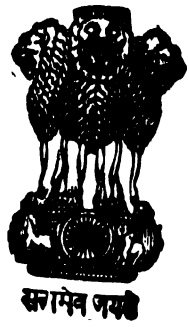
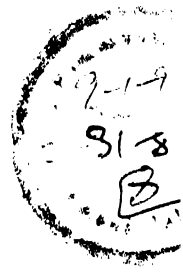




PARLIAMENTARY DEBATES

(Part I—Questions and Answers)

OFFICIAL REPORT

VOLUME VII, 1951

(2nd April to 16th May, 1951)

ThirdS ession (Second Part)

of the

PARLIAMENT OF INDIA

1951

CONTENTS

Volume VII—From 2nd April to 16th May, 1951

CORRIGENDA

In the Parliamentary Debates (Part I—Questions and Answers) Third Session of Parliament (Second Part), 1951,—

In Volume VII—

1. No. 1, dated the 2nd April, 1951,—

(i) कालम २७८२, पंक्ति ३, "हम" के स्थान पर "इस" पढ़ें ।

(ii) کالم ۲۷۸۳ نیچے سے سطر ۸ میں "بھی" کے بجائے "اسی" پڑھیں -

(iii) Col. 2807, line 30 *for* "Archaeological" *read* "archaeological" and line 5 from bottom *for* "Ttransport" *read* "Transport".

2. No. 7, dated the 10th April, 1951,—

(i) कालम ३०३२, नीचे से पंक्ति ४ "वगैहर" के स्थान पर "वगैरह" पढ़ें ।

(ii) Col. 3055, lines 16 and 17 *for* the word "Consituation" *read* "Constitution".

3. No. 8, dated the 11th April, 1951,—

कालम ३१२५, नीचे से पंक्ति ९ "याणिज्य" के स्थान पर "वाणिज्य" पढ़ें ।

4. No. 11, dated the 16th April, 1951,—

(i) Col. 3239, line 27 from bottom *for* "ment" *read* "meant".

(ii) Col. 3244, line 23 *insert* "of" after the words "abolition of any".

(iii) कालम ३२५१, नीचे से पंक्ति २ "श्री जागडे" के स्थान पर "श्री खापर्डे" पढ़ें ।

(iv) Col. 3254, line 14 *for* "yards" *read* "years".

5. No. 12, dated the 17th April, 1951,—

Col. 3267, line 24 *for* "clerllage" *read* "clerkage".

6. No. 13, dated the 18th April, 1951,—

(i) Cols. 3301 & 3302, lines 22 from bottom and 24 respectively *for* the words "statutary" and "statutory" *read* "statuary".

(ii) Col. 3330, line 21 *for* "landing" *read* "landed".

(iii) Col. 3340, lines 16 and 18 *for* "manzas" *read* "mouzas".

7. No. 15, dated the 20th April, 1951,—

Col. 3402, line 2 from bottom *for* "Curch" *read* "Church".

8. No. 16, dated the 21st April, 1951,—

Col. 3447, *for* the existing line 24 *substitute* "ship Scholarship ; and "

9. No. 17, dated the 23rd April, 1951,—

(i) Col. 3478, line 27 from bottom *for* "so" *read* "of".

(ii) Col. 3491, between lines 4 and 5 from bottom *insert* new line "and (iii) Raw materials during the period October 1950 to February".

10. No. 19, dated the 25th April, 1951,—

(i) Col. 3548, *for* the existing line 20 from bottom *substitute* "satisfaction of Members. It is the".

(ii) Col. 3556 for the existing line 1 from bottom *substitute* "Indian Rupee or Sterling ?" and *for* line 26 from bottom *substitute* "meet for the first session. Accord"

کالم ۳۵۹۳ نیچے سے سطر ۱۱ "طور پر" کے بجائے "طور پر" پڑھیں -

11. No. 20, dated the 26th April, 1951,—

(i) Col. 3621, line 7 from bottom *for* the figures "1,420" *read* "41,420".

(ii) Col. 3626, line 1 *for* "condeming" *read* "condemning".

12. No. 22, dated the 28th April, 1951,—

Col. 3687, line 26 *for* "complete" *read* "compete".

13. No. 26, dated the 3rd May 1951,—

Col. 3881 *for* the existing line 17 from bottom *substitute* "and Supply (Shri Gadgil) :(a) 105".

14. No. 27, dated the 4th May, 1951,—

Col. 3925, line 25 from bottom *for* "fireman" *read* "firman".

15. No. 30, dated the 8th May 1951,—

(i) Col. 4041, for the existing line 15 from bottom *substitute* "(c) No, as none is considered neces-".

(ii) Col. 4042, line 31 *insert* "such" before the word "circums-".

16. No. 31, dated the 9th May, 1951,—

Col. 4087, line 21 *for* "Rama" *read* "Rana".

17. No. 32, dated the 10th May, 1951,—

(i) Col. 4124, line 20 from bottom *for* "member" *read* "number".

(ii) Col. 4129, line 21 *for* the words "having come" *read* "coming out of", lines 6 & 8 from bottom *for* the figure "1.4.51" *read* "15.4.51", and *for* "15.4.51" *read* "1.4.51" respectively.

(iii) कालम ४१३३, पंक्ति १२ "नियम" के स्थात पर "नियंत्रणों" पढ़ें ।

18. No. 33, dated the 11th May, 1951,—

(i) Col. 4150, line 10 from bottom *for* "of" *read* "to".

(ii) Col. 4161, line 17 *for* the figure "85" *read* "185".

(iii) Col. 4162, line 24 *for* "in view of" *read* "in lieu of".

19. No. 36, dated the 15th May, 1951,—

(i) Col. 4270, line 30 *for* "pait-mixture" *read* "paint-mixture"

(ii) कालम ४२८८, पंक्ति २८, "*२९५" के स्थान पर "२९५" पढ़ें ।

(iii) कालम ४२८९, नीचे से पंक्ति १९, "चद्य" के स्थान पर "खाद्य" पढ़ें।

The Speaker

The Honourable Shri G. V. Mavalankar.

The Deputy-Speaker

Shri M. Ananthasayanam Ayyangar.

Panel of Chairman

Pandit Thakur Das Bhargava.

Shrimati G. Durgabai.

Shri Prabhu Dayal Himatsingka.

Sardar Hukam Singh.

Shri Manilal Chaturbhai Shah.

Secretary

Shri M. N. Kaul, Barrister-at-Law.

Assistants of the Secretary

Shri A. J. M. Atkinson.

Shri N. C. Nandi.

Shri D. N. Majumdar.

Shri C. V. Narayana Rao.

GOVERNMENT OF INDIA

Members of the Cabinet

Prime Minister and Minister of External Affairs—The Honourable Shri Jawaharlal Nehru.

Deputy Prime Minister and Minister of Home Affairs and the States—The Honourable Sardar Vallabhbhai Patel.

Minister of Education—The Honourable Maulana Abul Kalam Azad.

Minister Without Portfolio—The Honourable Shri C. Rajagopalachari.

Minister of Defence—The Honourable Sardar Baldev Singh.

Minister of Labour—The Honourable Shri Jagjivan Ram.

Minister of Communications—The Honourable Shri Rafi Ahmad Kidwai.

Minister of Health—The Honourable Rajkumari Amrit Kaur.

Minister of Law—The Honourable Dr. B. R. Ambedkar.

Minister of Works, Mines and Power—The Honourable Shri N. V. Gadgil.

Minister of Transport and Railways—The Honourable Shri N. Gopalaswami Ayyangar.

Minister of Industry and Supply—The Honourable Shri Hare Krushna Mahtab.

Minister of Food and Agriculture—The Honourable Shri K. M. Munshi.

Minister of Commerce—The Honourable Shri Sri Prakasa.

Minister of Finance—The Honourable Shri Chintaman Dwarkanath Deshmukh.

Ministers not in the Cabinet.

Minister for the purposes of agreement between the Prime Ministers of India and Pakistan of the 8th April, 1950—The Honourable Shri C. C. Biswas.

Minister of State for Transport and Railways—The Honourable Shri K. Santhanam.

Minister of State for Information and Broadcasting—The Honourable Shri R. R. Diwakar.

Minister of State for Parliamentary Affairs—The Honourable Shri Satyanarayan Sinha.

Minister of State for Rehabilitation—The Honourable Shri Ajit Prasad Jain.

Deputy Minister of Communications—Shri Khurshed Lal.

Deputy Minister of External Affairs—Dr. B. V. Keskar.

Deputy Minister of Commerce—Shri Dattatraya Parashuram Karmarkar.

Deputy Minister of Defence—Major General Himatsinhji.

Deputy Minister of Works, Mines and Power—Shri S. N. Buragohain.

Deputy Minister of Food and Agriculture—Shri M. Thiruma'a Rao.

