

*ON THE BOMBAY POLICE ACT AMENDMENT BILL : 3

Dr. B.R. Ambedkar: What I would like to submit is this. What we have done by accepting the amendment of the honourable member Mr. Pataskar is this. We have laid down as a direction to the Commissioner of Police the cases in which he can exercise the power that are given to him. The direction is that he shall exercise his powers only in cases where in his opinion witnesses are not willing to come forward to give evidence in the public against the person. That is a direction given to him, that he has to exercise the power given to him only in cases where in his opinion witnesses for reasons of safety are not willing to come forward to give evidence. In sub-clause (2), the Bill lays down a certain procedure which the Commissioner has to follow, and it is this. Firstly, the Commissioner has to give particulars of the charge ; secondly, the Commissioner has to give an opportunity to the man to explain the charge ; and thirdly an opportunity has to be given to the man to bring his witnesses. This sub-clause (6) deals with the right of a criminal court to question the order passed by the Commissioner of Police. What does this section do ? This section merely says this : that the court shall have authority—I am putting it positively—to see whether the procedure prescribed under this Bill has been followed or not. The first thing that the Commissioner is asked to follow by way of procedure is, to present the particulars of the charge ; secondly, he must give an opportunity to the person to explain the charge ; thirdly—a matter which was omitted in the original, but which was part of the judgment of the High Court—that the Commissioner must have material before him. That has now been added by the amendment moved by the honourable member Mr. Pataskar. Now, my submission is that we have also added by the clause that we have passed that this power should be exercised only in those cases where witnesses for reasons of safety are not willing to come forward. What the honourable member Mr. Bhole's amendment seeks to do is to add one more ground on which the High Court quash the order. As the sub-clause is now worded, the High Court could quash the order if the particulars of the charge were not presented to the man, if an opportunity was not given to him to explain the allegations

*B.L.A. Debates, Vol. 3, pp. 2586-87, dated 29th April, 1938

against him or his witnesses were not examined, and lastly—according to Mr. Pataskar’s amendment—there was no material before the Commissioner of Police upon which he could have passed his order. What the honourable member Mr. Bhole seeks to add is that the condition that has been laid down in part (I) of the amendment of the honourable member Mr. Pataskar, namely, that witnesses are not willing to come forward to give evidence shall also be one of the grounds on which the magisterial court could quash the order. Therefore, it is not a limitation upon the authority of the Magistrate. There is a procedure prescribed, and all that the clause says is, that the High Court or the magisterial court shall see that all these kinds of procedure are followed by the Commissioner of Police. The honourable member Mr. Pataskar does not seek, nor does anybody here seek, that the High Court or the magisterial court shall sit in judgment over the question whether the material was reliable. All that is needed for it to see is that the Commissioner had material. Similarly what the honourable member Mr. Bhole seeks to do is that the court should see that the Commissioner of Police had really taken into consideration the fact whether witnesses were prepared to come. The honourable member Mr. Bhole’s amendment does not seek to give the High Court or the magisterial court the power to sit in judgment over the question as to why the witnesses were not prepared to come. The High Court or the magisterial court is not to sit in judgment over that question and say “These are grounds on which nobody ought to be satisfied”. The finality of judgment is with the Commissioner of Police. What the amendment of the honourable member Mr. Bhole seeks to do is to bring into this clause a condition which we have imposed by passing the amendment of the honourable member Mr. Pataskar, which is a procedural condition, so as to make the Bill a complete whole. There is no conflict between the amendment we have passed and the honourable member Mr. Bhole’s amendment. All that is necessary is to add the words “in the opinion of the Commissioner”, and I move it.

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†*Dr. B. R. Ambedkar*: May I explain, Sir ? The position, briefly is this We have given certain powers to the court under renumbered sub-section (7); when a person is brought before a Magistrate for breaking the order of the Commissioner, the Magistrate has power to see that the proper procedure was followed. One of the things that the Presidency Magistrate has to see is whether the Commissioner had material before him. Now, this clause says that when the matter comes up before the Presidency Magistrate, the Commissioner or some other person will have to go into the witness box in order to inform the court that he had some material on which he could act. This clause says that in giving this evidence either the Police Commissioner or some other officer whom he may depute shall lead to the identity of a person or the identity of a property. I am explaining the place of sub-

clause (8); the place of sub-clause (8) is that it comes into operation when the order is being considered by the Magistrate to see whether it is proper or not, that is to say, whether it was passed according to the procedure. One of the things that the Magistrate has to see is whether there was material before the Commissioner, because that is one of the conditions ; and in proving what the material was, the question may arise whether the Magistrate will have the right to compel the Commissioner of Police to disclose all information, including such as would lead to the identity of the person or property. This clause says that while giving evidence the Commissioner of Police may withhold such information as he may have and, which would lead to the identity of the person or property. That is the place of sub-section (8).

