

*ON INDEPENDENCE OF JUDICIARY

Dr. B. R. Ambedkar (Bombay City): Mr. Speaker, Sir, I rise to support this motion. Speaking as I do on this motion at almost the fag end of the debate and realising the fact that some time must be left for the Honourable the Home Minister to make his reply, I propose to be very brief in the statements that I want to make to this House.

Sir, the first thing that I should like to state, speaking for myself, is that the act which is the foundation of this censure motion certainly does not come to me as any matter of surprise. I look upon this as the culmination of a series of activities, which undoubtedly amount to law-breaking activities which the Government is guilty of ever since it has taken office. It is only part of a series, one act in the drama that is proceeding: we do not know when it will come to an end. The first act to which I should like to make a reference is certainly the act undertaken by the present Government of restoring the lands that were confiscated from the Bardoli peasants. (Interruption.) I suppose I shall have a hearing, because my time is limited.

The Honourable the Speaker: Order, order. Will the honourable member resume his seat?

I am afraid if the discussion is to be carried on these lines, it would be opening up an interminable field. The point at issue is not whether the Government does or does not deserve condemnation for any of their past acts, but whether the particular act which is the subject-matter of the present motion is or is not deserving of condemnation. The motion is taken as relating to a definite matter of urgent public importance, and the definiteness, which has been the reason for the motion being allowed, has to be followed in the course of the debate also. Otherwise, the very object of the discussion will be frustrated. I would, therefore, request the honourable member to confine himself to the definite act that is before the House.

*B.L.A. Debates, Vol. 3, pp. 420-24, dated 7th March 1938.

Mr. Jamnadas M. Mehta of Railway Unions moved an adjournment motion seeking adjournment of the House to draw public attention to the Government interference with the independence of Bombay High Court. The Government had suspended the sentences of two prisoners named Jadhavji and Dhirajlal after the High Court had rejected the application of prisoners.

Dr. B. R. Ambedkar: May I make this submission. Sir, there is a distinction between a reference by way of analogy and argument and going into the merits. If I were going into the merits of the restoration of the Bardoli lands, I would certainly be subject to the objection you have taken. But I do say, subject to your ruling, that I am not out of order in saying that this act is the culmination of a series of activities of the Government and in referring to one of the past acts of Government without going into the pros and cons of it. I agree to finish by 5-30.

The Honourable the Speaker: It is not a matter of the honourable member agreeing to finish it by a certain time. What I feel is that, there being a definite matter and the honourable member having been given leave of the House for discussing a certain definite matter, even a reference to other matters may tend to introduce other subjects. I, therefore, feel that I would not be right in permitting references to other subjects even in general terms. I have no desire to curtail the liberty of any member ; I do want all the points that can be urged in this matter to be brought out but I do not want to allow any references to other matters, which may be sins of commission or omission. It is not that I am anxious to finish earlier and therefore wish to exclude reference to those matters. The Honourable member is entitled to have his full say on the point before the House.

Dr. B. R. Ambedkar: In view of that, I am bound to confine my remarks to the matter before the House.

Now, Sir, with regard to the matter before the House, what I should like to state is this, that, first of all, we are not in possession of the facts of the case, except what we have learnt from the newspapers. We have no definite data, and I am informed that although an appeal was made to the Honourable the Home Minister, to let the House know exactly what the facts were, he has not done so. Therefore, I, along with other members of the House, am certainly suffering under a handicap. It may be that in the end, when the facts are disclosed, it will be found that this debate was either unnecessary or premature. But if the debate turns out to be futile and unnecessary, the blame for that must necessarily fall upon the shoulders of the Honourable the Home Minister, because it is he who has declined to take the House into his confidence and to state exactly what has happened. If he had done so, probably the honourable mover of the motion might have taken it back, probably other members might have said that they did not want to take any part in the debate. But, as I said, if this debate turns out ultimately to be a futility, the fault will be his.

Relying upon the facts as we have come to know from newspaper reports, what is the point that arises for consideration ? It is said that the High Court had rejected the application of these men. The question is, why did the Minister allow it ? The point it seems to me is a very narrow point,

namely, whether there was any justification which the House could accept as reasonable for suspending the sentence passed upon the two convicts. The Honourable the Home Minister might say that the High Court does not possess the powers of suspension and therefore it is quite irrelevant to urge whether the High Court wisely or unwisely refused to suspend the sentence. That is not the question. The question is whether the authority, the prerogative, vested in the Government for suspending, commuting or reducing sentences on prisoners who have been lawfully convicted has been properly exercised. The question is whether the discretion has been properly exercised. Now, Sir, in order to find out whether the exercise on the part of the Honourable the Home Minister of this prerogative has been properly exercised, it is necessary to eliminate certain probabilities. First of all, on the facts as they appear from newspaper reports, it is clear that these people, who indulged in this act of gambling on a vast and a colossal scale, were certainly not poverty-stricken people who were driven to these nefarious acts of gambling for the purpose of earning their bread. That certainly is not the case. From the facts as reported, these people were rich Banias. They possessed enormous capital; they had several companies or head offices in different parts of the city, in different parts of India, and they were carrying on their trade on a colossal scale. There could be, therefore, no justification in this particular case that they were unfortunate people who, by reason of their poverty, by reason of their adverse circumstances, were compelled to resort to acts of gambling. That is not the excuse that one can find, because the facts are totally opposed to that kind of inference. Secondly, there has been nothing suggested, at any rate in the reports that have appeared and in the application that was made in the High Court, that there was any other ground for this suspension. There is nothing to show that these two convicts were ill or suffering from any disease; there is nothing to show that there was any domestic calamity befalling their families which needed their freedom. That also we do not know from the facts before us, and that inference, again, has to be eliminated. Thirdly, the possibility that might be suggested was that they wanted to make an appeal to a higher tribunal. As against that hypothesis, it is quite well known, and the Home Minister knows it far better than I do—he is a much greater lawyer than I can pretend to be—that the Privy Council has laid down in hundreds of cases that they shall not admit any appeal from a criminal court in India unless it is shown that in the course of the trial, not the ordinary provisions of the Criminal Procedure Code, but the principles of natural justice have been violated. They have, in their own judicious way, absolutely limited the scope and the authority for entertaining criminal appeals. And there is not the ghost of a suggestion in this case that either the Chief Presidency Magistrate or the High Court, before whom the trial and the appeal respectively were conducted, was in