GIPD—US—235PS—18-12-52—450

THE

PARLIAMENTARY DEBATES

(Part I—Questions and Answers)

OFFICIAL REPORT

PARLIAMENT OF INDIA

Friday, 20th April, 1951

The House met at a Quarter to Eleven of the Clock

[MR. SPEAKER *in the Chair*]

ORAL ANSWERS TO QUESTIONS

CARRIAGE OF INLAND MAIL

*3298. **Shri Sidhva:** (a) Will the Minister of **Communications** be pleased to state whether inland mail (post) is carried by steamers and if so, what routes do they cover and by what lines is it carried?

(b) How much amount by way of freight was paid to the steamship companies in 1949 and 1950 for carriage of such mail?

The Minister of Communications (Shri Kidwai): (a) and (b). Yes. A statement giving particulars is placed on the Table of the House. [*See* Appendix XXII, annexure No. 34].

Shri Sidhva: May I know whether the main line between Bombay and Saurashtra ports and Kutch is absolutely eliminated for purposes of carrying mail by steamers? In the statement I don't find that line; there is particularly no mention of Porbunder, Bhuj and Mandvi. May I know definitely whether mail to these places is not carried by steamer?

Shri Kidwai: The mails are carried by steamer only to the stations named in the statement.

Shri Sidhva: There is mention of mails being carried by steamer from Bombay to Dabhol, Bombay to Vijayadrug etc. I want to know whether mails are carried by steamer between Bombay and Saurashtra and Kutch ports?

Shri Kidwai: I have already replied that mails are carried by steamer only to the stations named in the statement.

CALCUTTA-KHATMANDU AIR ROUTE

*3299. **Dr. Ram Subhag Singh:** (a) Will the Minister of **Communications** be pleased to state whether it is a fact that the Calcutta-Patna-Khatmandu route of the recently opened air service is going to be changed to Calcutta-Muzaffarpur-Khatmandu?

(b) If so, do Government propose to provide aeronautical communication, air traffic control and navigational facilities at Muzaffarpur aerodrome?

The Minister of Communications (Shri Kidwai): (a) and (b). Yes. I may add that the question of a shuttle service between Khatmandu and Patna is likely to be considered.

Dr. Ram Subhag Singh: May I know whether any representation has been received to include Patna also in the present route Calcutta-Muzaffarpur-Khatmandu?

Shri Kidwai: The present route includes Patna, but the Indian National Airways who are operating the service have suggested that they should be allowed to take the 'plane direct to Muzaffarpur and from Muzaffarpur to Khatmandu. Then they also propose to have a shuttle service from Patna to Khatmandu and back.

Dr. Ram Subhag Singh: May I know the cost involved in providing aeronautical communication, air traffic control and navigational facilities at Muzaffarpur?

Shri Kidwai: The cost involved is: recurring—Rs. 10,320 and non-recurring Rs. 19,000 per annum.

Dr. Ram Subhag Singh: May I know how soon Government expect to provide these facilities?

Shri Kidwai: Let us hope in a month's time if not earlier.

Shri Chaliha: May I know whether there is any idea of connecting Chapra with Patna by air?

Shri Kidwai: There is no suggestion before us.

INTER-STATE MOVEMENT OF SUGAR

*3300. **Dr. Ram Subhag Singh:** Will the Minister of **Food and Agriculture** be pleased to state whether the Government of India propose to remove the ban on the inter-state movement of sugar?

The Minister of Food and Agriculture (Shri K. M. Munshi): No.

SUPERANNUATED STAFF

*3301. **Shri Sidhva:** Will the Minister of **Transport** be pleased to state:

(a) the number and categories of staff who are superannuated but are still in service in the Ministries of Railways and Transport; and

(b) the reasons for retaining them?

The Minister of State for Transport and Railways (Shri Santhanam): (a) and (b). There is no superannuated person in the service of the Ministry of Railways. A statement giving the information required in respect of such personnel in the Transport Ministry is placed on the Table of the House. [*See* Appendix XXII, annexure No. 35.]

Shri Sidhva: The statement says there are three superannuated officers of the categories of All India Service and Central Service Class I whose services could not be dispensed with. It says, "This is a specialist organisation which requires technical officers of high calibre". May I know what kind of high calibre is required and what kind of specialist organisation this is where substitute officers could not be found? And also, whether Government have taken any steps at any stage to find substitutes?

Shri Santhanam: Government have taken all possible steps and it was only where we found that the particular officer could not be replaced that we have given him the shortest possible extension.

Shri Sidhva: My question is not fully answered, Sir. I want to know what kind of a specialist organisation this is and whether any effort is made to replace these officers and when are they going to be replaced by some other technical men? Is there any effort being made by Government to see that at any stage they will be replaced?

Shri Santhanam: We are having only three superannuated officers. One of them was actively engaged in drafting the National Highway Code and we thought it would be a great loss to the country if we sent him away. He himself was anxious to go and it is at our request that he is staying. To the second officer we have given an extension for six months simply because there was some delay on the part of the U.P.S.C. in recruiting his successor. And the third one was taken because for the Roads organisation there was nobody experienced enough either within the organisation or outside to fill the post and we had to take him. He is a senior retired engineer from a State. These are the three instances.

Shri Sidhva: How many extensions have they been granted so far?

Mr. Speaker: I think we are taking unnecessarily long time over a matter of administrative detail.

Shri Sidhva: But I wanted to know whether at any stage new officers could be available for the purpose. The House is entitled to know.

Mr. Speaker: The House is entitled to know every detail of administration but then, in view of the special situation of the country everything is stepped up unduly and therefore there is a dearth of experienced men everywhere including in public life and parliamentary life. The hon. Member need not persist in that kind of an inquiry. Next question.

Shri Sidhva: I would like to put one more question with your permission, Sir. The statement also says that three Central Services Class III officers have been engaged as a purely temporary arrangement. May I know the meaning of this "temporary arrangement"? Are they for a few months?

Shri Santhanam: For a few months till we find a substitute. That is the meaning of "temporary arrangement".

SUPERANNUATED STAFF

*3302. **Shri Sidhva:** Will the Minister of **States** be pleased to state:

(a) the number and categories of superannuated staff in service in his Ministry; and

(b) the reasons for retaining them?

The Minister of States, Transport and Railways (Shri Gopalaswami): (a) Two: Class I—1 (Secretary of the States Ministry);
Class III—1 (Caretaker in the States Ministry.)

(b) The Secretary has been retained in the public interest in view of special talents and experience in dealing with problems of the integration and consolidation of States.

The post of Caretaker carries a fixed pay of Rs. 130 and is normally filled by a retired officer.

Shri Sidhva: What is the special talent that this officer possesses?

Shri Gopalaswami: The speciality of the talent has been appreciated both by the previous Minister of States and by the present Minister.

ELECTRICAL LOCKING ARRANGEMENTS

*3304. **Dr. M. M. Das:** (a) Will the Minister of **Railways** be pleased to state whether it is a fact that the old Electrical Locking arrangements of the Cabins in the Sealdah Division, that existed during the time of B. A. Railways, have been replaced by those used in E. I. Railways?

(b) If so, what has been the total expenditure for the replacement?

(c) What are the reasons for the replacement?

The Minister of State for Transport and Railways (Shri Santhanam): (a) The reply is in the negative.

(b) and (c). In view of the reply to part (a) these do not arise.

Dr. M. M. Das: Am I to understand that the electrical locking arrangement of the cabins in the old Sealdah Division of the B.A. Railway has not been replaced?

Shri Santhanam: That is exactly the reply.

Kaka Bhagwant Roy: May I know on how many stations on the E. P. Railway this electrical interlocking arrangement has been introduced?

Shri Santhanam: If he will table a question, I shall give him all the details about the arrangements on the E. P. Railway.

Shri Sidhva: Excuse me, Sir. Question No. 3303 has been passed over.

Mr. Speaker: Perhaps the hon. Member does not know that it has been withdrawn.

Shri Sidhva: What do we know about it?

Mr. Speaker: The hon. Member who put that question is present in the House and.....

Shri Sondhi: We do not know that it is withdrawn. We are entitled to know because we are ready with supplementaries.

Mr. Speaker: If the question is withdrawn at the last moment, and the hon. Member who has tabled the question is present in the House and when it is passed he does not raise any objection at all, then the clear presumption is that the question must have been withdrawn.

Shri Sondhi: All that we want is that you must announce that so and so question has been withdrawn.

Mr. Speaker: I generally do that, but even without it, hon. Members should take it for granted that it is withdrawn.

Shri Sondhi: There have been so many slips like that.

Mr. Speaker: Order, order. Next question.

RAILWAY TRAINING SCHOOLS

*3305 **Dr. M. M. Das:** Will the Minister of **Railways** be pleased to state:

(a) the number of Training Schools maintained and run by the Indian Government Railways and the places where they are situated;

(b) the total annual expenditure for these schools; and

(c) the annual expenditure for the maintenance of the Training School at Sealdah?

The Minister of State for Transport and Railways (Shri Santhanam): (a) There are 18 Training Schools on the former Indian Government Railways situated at Gauhati, Badarpur, Ajmer, Sini, Chandausi, Sealdah, Jamalpur, Kanchrapara, Saharanpur, Ghaziabad, Bina, Bhusaval, Madras, Gorakhpur and Trichinopoly Junction. Besides these, part-time classes are also conducted at Dohad, Ajmer and Kharagpur and at the Government Trade School, Perambur.