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†*Dr. B. R. Ambedkar*: Sir, I would like to move this amendment, namely : —

For the words “hereinafter appearing” the following words shall be substituted : —

“and for the purpose of dealing with habitually dangerous characters and for the purpose of preserving public peace and tranquillity during communal riots.”

That is the amendment which I wish to move.

The Honourable the Speaker: I was just referring to the amendment of the honourable member the learned Doctor in which he had moved for the application of this Act to habitual offenders. I am inclined to the view that even this part of the amendment will be out of order in view of the decisions taken by the House.

Dr. B. R. Ambedkar: Sir, I would like to submit that the Bill, which is now before the House, has two-fold purposes, namely, one purpose is to deal with communal riots and therefore I submit that that part of my amendment which refers to communal riots is perfectly in order. The Bill also deals with certain provisions which are intended or calculated to deal with what in the terms of the Honourable the Home Minister, are regarded as mavalis and which I submit is translated by the words “habitually dangerous characters”. My amendment is merely intended to make clear the two-fold purpose which this legislation has in view. One purpose is to deal with communal riots and the other purpose is to deal with what are called “mavalis”. I submit, therefore, that my amendment is in order. If, however, that is objectionable, I am prepared to use the words “for the purpose of controlling the activities of “mavalis”.

The Honourable the Speaker: The difficulty about that will be that the word “mavali” is not defined in the Act. It is not an expression which is defined in any Act

Dr. B. R. Ambedkar: Sir, my submission is that the preamble is not

†B.L.A. Debates, Vol. 3, pp. 2630-34, dated 29th April 1938.

going to be the subject matter of judicial interpretation. The preamble merely contains a rule of guidance for the purpose for which we are to use this Act and I therefore submit that even though the word “mavali” has not been judicially interpreted, it is a term which is so well-known today to both the Honourable the Home Minister and the Commissioner of Police that I think there should be no difficulty about it

The Honourable the Speaker: The amendment is to be divided in two parts—one referring to habitual offenders, as the honourable member has stated, is the one which he is prepared, I understand, to drop.

Dr. B. R. Ambedkar: No, I am prepared to split it into one dealing with persons who are either dangerous characters or mavalis, and the other I submit is a direct reference to the amendment which gives the emergency powers.

The Honourable the Speaker: The other I can see. If divided into two parts, then about the first, I think that even the expression used “mavalis” will not

Dr. B. R. Ambedkar: Then my amendment will be this : —

“for dealing with persons who are dangerous characters”. I am prepared to take away the word “habitually”. The preamble is intended to make clear our intentions.

Mr. Jamnadas M. Mehta: I submit, Sir, that the learned Doctor’s amendment should be held perfectly in order, because it is now realised that the whole Bill has two intentions; one to deal with an emergency and the other to deal with characters which are described in the Act. The preamble must express what the House has enacted; otherwise the preamble will be incomplete and will not express what the object of the Bill is.

The Honourable the Speaker: I am not considering any technical objection. I am only considering how the phraseology would express what has been stated in the Bill and what has been passed by the House.

The Honourable Mr. B. G. Kher: May I suggest to the honourable member that the word “dangerous” is vague? It must be “dangerous to society”, “danger to the city” or something to that effect. We are accustomed to receive telegrams “so and so dangerous, start immediately”. The word “dangerous” by itself is vague.

Dr. B. R. Ambedkar: I may suggest “for the purpose of dealing with persons who are a danger to the residents of the City of Bombay for preserving the peace and tranquillity during the riots”.

The Honourable Mr. K. M. Munshi: You have left out “factions and gangs” during riots. The words of the section are “between communities, factions and gangs”.

Dr. B. R. Ambedkar: We can put it this way: “for preventing disturbance of public peace and tranquillity by reason of conflicts between communities and sections thereof, and gangs and factions”.

The Honourable the Speaker: This is what I have taken down: “for the purpose of dealing with persons who are a danger to the City of Bombay and for preventing disturbance of public peace and tranquillity by reason

of conflicts between communities and sections thereof, or gangs or factions.”

The Honourable Mr. K. M. Munshi: “And for other purposes hereinafter mentioned”.

Dr. B. R. Ambedkar: What other purposes ?

The Honourable Mr. K. M. Munshi: “And other purposes hereinafter mentioned”.

Dr. B. R. Ambedkar: What are the other purposes ?

The Honourable Mr. K. M. Munshi: There are various procedural purposes also.

Dr. B. R. Ambedkar: Then, I will make it clear by saying “and for prescribing the procedure for dealing with such cases”.

The Honourable the Speaker: Is that all necessary in the preamble ? We should not make it cumbersome.

The Honourable Mr. K. M. Munshi: There is the question of immigrants also in the Act. And so, “other purposes hereinafter mentioned” is necessary.