any sense guilty of violating the provisions of the Criminal Procedure Code or the principles of natural justice. I do not see any other circumstance which *prima facie* could make me believe that there was a reasonable cause which could have induced the Home Minister to suspend the sentence passed upon these people.

Then, Sir, I submit that there has never been a precedent at any rate to my knowledge, of ordinary convicts having their sentences suspended for any reason by any of the Home Members who have preceded the present Home Minister. And certainly no Government has ever accepted illness or a private difficulty as sufficient cause for the suspension of sentences which have been judicially passed by the highest tribunal in the province. It is, therefore, I submit, a most scandalous affair, unless some reasonable explanation is coming forth, that a Home Minister should have gone over the head of the High Court and suspended the sentence. He well knows—at any rate we know from facts that have appeared in the papers—that an application was made by the advocate who appeared on behalf of these accused in the High Court. The advocate made an application for the grant of special consideration for these people while they were in jail, namely, that they should be treated as B class prisoners. I am also told that an application was made by the advocate who appeared on behalf of the appellants that their sentences should be suspended for the time being. Both these applications were rejected. The very same applications—at any rate, one of those applications has been granted by the Home Minister. Sir, there could be no surer way of bringing law and order into contempt than the act of which the Home Minister is guilty. I have no hesitation in pronouncing that opinion. I would like to ask the Honourable the Home Minister whether an act of this kind which *prima facie*, on its very face, does not bear a satisfactory explanation which could carry conviction to the mind of the people, is not likely to create a suspicion about the integrity and honesty of the administration of this Province. Sir, I would also like to ask a further question in this connection and that question I want to put to the Honourable the Prime Minister. The question is this : Was this order passed with the knowledge of the Prime Minister ? Was this order passed with the knowledge of the Cabinet or was it passed only by the Honourable the Home Minister ? Sir, I ask these questions for a very great reason. We are entitled to suppose, although we have no positive evidence on this point that under the new Act the Congress Cabinet is working as a collective body with a collective responsibility; and, therefore, I am entitled to presume that this matter was placed before the whole of the Cabinet and if not before the whole of the Cabinet, at any rate, before the Prime Minister who, in the eye of the people, is the person who is solely responsible for the administration of this Province. I am particularly bound to make this

reference and ask these questions because I treat this as a very grave matter. Suspension of sentence passed upon a convicted person is certainly a violation of the law and I submit that so grave an act involving such serious consequences to the administration of justice, to the welfare of the people of this Province, could not have been carried out without the knowledge of the Prime Minister. I am presuming this and I would like to know whether my presumption is correct and I hope I will receive an answer to my questions. (Applause.).

Mr. W. S. Mukadam : May I know, Sir, whether any drink is allowed in the House ? I bring to your notice one fact that when the Town Planning Act was being discussed, I raised a point of order when Mr. Mirams was speaking and Sir Ibrahim Rahimtulla gave a ruling that no drink was allowed in the House. Then Mr. Mirams asked whether water was allowed, and the President said that even water was not allowed.

The Honourable the Speaker: I think it is better to have the convention of having nothing in the House by way of a drink, by which I mean pure water and nothing else. (Laughter.).

Mr. W. S. Mukadam: Mr. Mirams asked the question whether water was allowed in the House or not, and the President said that even water was not allowed.

The Honourable the Speaker: The Honourable member (Mr. Mukadam) raised a point of order with reference to “drink” which is capable of many meanings and therefore I restrict myself to the meaning of the word “drink” in the sense of drinking water. I believe the honourable member (Mr. Mukadam) raised the point with reference to the honourable member Dr. Ambedkar who had just a sip, before his speech, to keep him up.

Dr. B. R. Ambedkar: Sir, may I explain ? I am suffering from indigestion. Under medical instructions, I do not take any food for two days—Saturday and Sunday, and on these I am not allowed to drink water even. My condition on Monday is, therefore, of great exhaustion, and, unless I had taken a sip of water, I could not have made a speech. If I have offended against the rules of etiquette of the House and against decency, I apologise to the House.

The Honourable the Speaker: Now that the honourable member Dr. Ambedkar has given an explanation, I do not think anything more remains to be done in this matter, except the removal of glass from the table. (Laughter).