(b) The annual expenditure for the Training Schools is approximately Rs. 15,11,000 and for the part-time classes Rs. 20,000.

(c) Rs. 51,000.

Dr. M. M. Das: May I know the average number of trainees that are trained in the Sealdah training school?

Shri Santhanam: I have not got the figure with me.

Dr. M. M. Das: May I know whether it is a fact that after the Sealdah Division was taken up by the E. I. Railway after the partition of the country the importance of the Sealdah

training school has been reduced to the minimum and Government do not find it profitable to maintain the upkeep and efficiency of the institution?

Shri Santhanam: I have no special information regarding the Sealdah school. The question referred to the schools in the Indian Government Railways and so I have given that information. If he wants information about the Sealdah training school, I am prepared to give it to him later.

Dr. M. M. Das: Do Government contemplate closing this training school?

Shri Santhanam: Not so far as I know.

Shri Rathnaswamy: What are the various subjects that are taught in these training schools and what are the categories of employees who get the benefit of this training?

Shri Santhanam: Generally Station Masters and Guards are trained at these schools. People who are engaged in signalling also get training.

Ch. Ranbir Singh: May I know what is the system of recruitment adopted in respect of these trainees? Is it through the Public Service Commission?

Mr. Speaker: Order, order.

Shri Sohan Lal: Is there any reservation for scheduled caste trainees in these training schools?

Shri Santhanam: In the initial recruitment to the Railway Service, the proportion is maintained. Therefore, it must come more or less automatically.

Shri Sohan Lal: May I know definitely whether it is maintained or not, and what is the number of scheduled caste trainees in each school?

Mr. Speaker: He should give notice of a separate question for that.

Dr. M. M. Das: Are the institutions already in India sufficient for giving training to our railwaymen, or is it necessary to send them off to any foreign countries for training?

Shri Santhanam: The existing institutions are not sufficient and we are contemplating their expansion. But I do not think there is any necessity to send people to foreign countries.

TRAIN COLLISION

*3307. **Shri Sanjivayya:** Will the Minister of **Railways** be pleased to state:

(a) whether it is a fact that on the 22nd December, 1950, there was a collision of two trains in the Egmore Station, Madras;

(b) whether it is a fact that a case under Section 101 of the Indian Railways Act, has been launched;

(c) if so, against whom;

(d) what is the result of the case; and

(e) what is the damage done to the Railways by this accident?

The Minister of State for Transport and Railways (Shri Santhanam): (a) The collision was not between two trains as stated in the question, but between the empty rake of No. 7 Dhanuskodi Passenger and two Officer's inspection carriages berthed in a lay-bye siding at Madras Egmore station, when the former was being backed on to platform No. 3.

(b) to (d). A case was registered by the Railway Police against the Relieving Cabin Station Master held responsible for the accident but no prosecution was launched. The Police have, on further consideration dropped all action in the matter.

(e) The approximate cost of damage to rolling stock and permanent way amounted to Rs. 230.

Shri Sanjivayya: What are the reasons for the collision?

Shri Santhanam: The rake was backed against signals and the collision took place.

Shri Sanjivayya: Did anyone receive severe injuries and if so was any compensation paid?

Shri Santhanam: No one was injured.

Shri Sidhva: It is stated that this accident took place due to wrong signalling. Now, that is serious. In that case, why was the prosecution withdrawn?

Mr. Speaker: It was not launched at all.

Shri Sidhva: Why was no prosecution made?

Mr. Speaker: The hon. Minister has said that they handed the papers over to the Police and the Police came to the conclusion that no prosecution could be launched.

Shri Santhanam: I may add that departmental action was taken, and this was considered to be a case only for departmental action.

ALLOTMENT OF QUARTERS TO RAILWAY EMPLOYEES

*3308. **Shri Sohan Lal:** (a) Will the Minister of **Railways** be pleased to state what is the general policy of allotment of quarters to the railway employees?

(b) Are fourth grade servants allotted quarters or not?

(c) How many quarters are attached to the Pather-Dit Railway Station (in Bihar near Dhanbad)?

(d) How many sweepers are employed particularly for that station and how many of them have been allotted quarters?

The Minister of State for Transport and Railways (Shri Santhanam): (a) The general policy is to allot quarters to those staff whose stay near the site of their work is considered essential. After meeting their needs, quarters, if available, are allotted to other staff.

(b) Yes.

(c) 487 quarters.

(d) 43 sweepers and one Jemadar are employed at this station and out of them 15 sweepers and the Jemadar have been allotted quarters.

Shri Sohan Lal: What is the length of service of these sweepers and when were they allotted quarters?

Shri Santhanam: I have got only the number of sweepers who have been allotted quarters. I have not got details about the length of their service.

Shri Sohan Lal: May I know whether in one quarter only one family is accommodated or more than one family is accommodated?

Shri Santhanam: It may be that because there are more people than there are quarters, a single quarter may have been divided and allotted to two families. I cannot say off-hand what happens in a particular case.

COAL CARGO

*3309. **Shri S. C. Samanta:** Will the Minister of **Transport** be pleased to state:

(a) whether the Calcutta Port Commissioners have taken over again the trimming of Coal Cargo and bunkers in the Kidderpore Coal Dock and if so, from when; and

(b) whether the trimming charge has been increased?

The Minister of State for Transport and Railways (Shri Santhanam): (a) Yes; from the 1st January 1951.

(b) No. Trimming charge was being levied at the rate of Re. 0-13-0 per ton since 1st October 1950 and this rate has been continued by the Commissioners on their taking over the work.

Shri S. C. Samanta: Is it not a fact, Sir, that trimming of coal is not the statutory responsibility of the Calcutta Port Commissioners? If so, why have they taken over this charge?

Shri Santhanam: It is certainly not a statutory responsibility. But the contractor who was doing this job was found so unsatisfactory that the shipping agents requested the Port Commissioners to undertake the work. So it has been undertaken by the Port Trust.

Shri S. C. Samanta: Are the Port Commissioners improving the trimming arrangements?

Shri Santhanam: All the parties seem to be satisfied with the present arrangements.

Shri S. C. Samanta: May I know how the recent strike of coal trimmers was called off—what was the settlement arrived at?

Shri Santhanam: I have no information regarding the strike.

Shri S. C. Samanta: May I know Sir, whether the coal trimming arrangement at Vizag. will help because the trimming arrangements at Calcutta Port are not sufficient, with the result that not more than one thousand tons can be carried by ship from that place?

Mr. Speaker: I think the hon. Member is making a suggestion for action.

FOOD PROCUREMENT IN BHOPAL

*3310. **Thakur Lal Singh:** Will the Minister of **Food and Agriculture** be pleased to state:

(a) the total amount of (i) *Jawar;* and (ii) wheat procured from Bhopal in 1949 and 1950;

(b) the rate at which the grain was procured;

(c) the expense per maund (including commission to Agents) Government had to incur in exporting it to places outside Bhopal;

(d) what was the policy adopted in procuring this grain; and

(e) whether there was any dissatisfaction among the people in 1949 at the method adopted in procuring it?

The Minister of Food and Agriculture (Shri K. M. Munshi): (a) There was no procurement in 1949. During

1950, 2,150 tons wheat and 3,701 tons *Jawar* were procured.

(b) The purchase rates during 1950 were:

Rs. per md.)

For Wheat	For Jawar
13-0-0 upto end March 50	8-4-0 upto end Jan. 50
12-0-0 upto 15th May 50	8-0-0 from 1-2-51
11-8-0 from 16th May 50	8-4-0 from 15-11-50 to 31-12-50

(c) The total incidental charges from the procurement to the F.O.R. stage was Rs. 2-5-2 per md. including cost of gunny.

(d) Semi-monopoly by Government.

(e) As there was no procurement during 1949, the question does not arise.

Thakur Lal Singh: What percentage of total produce was procured in 1950?

Shri K. M. Munshi: Over 110,000 tons of food-grains were produced. The procurement was 2.150 tons of wheat and 3,701 tons of jawar.

Thakur Lal Singh: What methods are Government adopting this year for procuring food-grains?

Shri K. M. Munshi: The procurement is going on. They have to export a certain quantity.

Thakur Lal Singh: What was the reason for the change of rate in 1950?

Shri K. M. Munshi: Change of rate depends upon the market and on the necessity of keeping the prices at a low level.

Shri Chattopadhyay: May I know the number of cases in which Government had to issue directives on the grain-owners for surrendering the grain?

Shri K. M. Munshi: I am afraid I have not got the information here.

Ch. Ranbir Singh: May I know the percentage of handling charge to the procurement price?

Shri K. M. Munshi: The amount of Rs. 2-5-2 which I have given includes all the incidental charges.

Post Offices in Bhopal

***3311. Thakur Lal Singh:** (a) Will the Minister of **Communications** be pleased to state how many new post offices were opened in Bhopal State during the year, 1950 and how many were closed?