Mr. Jamnadas M. Mehta: “Hereinafter” is not necessary.

Mr. S. V. Parulekar: We may adjourn till tomorrow, so that we may arrive at an agreed wording.

The Honourable the Speaker: It seems there is agreement as to the substance, and now it is only a question of phraseology. The amendment now moved being accepted in substance, it may be incorporated in the Bill at this stage, and later on, at the third reading any verbal amendments necessary may be made.

The Honourable Mr. K. M. Munshi : Sir, may I have the final word ? I do not want to miss these immigrants.

The Honourable the Speaker: This is what is being proposed by the honourable member Dr. Ambedkar :

“Instead of the words ‘hereinafter appearing’ substitute :

‘for the purpose of dealing with persons who are a danger to the City of Bombay and for preventing disturbances of public peace and tranquillity by reason of conflict between communities and sections thereof or gangs or factions, and for certain other purposes hereinafter appearing’.”

The Honourable Mr. K. M. Munshi: I accept the amendment

Dr. B. R. Ambedkar: May I know what other purposes there are ?

The Honourable Mr. K. M. Munshi: For dealing with immigrants.

Dr. B. R. Ambedkar: The immigrant is an object and not a purpose.

The Honourable Mr. B. G. Kher: The question is that immigrants who come into the city with certain diseases have to be dealt with. It is not the object of the preamble to describe all purposes seriatim. “Certain other purposes hereinafter appearing” clearly means the purposes embodied in the Bill itself. No other purpose can be brought into the Bill.

The Honourable the Speaker: Are the words “for certain other purposes” to be taken out ?

Sir Ali Mahomed Khan Dehlavi: They must disappear, because we are dealing with section 27 only and not the Act as a whole.

The Honourable Mr. B. G. Kher: If you do not want it, we are willing to take it out.

The Honourable the Speaker: The consensus seems to be that the word “hereinafter” should remain. The amendment would then read : In place of the words “hereinafter appearing”, substitute the following :

“of dealing with persons who are a danger to the City of Bombay and for preventing disturbance of public peace and tranquillity by reason of conflict between communities”

The Honourable Mr. B. G. Kher: May I suggest that the phrase should be “public peace or tranquillity” and not “public peace and tranquillity”? So also, “by reason of conflict between communities or sections.”

The Honourable the Speaker: “..... disturbance of public peace or tranquillity by reason of conflict between communities or sections thereof or gangs or factions, and for certain other purposes hereinafter ”

Sir Ali Mahomed Khan Dehlavi: “Or for certain other purposes”; I think we agreed to that ?

The Honourable Mr. K. M. Munshi: I will agree to anything.

Mr. R. A. Khedgikar: Are we not to be given a chance to examine the wording ? We have not, fully understood it.

The Honourable the Speaker: I am now reading the final draft. It is open to correction, in case I have committed any mistake.

Mr. S. V. Parulekar: Will you give us an opportunity of studying the amendment before we make up our mind about it ? The amendment is very long, and we do not know the implications of it just now. So, we should be given an opportunity to study it. It may be taken up for discussion.

The Honourable the Speaker: As I stated, the preamble, after all, merely tries to give a summary, and a very general summary, of what is following,

Dr. B. R. Ambedkar: It is a direction to the executive authority.

The Honourable Mr. B. G. Kher: We are willing to accept anything that you propose.

Mr. Jamnadas M. Mehta: Anything that will shorten this discussion will be welcome ! (Laughter)

The Honourable the Speaker: It is therefore that I am suggesting the final wording as it seems to have been agreed to. I am reading the whole amendment again ; honourable members will please hear it patiently :

“In place of the words ‘hereinafter appearing’, substitute the following :

‘of dealing with persons who are a danger to the City of Bombay and for preventing disturbance of public peace or tranquillity by reason of conflict between communities or sections thereof or gangs or factions and for the purposes hereinafter appearing’.”

Mr. Jamnadas M. Mehta: “Other” must be there.

The Honourable the Speaker: “And for other purposes”.

Dr. B. R. Ambedkar: “Such as dealing with immigrants”.

The Honourable the Speaker: After all, lawyers know as to how a preamble is construed and what importance is attached to it so far as the construction of the sections is concerned. If I may be permitted to say so, I do not think this point is really such as to be such a debatable point as that.

Mr. Jamnadas M. Mehta: “Other” must be there, because those which are mentioned previously are also purposes.

The Honourable the Speaker: “And for other purposes hereinafter appearing”.

Mr. Jamnadas M. Mehta: That will do.

The Honourable Mr. K. M. Munshi: I accept the amendment.

The Honourable the Speaker: So then, I take it that this will be the wording. (Interruption). The phraseology is taken from the sections themselves.

Dr. B. R. Ambedkar: I accept it.

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