home Minister in getting this legislation pass through.

†B.L.A. Debates, Vol. 3, p. 2497, dated 27th April 1938.

‡B.L.A. Debates, Vol. 3, pp. 2499-2501, dated 27th April 1938.

The second observation I should like to make is this. At the parties conference where we had a discussion with regard to this amendment, I did say that I would support the measure which was agreed to at the time when we discussed the various proposals. My honourable friend the Home Minister might say that, having taken that view at the time of the conference, it was not open to me to come forward with an amendment now. It is that which I would like to explain. Sir, when I agreed with the Honourable the Home Minister to support him, the amendment was confined to the principle underlying the Bill. The principle underlying the Bill, if I understand it correctly, is this. There are certain persons in the City of Bombay who are committing crimes and whose character is such that by reason of the terror they strike against their victims, the victims themselves do not come forward to give evidence in a court of law. Therefore, a regular trial could not be had. That is the principle, as I said, of this Bill. To that principle I stick. I am not deviating from that principle. All that I am seeking to do is to confine the category of persons against whom action can be taken by the Commissioner of Police without resorting to a regular trial by reason of the fact that the informants are not prepared to come before a Court of Law. Therefore, my view is that my amendment is an amendment of detail and not an amendment of principle.

Now, Sir, turning to the amendment, the first thing I should like to draw the attention of the House is this. The wording as it stands is that:

“that the presence, movements or acts of any person in the city of Bombay is or are causing or calculated to cause danger or alarm or a reasonable suspicion that unlawful designs are entertained by such person.”

It will be noticed that the language is of the mildest character. Secondly, it seems to me that the person who does a single unlawful act which has the consequence of causing danger or alarm or reasonable suspicion can be taken hold of by the Commissioner of Police and deported under the powers we are giving. I am sure that was not the intention of the Honourable the Home Member nor was it ever my intention. If I understand correctly the view point of the Honourable the Home Minister, he said in the opening speech that in seeking powers under the amendment he has proposed that his main object is to get hold of pucca mavalis, to use his own words. If I understand the words “pucca mavali” my feeling is that a pucca mavali is a person who habitually does something which is dangerous and desperate and who habitually indulges in unlawful activities. If that is the intention of the Honourable the Home Minister he should have no objection in seeking that the intention he professed on the floor of this House is embodied in specific terms in the law itself. It is, therefore, from that point of view I have sought to amend his language by emphasising that the person must be doing all these things by habit :

“that any person within the limits of the city of Bombay is by habit engaged in unlawful activities which are a menace to the residents of the

city and who is so desperate and dangerous as to render his being at large in the city hazardous and who is habitually engaged

The rest of the amendment is like that of the honourable member Mr. Pataskar I take it the Honourable Minister has no objection to that amendment being an official one.

What I have sought to do is nothing new. I have taken the wording from section 110 of the Criminal Procedure Code. Section 110 of the Criminal Procedure Code gives power to the police to prosecute a man before a Presidency Magistrate or District Magistrate if he is by habit a robber. I have taken the wording from sub-section (a) of section 110 and sub-section (f) of section 110. It might be argued that under section 110 of the Criminal Procedure Code, even if a person is by habit a robber and even if a person is a desperate and dangerous character action cannot be taken against him without a trial. Why do you want to take action against him, because he is in the city of Bombay ? That kind of argument may be used. My justification for that is that we are dealing with cases where persons are not prepared to come before a court of law to give evidence and that is the reason why I have consented to give the Commissioner of Police the power of an extra-judicial and extra-legal kind. In giving such powers it is necessary to restrict and define the category of persons against whom action can be taken. My submission is that the House will do well in defining the class by saying that the person must be doing unlawful acts by habit and not by accident. With these words, I commend my amendment to the House.

●●