(b) What is the normal length of radius of an area served by a post office?

The Minister of Communications (Shri Kidwai):

(a) Opened 5
Closed 1

(b) 5 miles.

Thakur Lal Singh: How many post offices were closed during the year?

Shri Kidwai: One.

Thakur Lal Singh: What was the reason for it?

Shri Kidwai: It was in a military station and as the military did not require it any more, it was closed.

Land Cultivation in Bhopal

***3312. Thakur Lal Singh:** Will the Minister of **Food and Agriculture** be pleased to state the area under cultivation in the State of Bhopal during 1949 and 1950 for *Jawar*, wheat, rice and cotton?

The Minister of Food and Agriculture (Shri K. M. Munshi): The following areas were under cultivation in the State of Bhopal during 1948-49 and 1949-50 for *Jawar*, Wheat, Rice and Cotton:

Figures in Thousand Acres

	1948-49	1949-50
Jawar	235	160
Wheat	310	502
Rice	41	47
Cotton	20	21

Thakur Lal Singh: Are any steps being taken by the Bhopal Government to encourage cooperative system of farming, especially in the newly tractorised land?

Shri K. M. Munshi: They are trying to encourage cooperative system of farming.

Thakur Lal Singh: Are they successful?

Shri K. M. Munshi: The experiment is being tried. It is too early to say whether they have succeeded or not.

Chittaranjan Locomotive Factory

***3313. Shri Balmiki:** Will the Minister of **Railways** be pleased to state to which of the Railways in India the locomotives manufactured by the factory at Chittaranjan upto March 1951 have been allotted?

The Minister of State for Transport and Railways (Shri Santhanam): The locomotives turned out from Chittaranjan upto the end of March 1951 have been allotted to the B. N. and B. B. and C. I Railways.

श्री कन्हैया लाल वाल्मीकी : मार्च सन् ५१ तक इस फैक्टरी द्वारा कितने एंजिन तैयार किये गये हैं ?

[**Shri Balmiki:** How many engines have been manufactured by this factory upto March, 1951?]

Mr. Speaker: How many engines were assembled in this factory during last year?

Shri Santhanam: Seven, Sir.

श्री कन्हैया लाल वाल्मीकी : मजबूती के लिहाज से विदेशी एंजिनों से यहां के एंजिन कैसे हैं ?

[**Shri Balmiki:** How do these engines compare with those manufactured by foreign countries with regard to their durability?]

Mr. Speaker: How do the engines assembled in this factory compare with the foreign made engines?

Shri Santhanam: They compare very well indeed.

Shri J. N. Hazarika: May I know whether the engines produced are for broad gauge or for metre gauge?

Shri Santhanam: All the production in Chittaranjan is for broad gauge.

Shri Sidhva: May I know how many engines were produced till now?

Mr. Speaker: He said seven.

Shri Sidhva: May I know whether all the parts of the engines were manufactured here or.....

Mr. Speaker: That question was dealt with previously.

Central Tractor Organisation

*3315. **Shri Jagannath Das:** Will the Minister of **Food and Agriculture** be pleased to state the expenses incurred on the Central Tractor Organisation in the years 1948, 1949 and 1950 and their plans for 1951?

The Minister of Food and Agriculture (Shri K. M. Munshi): A statement showing the expenses incurred on the running of Central Tractor Organisation upto the year 1950-51 is placed on the Table of the House. [*See* Appendix XXII, annexure No. 36.]

As for the current year, 240 new tractors purchased out of the loan from the International Bank and about 100 old tractors are being used for reclamation in the U.P., Madhya Pradesh, Madhya Bharat and Bhopal and a total area of 2,39,500 acres is expected to be reclaimed by them during the 1951 reclamation season ending on 31st May 1951.

Shri Sondhi: What is the total number of new heavy tractors imported from England and America?

Shri K. M. Munshi: I have not got the break-up here. I think I gave an answer to this a few days ago. I think it is 160 or so—I am speaking subject to correction.

Shri Sondhi: May I know whether any financial sanction was obtained from the Finance Committee for the entire number imported.

Shri K. M. Munshi: I want notice of that question.

Shri Sidhva: Out of these 240 tractors, are they all for the Central Government or are some for the State Governments or for private purposes?

Shri K. M. Munshi: These form part of the fleet of the Central Tractor Organisation.

Ch. Ranbir Singh: May I know the average number of hours put in per tractor?

Shri K. M. Munshi: I must have notice of it.

Grow More Food Campaign (Propaganda)

*3316. **Shri Jagannath Das:** Will the Minister of **Food and Agriculture** be pleased to state:

(a) the expenses involved in the propaganda of Grow More Food campaign in the years 1947, 1948, 1949 and 1950 and what expenditure Government propose to incur in 1951; and

(b) how many pamphlets or leaflets were issued during these years separately, and how many were in Hindi and how many in other Indian languages?

The Minister of Food and Agriculture (Shri K. M. Munshi): (a)

Year	Expenditure
1947-48	Nil
1948-49	Nil
1949-50	Rs. 3,720/-
1950-51	Rs. 30,000/- by the Ministry of Food and Agriculture and Rs. 70,000/- by Ministry of Information and Broadcasting on behalf of Ministry of Food and Agriculture.
1951-52	A provision for Rs. one lakh has been made in the budget for 1951-52.

(b)

Year	Pamphlets	Leaflets
1947-48	..	..
1948-49	..	..
1949-50	6 (Hindi—2 English—4)	.. ..
1950-51	12 (Hindi—8 English—4)	7 (Hindi—6 English—1)

Shri Rathnaswamy: What steps do Government propose to take to see that the subsidies given for growing more food in this country are not utilised for any other purpose, as has been our experience in the past?

Shri K. M. Munshi: Though it strictly does not arise, I may say that I dealt with it in detail in my speech the other day in the House.

Shri R. Velayudhan: What is the percentage of increase in acreage due to the Grow More Food campaign, as compared with the previous year?

Shri K. M. Munshi: The hon. Member will find it in the exhaustive note which I circulated to the House.

Shri R. Velayudhan: Is it a fact that in this integrated programme the increase of acreage under jute cultivation was 25 per cent. more than the previous year while the increase of the acreage under food cultivation was not more than 3 per cent.?

Shri K. M. Munshi: The hon. Member will realise that this question deals only with the expenses with regard to the propaganda, but most of the questions in regard to this matter I had dealt with in that note, hoping that Members would read it.

Shri Sidhva: May I know whether these pamphlets are meant for the benefit of the farmers or somebody else?

Shri K. M. Munshi: They are for the benefit of the farmers, Hindi-knowing or English-knowing, and also to educate people into the necessity of growing more food.

Shri Sidhva: How many of them know English?

Mr. Speaker: I am going to the next question.

RAILWAY CATERING

*3319. **Shri S. C. Samanta:** Will the Minister of Railways be pleased to state:

(a) the detailed policy of the Railway Board to allot small stations to local professional men and displaced persons for catering and refreshments;

(b) whether before allotting, the displaced persons are asked to submit a statement to the effect that whether they have got any other business interest with the Government; and

(c) whether any small stations have been allotted to two persons and if so, the reasons therefor?

The Minister of State for Transport and Railways (Shri Santhanam): (a) The policy is to allot, as far as possible, vacant contracts for refreshment room and vending at small stations to local professional men, including displaced persons, who may elect to settle in such areas. Existing contractors who are rendering satisfactory service are not, however, disturbed, even if they are not local people.

(b) A displaced person is required to give a certificate in writing before a contract is allotted to him, that he holds no catering or vending contracts in his name or has no financial or other interest in any other vending or catering contract anywhere on the Indian Railways.

(c) A few small stations have been allotted to more than one person to accommodate a larger number of contractors.

Shri S. C. Samanta: May I know whether the policy of the Railway Board has changed as regards the allotment of these refreshment rooms to displaced persons and others, and whether all things being at par no preference will be given to displaced persons?

Shri Santhanam: All things being equal, preference is given to the displaced person, but the Central Advisory Council advised us that quality should come first and we have adopted that recommendation.

Shri A. C. Guha: May I know in how many small stations in Bengal and Bihar local professional men and displaced persons have been given catering contracts?

Shri Santhanam: I have got the details for all the Railways and if the hon. Member wants the whole details or for any particular Railway I can give them, but I have not got any Statewise figures.

Shri A. C. Guha: I wanted the details only for the B. N. and E. I. Railways.

Mr. Speaker: He has not got the break-up of the figures and if the hon. Member wants any specific information he should give notice—that is what he means.

Shri A. C. Guha: I want to know whether any station has been given to local men and to displaced persons in that area.

Shri Santhanam: On the B. N. Railway 34 vending contracts for local men and 8 vending contracts for displaced persons have been given. On the E. I. Railway two catering contracts and 67 vending contracts have been given to local men, and 17 catering contracts and 63 vending contracts have been given to displaced persons.

Shri Sondhi: The hon. Minister said that quality is the biggest criterion in making allotments for these caterers. Unless a contractor is given a chance to prepare and show a quality may I know how the quality can be known?

Mr. Speaker: Order, order. It is not a question but an argument.

Babu Ramnarayan Singh: What is the policy of the Government while considering the question of contracts? Do they consider the claims of the local people?

Shri Santhanam: We do. In fact, except in very big stations, where large investment of capital is needed, the claims of local men and displaced persons are given preference to those of other people who are speculators.

Shri Shiv Charan Lal: Have some of these vendors in some stations formed themselves into co-operative societies, and have the Railway Department given them contracts somewhere?

Shri Santhanam: In one or two places they have, and wherever they have proved their quality we have instructed the Railway Administration to consider their claims sympathetically. But in the nature of things it is a cooperative society to sell to non-members and therefore it is very difficult to admit its claims to a great extent.

REPORT OF RIVER NAVIGATION EXPERT

***3320. Shri Rathnaswamy:** Will the Minister of **Transport** be pleased to state:

(a) whether it is a fact that Government do not propose to publish the report submitted by the River Navigation Expert sent by the E.C.A.F.E. last year; and

(b) if so, the reasons therefor?

The Minister of State for Transport and Railways (Shri Santhanam): (a) and (b). The River Navigation Expert was deputed by the E.C.A.F.E. to whom he has submitted his report and it is for them to publish it. The question of the Government of India publishing the report does not arise.

RIVER TRANSPORT IN WEST BENGAL

***3321. Shri Rathnaswamy:** Will the Minister of **Transport** be pleased to state:

(a) the steps taken to organize the river transport in West Bengal which has been disturbed by partition; and

(b) what is the progress achieved in connection with establishing a river link between West Bengal and the Uttar Pradesh?

The Minister of State for Transport and Railways (Shri Santhanam): (a) The Government of India are fully alive to the importance of river transport in the movement of tea, jute and other goods from Assam, North Bengal and Bihar to Calcutta and of tea-garden stores, salt, etc. in the opposite direction. Among the steps taken for the better utilisation of river transport services to supplement the capacity of the Assam Rail Link are: (i) the setting up of local Co-ordination Committees at steamer-rail junctions to process day to day movements, according to priorities allocated by the Assam Rail Link Committee; (ii) the provision of additional railway sidings and other transhipment facilities; and (iii) the introduction of through booking arrangements for rail-river transport. The West Bengal Government have, on their part, constituted a State Inland Water Transport Committee to review the river transport position in the State from time to time. They have also taken necessary steps to organise regular passenger services on rivers. As a result of all these, the river transport system in West Bengal is now working to capacity, and movement of jute to Calcutta is taking place by river in large quantities.

(b) The establishment of a direct river link between West Bengal and Uttar Pradesh is one of the objects of the multi-purpose Ganga Barrage Scheme which is under investigation at present.

Shri A. C. Guha: Is it true that the entire river traffic of West Bengal and Assam is in the hands of one European Company and they have transferred quite disproportionately a large number of their steamers from this side to Pakistan side?

Shri Santhanam: I do not think that they have transferred. It is only to regulate and prevent such transfers, we have passed the Bill yesterday.

Shri A. C. Guha: My first part of the question has not been answered. I want to know whether a European Company has practically a monopoly possession of the entire traffic.

Shri Santhanam: That has been so for the past half a century, Sir.

Shri A. C. Guha: May I know if Government thinks it desirable to take any step to foster some Indian Companies to take up that traffic?

Shri Santhanam: I would like certain Indian Companies to come forward. As the price of shipping is so costly, I do not think that there is any prospect of any Indian Company coming forward for this purpose.

Basantpur Canal

*3322. **Shri Baigra:** (a) Will the Minister of States be pleased to state whether it is a fact that Basantpur canal from Ravi river is the only canal supplying water to Kathua District of Jammu and Kashmir State for irrigation purposes?

(b) Is it a fact that under some old arrangements between the Punjab Government and Jammu Authorities, water is supplied only in summer season and not throughout the year?

(c) Did the Jammu and Kashmir Government lately request the Government of India to remove the hindrance and if so, what are the results?

The Minister of States, Transport and Railways (Shri Gopalaswami): (a) Yes.

(b) and (c). The supply of water to the Basantpur Canal is at present regulated by what is known as the 'Rivaz Award' of 1895. A representation has been received from the Jammu and Kashmir Government for modification of some of the terms of the Award, and the matter is under the consideration of the Government of India and the Punjab Government.

श्री बैगरा : क्या सरकार को यह मालूम है कि जब मगरिबी पंजाब में नहर का पानी कम हो जाता है तो रियासत की नहर का पानी बन्द कर के मगरिबी पंजाब को दिया जाता है और इस से रियासत की फसलें खराब हो जाती हैं।

[**Shri Baigra:** Are the Government aware of the fact that when there is not enough water available in the canal in West Punjab, the supply of water to the canal in the State is stopped and diverted to West Punjab with the result that the crops in the State are spoiled?]

Shri Gopalaswami: That representation has been received. We are considering the whole question as to whether we should take action or not in the matter.

श्री बैगरा : क्या सरकार इसके लिये जल्दी कोई कदम उठायेगी जिस से रियासत को साल भर पानी दिया जा सके और रियासत पानी का पूरा फायदा उठा सके ?

[**Shri Baigra:** Will the Government take any steps in the near future to ensure the supply of water to the State for the whole year so that the State may take full advantage of it?]

Shri Gopalaswami: We will do what we can, as early as possible.

Aeronautical Communication Service

*3323. **Shri S. C. Samanta:** (a) Will the Minister of Communications be pleased to state how many technical and non-technical persons are working under Aeronautical Communication Service in India?

(b) How many of the technical persons were trained abroad?

(c) Have any students been sent abroad to have experience in Aeronautical Engineering by the Government of India?

The Minister of Communications (Shri Kidwai): (a) Excluding Class IV staff, there are 1260 technical persons and 238 non-technical persons working in the Aeronautical Communication Service of the Civil Aviation Department.

(b) Twenty-three.

(c) Yes. During the recent past, certain Engineering officers of the

Civil Aviation Department have been sent abroad for short periods for bringing their knowledge up to date. Besides, about a dozen persons have been sent for training in foreign countries either under the Overseas Scholarship Scheme or under the United Nations Organisation Fellowship Scheme.

Shri S. C. Samanta: May I know how many students are studying in foreign countries in the Engineering of Aeronautical Communication Service over and above the students referred to by the hon. Minister?

Shri Kidwai: I have no information as to how many people have gone there to study Aeronautical Engineering or for pilots-training etc.

Shri S. C. Samanta: Does not the Embassy keep any records of the students studying there?

Shri Kidwai: They must have got the records. If the hon. Member is interested, we can send for those records.

Firing in Manipur

*3324. **Shri Saprawnga:** Will the Minister of States be pleased to state:

(a) whether it is a fact that firing was resorted to on a crowd in Mao village of Manipur State in the year 1948, resulting in the death of a few persons;

(b) if the answer to part (a) above be in the affirmative, how many were killed and wounded;

(c) what was the cause of the firing;

(d) whether there was any enquiry made, and if so, what were the findings of the enquiry; and

(e) whether any claims of compensation have been forwarded by those who suffered as a result of the firing, and whether they have been compensated by Government?

The Minister of States, Transport and Railways (Shri Gopalaswami): (a) to (e). In August 1948, there was an incident in Manipur in connection with a no tax campaign started by the Mao Nagas. A mob of about 1,000 persons obstructed the police in the discharge of their duty. Since the mob would not disperse even after persuasion and warning, fire had to be opened. Three people were killed and four were wounded. A Magistrate was present with the police party and it was established that the firing was justified: no formal enquiry was therefore ordered. As a gesture of goodwill, however, the Government of India have decided that suitable *ex gratia* payments should be made to those who suffered as a result of the incident.

Shri Saprawnga: Is it a fact that before the firing took place the crowd resorted to violence and attacked the Military people employed there?

Mr. Speaker: I am afraid the incident is an old one of 1948. The question is of payment of compensation to those who suffered and the hon. Minister has replied that some *ex gratia* payment has been permitted.

Shri Gopalaswami: That *ex gratia* payment was sanctioned quite recently.

Mr. Speaker: The hon. Member may if he likes pursue the question so far as the *ex gratia* payment is concerned but it is no use going now into an old incident that happened three years ago.

Attack on Villagers in Manipur

*3325. **Shri Saprawnga:** Will the Minister of States be pleased to refer to the answers given to parts (b) and (c) of starred question No. 2167, on the 13th March 1951 regarding an attack on villagers in Tamenglong Sub-Division, Manipur State in January 1951 and state:

(a) whether the case of dispute over the land had been brought to a court before the rioting took place;

(b) what was the area of the land under dispute, and whether the land was meant for cultivation, grazing or any other purpose; and

(c) how many of the total number of persons arrested so far, belong to one party and how many belong to the other?

The Minister of States, Transport and Railways (Shri Gopalaswami): (a) No, Sir.

(b) The area of the land is about 20′ × 40′. The site was meant for a small church.

(c) Nineteen persons have so far been arrested from the party who are alleged to have committed the murders. No arrest have been made from the other party.

Shri Saprawnga: May I know whether the other party had taken permission from authorities before they built this Church?

Shri Gopalaswami: There was a land dispute between the two parties.

Mr. Speaker: His question was whether the permission was taken from the authorities before the Curch was built.

Shri Chaliha: May I know if there was a quarrel between two sects of Christians themselves or whether it was between Manipuris and Christians?

Shri Gopalaswami: One party belonged to the Christian Community and the other party was non-Christian.

Shri Saprawnga: May I know how many have been prosecuted and arrested so far?

Shri Gopalaswami: 19 persons have been so far arrested.

HINDUSTAN AIRCRAFT LTD., BANGALORE

*3327. **Dr. Deshmukh:** (a) Will the Minister of **Railways** be pleased to state whether any development of Hindustan Aircraft Ltd., Bangalore for manufacturing of more railway coaches is under contemplation?

(b) What is the target of production intended?

(c) By what time would this be achieved?

The Minister of State for Transport and Railways (Shri Santhanam): (a) No.

(b) and (c). Do not arise.

Dr. Deshmukh: Is there any scheme or proposal to manufacture an increased number of coaches and if so in what place, if not in the Hindustan Aircraft Ltd.?

Shri Santhanam: There are two sets of proposals for increasing the production of coaches. One is to increase the production in the old style in all our workshops and we are also contemplating to set up a separate building establishment for building integral coaches. We are now investigating the best possible location and no decision has been arrived at.

Dr. Deshmukh: Was there any proposal on the part of the Hindustan Aircraft Ltd., for increased production of coaches at any time?

Shri Santhanam: Once it was considered whether it would not be desirable to set up this Carriage factory in connection with the Hindustan Aircraft Ltd. But, now that it has been taken over by the Defence Ministry and their requirements will fully take up the work of the factory, we are now contemplating whether we should shift it to some other place.

Dr. Deshmukh: Does this Hindustan Aircraft Ltd. carry out the work of re-conditioning of old coaches?

Shri Santhanam: No. Building up of coaches is going on. We have already got 133 coaches and another 120 are being done. It will go on producing as much as it can. Only it is not expanding these activities and a new factory for coaches will be put up probably in another place.

Shri Shiv Charan Lal: Government has placed orders for coaches manufactured in foreign countries. Was it not possible to have them manufactured here in India?

Shri Santhanam: We are utilising all the capacity available in the country. It is only for the excess requirements that we are going abroad.

AIR PASSENGER AMENITIES

*3328. **Dr. Deshmukh:** (a) Will the Minister of **Communications** be pleased to state whether there is any supervision exercised by Government over the air service companies in respect of passenger amenities?

(b) Is this question taken into consideration at the time of issuing licences and if not, do Government propose to consider the matter?

The Minister of Communications (Shri Kidwai): (a) Yes.

(b) Yes, it is taken into consideration and relevant conditions are included in the licence.

Dr. Deshmukh: What organisation is there? Is there any officer? What is the name of the officer who looks after the amenities?

Shri Kidwai: As I mentioned in my reply, the condition is laid down in the Licence. The Aerodrome Officers and Inspectors are expected to inspect the aeroplanes from time to time to see that the conditions are fulfilled.

CANCELLATION OF AIR PASSAGES

*3329. **Shri A. H. S. Ali:** Will the Minister of **Communications** be pleased to state:

(a) whether the rules for cancellation of air passages in practice for various Air Companies in the country are similar; and

(b) whether these rules are approved by the Government of India?

The Minister of Communications (Shri Kidwai): (a) Yes, Sir.

(b) No Sir, not ordinarily. But recently the Air Transport Licensing Board informed the air companies that no cancellation charge should be levied in respect of cancellations made more than 72 hours before time of flight.

Shri A. H. S. Ali: What are the incidental charges that the carrier has to bear for every passage?

Shri Kidwai: I have not been able to appreciate the implications of this supplementary question.

Mr. Speaker: What is the question?

Shri A. H. S. Ali: A carrier has to bear some incidental charges for every passage booked.

Shri Sondhi: By a passenger?

Shri A. H. S. Ali: Yes. What are those incidental charges that he has to bear?

Shri Kidwai: Except for the labour in booking the passage, there is no incidental charge.

Shri A. H. S. Ali: If a passage is booked within 24 hours of the journey and then cancelled, what will be percentage of cut? Is there any provision in the rules?

Shri Kidwai: Air services are being operated by private companies. Every one of the companies has got its own rules and the rules are printed. It is open to the passengers to accept those rules or not. Some cases were brought to our notice that though the passage was cancelled much ahead of the time or date, still some charges were being made, and therefore, for the first time, they have intervened and said that no charge should be made if a passage is cancelled more than 72 hours before the time of flight.

Dr. Deshmukh: Has no attempt been made to see that these rules are uniform with regard to all the companies?

Shri Kidwai: No, because every company is free to frame its own rules.

Dr. Deshmukh: Is it not a fact that even if an air company carries a passenger in the vacancy created by the non-appearance of a passenger, the passenger who has cancelled his seat does not get any refund?

Mr. Speaker: Order, order. That is entering into an argument.

Udaipur—Ahmedabad Railway Line

***3331. Shri Balwant Sinha Mehta:** (a) Will the Minister of **Railways** be pleased to state whether the line connecting Udaipur with Ahmedabad is finally surveyed?

(b) If not, when is the survey expected to be completed?

(c) Will it run through Himmatnagar or Talod and what important places will be on this proposed route?

(d) What is the total amount likely to be incurred on it?

(e) When is this line to be taken up for construction?

The Minister of State for Transport and Railways (Shri Santhanam): (a) It has not yet been finally surveyed but a preliminary survey has been carried out.

(b) A final location survey is not contemplated at present.

(c) Both the alternatives have been surveyed. The alignment between Udaipur and Himmatnagar passes through the following important places:

Zawar, Jaisamand, Rakhabdeo, Dungarpur, Bichiwara, Samalaji and Raighad.

The alternative connection to Talod follows the same alignment up to Samalaji and then passes through Titoi, Modasa and Dhansura.

(d) The line between Udaipur and Himmatnagar is estimated to cost Rs. 362 lakhs and that between Udaipur and Talod Rs. 384 lakhs approximately.

(e) The project has yet to be considered by the Central Board of Transport. The Government are not in a position to say at this stage if or when the line would be taken up for construction.

Tea Gardens in Assam

***3396. Shri Chaliha** (on behalf of **Maulvi Wajed Ali**): Will the Minister of **Food and Agriculture** be pleased to state:

(a) the number of tea gardens in the State of Assam and total acreage of lands held by them;

(b) the total area of lands under actual tea cultivation and total area lying waste;

(c) whether any waste land in tea gardens has been since reclaimed for growing food crops or for rehabilitation of displaced persons or others during 1949 and 1950; and

(d) the total quantity of extra food produced from the above waste lands?

The Minister of Food and Agriculture (Shri K. M. Munshi): (a) There are 790 tea gardens in the State of Assam. They hold 11·85 lakh acres of land.

(b) The total area of lands under tea cultivation in 1949 was 3·77 lakh acres.

(c) Yes. During 1949 and 1950 about 16,130 acres and 19,768 acres respectively of waste land were reclaimed by the tea gardens for growing more food. Similar figures with respect to the land reclaimed for rehabilitation of displaced persons or others are not available.

(d) About 18,000 tons of foodgrains, mostly rice.

Shri Sidhva: May I be permitted to put question No. 3326? That is an important question regarding the Railway Board. There are still five minutes, Sir.

Mr. Speaker: There are still five minutes. If there are no supplementaries here, I am going to take up the two other questions in respect of which authority has been given.

Mr. Sidhva.

RAILWAY BOARD

*3326. **Shri Sidhva** (on behalf of **Shri Biyani**): (a) Will the Minister of **Railways** be pleased to state how does the newly constituted Railway Board propose to function?

(b) Has any policy been arrived at in regard to the appointment of the President and the Secretary of the Board?

(c) What are the qualifications and experience which Government propose to lay down for these posts?

(d) What would be the functions of this newly constituted Board as distinct from the functions performed by the previous Board?

The Minister of States, Transport and Railways (Shri Gopalaswami): (a) to (c). The hon. Member's attention is drawn to paragraph 65 of my Budget speech dated the 22nd February 1951. To the post of Secretary of the reorganised Board a railway officer of the rank of Deputy Director in the Railway Board has been appointed.

(d) The functions of the reconstituted Railway Board are not in substance different from those of the Railway Board as it existed up to the 31st March last. The methods of business and the procedure to be followed have however been radically altered with a view to ensure both expedition and efficiency.

Shri Sidhva: In view of the change in the composition of the Railway Board, may I know whether the Constitution of the Railway Board has also been changed, and if so, in what respect?

Shri Gopalaswami: I do not know what the hon. Member means by a change in the Constitution. The Railway Board as an institution has statutory authority behind it. Its strength could be fixed from time to time. Only the strength has been reduced from five to four.

Shri Sidhva: There are certain rules under the old Constitution whereby the Railway Commissioner is considered to be supreme and only in special instances will he consult the Minister. I wanted to know whether any change has been made in that position.

Shri Gopalaswami: It is a very inaccurate description of the state of things that existed.

Shri Sidhva: But, it is a fact.

Shri Rathnaswamy: May I know whether as a result of the re-constitution of the Railway Board, any economy has been effected and if so to what extent?

Shri Gopalaswami: There is a big economy in that a post carrying a salary of Rs. 5,000 has been abolished. There are other economies also.

Mr. Speaker: The Question-hour is over.

WRITTEN ANSWERS TO QUESTIONS

ZONAL GROUPING OF RAILWAY REFRESHMENT ROOMS AND RESTAURANTS

*3314. **Shri S. N. Das:** Will the Minister of **Railways** be pleased to state:

(a) whether it is a fact that refreshment rooms and restaurants have been grouped by railways on a Zonal basis;

(b) if so, which are the Zones on the O.T. Railway and the E.I. Railway; and

(c) whether contractors for the Zones have been settled?

The Minister of State for Transport and Railways (Shri Santhanam): (a) No, the idea was considered but given up.

(b) and (c). Do not arise.

AGRICULTURAL FARMS

*3317. **Shri Kishorimohan Tripathi:** (a) Will the Minister of **Food and Agriculture** be pleased to state whether it is a fact that Government propose to implement a scheme for opening large-scale agriculture farms all over India?

(b) If so, how do Government propose to finance the scheme?

(c) Are the proposed farms going to be run on the co-operative, collective or other lines?

The Minister of Food and Agriculture (Shri K. M. Munshi): (a) to (c). The hon. Member is presumably referring to the Scheme for the establishment of Associated Farms throughout the country. His attention is invited to my reply to Unstarred Question No. 186 by Shri Ganamukhi on 9th April, 1951.

JUTE MANUFACTURES FOR FOOD STORAGE

*3318. **Shri Kishorimohan Tripathi:** (a) Will the Minister of **Food and Agriculture** be pleased to state the total demand of Jute manufactures—sacks, bags, etc.—for purposes of food storage?

(b) Has any attempt been made to find alternative containers for food storage so as to release more jute manufactures for export?

The Minister of Food and Agriculture (Shri K. M. Munshi): (a) Jute bags are used for bagging imported foodgrains landed in bulk (Wheat and Milo) at Indian ports, the requirement being 10 to 12 bags per ton of grain. A small portion of the imported foodgrains landed at ports is sent to storage godowns. No additional Jute bags are used for storage of imported foodgrains.

(b) No containers suitable for packing foodgrains and available at reasonable prices have been found.

LAND RECLAMATION BY DISPLACED PERSONS

*3330. **Lala Achint Ram.** (a) Will the Minister of **Food and Agriculture** be pleased to state how much acreage of land Government propose to get reclaimed through displaced persons?

(b) How many displaced persons are engaged in this work?

(c) How much money have Government distributed amongst them for the purpose of reclamation?

The Minister of Food and Agriculture (Shri K. M. Munshi): (a) There is no scheme for reclaiming land through displaced persons in so far as the Ministry of Food and Agriculture is concerned. The Ministry maintains a Central Tractor Organisation for the purpose of reclaiming lands by means of tractors.

(b) and (c). Do not arise.

FOOD GRAINS FOR WEST BENGAL

227. **Shri S. C. Samanta:** Will the Minister of **Food and Agriculture** be pleased to state:

(a) the amount of food grains supplied by the Government of India to the State of West Bengal in the years 1949 and 1950;

(b) the amount of production and procurement of food grains in the State in the same years;

(c) the population in the rationed areas; and

(d) the *per capita* amount of ration supplied per day during those years?

The Minister of Food and Agriculture (Shri K. M. Munshi): (a) Supplies to West Bengal amount to 412,000 tons in 1949 and 306,000 tons in 1950.

(b) Production and procurement in each of these years were as follows:

	Production	Procurement
1949	34·56 lakh tons	4·37 lakh tons
1950	37·02 ,, ,,	4·73 ,, ,,

(c) Population under rationing on 31st December 1949 was 70·13 lakhs and on 31st December 1950 36·10 lakhs.

(d) The size of the basic ration per adult per day was 10 ounces from 1st January 1949 to 17th July 1949; 12 ounces from 18th July 1949 to 5th November 1950; 10 ounces from 6th November 1950 to 19th November 1950 and thereafter 12 ounces.

SUGAR PRODUCTION

228. **Shri Sidhva:** (a) Will the Minister of **Food and Agriculture** be pleased to state what is the total production of sugar upto 31st March 1951?

(b) How much quantity is likely to be produced when the crushing season is over?

(c) How much of the provisional quotas have been issued for free sale before the completion of target of ten lac tons?

(d) What became of the carry-over of the imported sugar and how is it distributed?

(e) Do Government intend to maintain a reserve stock?

(f) What are the control prices of sugar in Bombay, Calcutta, Madras, Lucknow, Delhi, Nagpur, Jubbulpore, Gauhati, Cuttack, Bhopal, Hyderabad, Mysore and Travancore and also free sale prices at these places?

The Minister of Food and Agriculture (Shri K. M. Munshi): (a) 10.17 lakh tons and upto 15th April 1951 about 10·65 lakh tons.

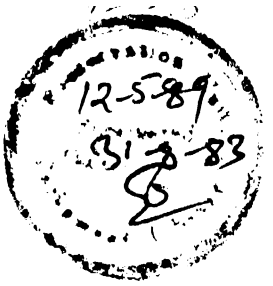
(b) About 11 lakh tons.

(c) About 67,000 tons upto 15th April 1951.

(d) Imported sugar has been allotted to the maritime States of Bombay, Madras, West Bengal and Saurashtra against their consumption quotas for controlled distribution.

(e) Yes, at least one lakh tons.

(f) A statement showing the controlled and open market (where available) wholesale prices of sugar in the markets mentioned is placed on the Table of the House. [*See* Appendix XXII, annexure No. 37.]



PARLIAMENTARY DEBATES

(Part II—Proceedings other than Questions and Answers)

OFFICIAL REPORT

VOLUME X, 1951

(31st March, 1951 to 20th April, 1951)

Third Session

of the

PARLIAMENT OF INDIA

1950-51

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THE

PARLIAMENTARY DEBATES

(Part II—Proceedings other than Questions and Answers.)

OFFICIAL REPORT

PARLIAMENT OF INDIA

Friday, 20th April, 1951

The House met at a Quarter to Eleven of the Clock.

[MR. SPEAKER *in the Chair*]

QUESTIONS AND ANSWERS

(See Part I)

11-45 A.M.

PAPERS LAID ON THE TABLE

DELHI ROAD TRANSPORT AUTHORITY (AUDIT) RULES

The Minister of States, Transport and Railways (Shri Gopalaswami): I beg to lay on the Table a copy of the Delhi Road Transport Authority (Audit) Rules, 1951, published in the Ministry of Transport Notification No. 51-TAG(43)/50, dated the 31st March, 1951. (*Placed in Library. See* No. P-159/51).

NOTIFICATIONS AMENDING PUNJAB MOTOR VEHICLES RULES

Shri Gopalaswami: I beg to lay on the Table, under sub-section (3) of section 133 of the Motor Vehicles Act, 1939, a copy of each of the three notifications issued by the Chief Commissioner, Himachal Pradesh, Nos. J-96-26/49, dated the 27th March, 1951, amending the Punjab Motor Vehicles Rules, 1940. (*Placed in Library. See* No. P-160/51).

NOTIFICATION AMENDING DELHI MOTOR VEHICLES RULES

Shri Gopalaswami: I beg to lay on the Table, under sub-section (3) of section 133 of the Motor Vehicles Act, 1939, a copy of the notification issued by the Chief Commissioner, Delhi, No.

F 12(159)/50-MLT., dated the 14th April, 1951, amending the Delhi Motor Vehicles Rules, 1940. (*Placed in Library. See* No. P-161/51).

ELECTION TO COMMITTEES

STANDING COMMITTEES FOR MINISTRIES OF COMMERCE AND INDUSTRY; HOME AFFAIRS; AND WORKS, PRODUCTION AND SUPPLY

The Minister of State for Parliamentary Affairs (Shri Satya Narayan Sinha): I beg to move:

> "That this House do proceed to elect in such manner as the hon. the Speaker may direct one Member to serve on the Standing Committee to advise on subjects dealt with in the Ministry of Commerce and Industry until the end of the financial year 1951-52 *vice* Shri R. L. Malviya, resigned."

Mr. Speaker: The question is:

> "That this House do proceed to elect in such manner as the hon. the Speaker may direct one Member to serve on the Standing Committee to advise on subjects dealt with in the Ministry of Commerce and Industry until the end of the financial year 1951-52 *vice* Shri R. L. Malviya, resigned."

Shri Sidhva (Madhya Pradesh): Sir, the elections took place only some three weeks ago. May I know the reason for this resignation? The Rules of Procedure lay it down that the consent of the Member concerned has to be obtained before his name is proposed. Was this consent obtained in this case? And.....

Mr. Speaker: Let us first know the reasons.

Shri Satya Narayan Sinha: The consent was certainly obtained; but later for some other reason the Member has resigned. When from three hundred

[Shri Satya Narayan Sinha]

and twenty persons Members are elected and that too without contest, something or other happens and we have got to do something and such elections are necessitated.

Mr. Speaker: I have already put the question.

The motion was adopted.

Shri Satya Narayan Sinha: I beg to move:

"That this House do proceed to elect in such manner as the hon. the Speaker may direct one Member to serve on the Standing Committee to advise on subjects dealt with in the Ministry of Home Affairs until the end of the financial year 1951-52 *vice* Shri V. J. Gupta, resigned."

Mr. Speaker: The question is:

"That this House do proceed to elect in such manner as the hon. the Speaker may direct one Member to serve on the Standing Committee to advise on subjects dealt with in the Ministry of Home Affairs until the end of the financial year 1951-52 *vice* Shri V. J. Gupta, resigned."

The motion was adopted.

Shri Satya Narayan Sinha: I beg to move:

"That this House do proceed to elect in such manner as the hon. the Speaker may direct two Members to serve on the Standing Committee to advise on subjects dealt with in the Ministry of Works, Production and Supply until the end of the financial year 1951-52 *vice* Shri O. V. Alagesan resigned and Shri Rasoolkhan Pathan who died on the 12th April, 1951."

Mr. Speaker: The question is:

"That this House do proceed to elect in such manner as the hon. the Speaker may direct two Members to serve on the Standing Committee to advise on subjects dealt with in the Ministry of Works, Production and Supply until the end of the financial year 1951-52 *vice* Shri O. V. Alagesan resigned and Shri Rasoolkhan Pathan who died on the 12th April, 1951."

The motion was adopted.

Mr. Speaker: I have to inform hon. Members that the following dates have been fixed for receiving nominations and holding elections, if necessary, in connection with the following Committees, namely:

	Date for nomination.	Date for election
1. Standing Committee for the Ministry of Commerce & Industry. 2. Standing Committee for the Ministry of Home Affairs. 3. Standing Committee for the Ministry of Works, Production and Supply.	21-4-51	24-4-51

The nominations for these Committees will be received in the Parliamentary Notice Office up to 12 NOON on the date mentioned for the purpose. The elections which will be conducted by means of the single transferable vote, will be held in the Assistant Secretary's Room (No. 21) in the Parliament House between the hours 10-30 A.M. and 1 P.M.

SUPREME COURT ADVOCATES (PRACTICE IN HIGH COURTS) BILL —*concld.*

Mr. Speaker: We will now proceed to legislative business, namely: The further consideration of the motion moved by Dr. Ambedkar yesterday:

"That the Bill to authorise advocates of the Supreme Court to practise as of right in any High Court, be taken into consideration."

Shri Venkataraman (Madras): Yesterday, I was submitting that this Bill is a welcome measure, but that the proviso militates against the very object of the Bill. I was trying to show how.....

The Minister of Law (Dr. Ambedkar): To cut short the proceedings, I may say I am prepared to accept the amendment, subject, of course, to other understandings.

Shri Venkataraman: I am very grateful to the hon. Law Minister for accepting the suggestion and so I wholeheartedly support the Bill without clause (a) in the proviso.

Pandit Thakur Das Bhargava (Punjab): I rise to support the Bill. The hon. Law Minister has been

eased to accept the suggested amend-
ent and I would rather that no more
nendments were moved. At the same
me my justification for taking up a
ttle of the time of the House is this.
ccording to article 22 of our Consti-
ıtion it has been laid down:

> "No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice."

My submission is that this article
ecures to every person the right to be
efended by a legal practitioner. There-
ore, if it can be said about any
erson that he is a legal practitioner,
ıen no rule or restriction can stand
ı his way if he wants to defend any
:cused person. Then the question
rises as to who is a legal practitioner.
he word legal pactitioner has not been
efined in the Constitution, nor in any
ther place except in the Legal Practi-
oners' Act. In the Bar Councils Act
has not been defined. But in the
egal Practitioners' Act it has been
efined thus:

> "Legal practitioner means an advocate, a vakil, attorney of a High Court, a pleader, *mukhtiar* or revenue agent."

herefore, my submission is that if a
erson even if he does not satisfy any
the conditions, which were placed
efore the House yesterday by Dr.
mbedkar, even then, under the Con-
ıtution, he is entitled to defend any
:cused person in any court which is
ıbordinate to the Supreme Court or
ven in the Supreme Court. Now, as
e have seen, the word "legal practi-
oner" includes a pleader. And accord-
ıg to the definition of a pleader in
e Code of Criminal Procedure, 4(2)
ısed with reference to any person in
ıy court, the word means a *mukhtiar*
ıthorised under any law for the time
ıing in force to practise in such a
ourt and includes an advocate etc.
ıd any other person appointed with
ıe permission of the court to act in
ıch proceedings". Therefore, accord-
g to this definition a person need not
a law graduate of a university or
ay not been practising in any court;
ıt if he has the permission of the
ourt, as mentioned in the definition,
ıen he can act as a pleader, or a legal
:actitioner. And so, while I agree
ith the provisions of this Bill and
hile I feel that it is right to liberalise
ıe provisions, I for one am afraid
ıat if any restriction is placed on the
efinition of the word "legal practi-
oner" in article 22, then that would be against the Constitution. According to the Constitution, any person whether he is a law graduate or not, or whether he is allowed to practise in the Supreme Court or not, even then according to the meaning of the word legal practitioner, he shall be fully entitled to defend any person who claims the right under article 22 to be defended. Therefore, even if this Bill were not passed, I feel that every legal practitioner of the Supreme Court is entitled to go to any court in India, to any criminal court and defend anyone and also appear on the original side in the High Court where criminal proceedings take place. As this Bill is in consonance with that principle I have no quarrel with it. All the same I must submit a note of warning that this is a fundamental right and the Supreme Court has been invested under section 32 with the duty to guarantee such rights. The rules of the Supreme Court must be in accordance with section 22. I find from the qualifications mentioned by Dr. Ambedkar that they are not in consonance with it. So far as the criminal side is concerned this question has to be agitated to see that these principles apply to all criminal courts.

Dr. Deshmukh (Madhya Pradesh): May I reply to my hon. friend, because I happen to take a different view. I find no difficulty between the present Bill and article 22 of the Constitution. Those are completely separate matters. All that we are doing by the Bill before the House is that everybody who is an advocate of the Supreme Court *ipso facto* gets the right of practising in any high court in India. Article 22 refers only to the right of a detained person to engage and be defended by a legal practitioner. I do not think that the wording legal practitioner in article 22 would bear such a wide interpretation as my friend desires to put upon it. I do not think anybody described as a legal practitioner, simply because a detained person wants him, will have the right of defending him. Besides the provisions quoted from the Cr. P.C., I do not think, will be, in any likelihood, affected. All those provisions remain intact and I do not think merely because we are having this Bill those rights of a person to be defended by even a non-law-graduate is affected in any way.

So far as the interpretation of the words legal practitioner is concerned I do not think it applies to anybod who happens to be a legal practitioner. The words will have to be interpreted in a reasonable manner. If that is the case it would mean only a legal practitioner who has the right of appearing

[Dr. Deshmukh]

and pleading in that particular court where the case of a detenu happens to be taken and it could not mean anybody, because the local rules are there to lay down who shall practise in a particular court or not and those rules, I do not suppose, are abrogated by the fact that an accused person or detenu can choose any legal practitioner of his choice. I am glad Dr. Ambedkar has accepted the amendment.

I do not know how the position will stand. So far as the original side is concerned the High Courts have their own rules. I do not know if by the Bill and the amendment we are going to accept those rules are going to be abrogated, supplanted or superseded. That is one doubt in my mind. I do not know what would be the position of those rules made by the High Courts authorising persons to practise on the original side and whether by this Bill the Parliament is in a position to say that all those rules, notwithstanding, the advocates of the Supreme Court will be permitted not only on the appellate side but also on the original side. It is to be noted that there is no mention or reference to them in the Bill. That is a certain doubt in mind and if it is genuine I hope my learned friend will explain.

Shri Karunakara Menon (Madras): I wanted to speak on two aspects of this Bill. One was with respect to proviso A of clause 2. Now that the amendment with respect to it has been accepted by the Law Minister I would only request him to consider all sides of the question again and see how far, if the Bill is passed, it will militate against the laws already existing empowering the High Courts to regulate the practice of advocates appearing before them. All precautions might be taken to see that this Bill when passed is effective and does not contravene any of the provisions of the existing law.

12 NOON

I have to say a word with respect to the unification of the bar. It is stated in the Statement of Objects and Reasons that with the establishment of the Supreme Court, there has arisen the need for the constitution of a united Bar for the whole of India. In my opinion it would be better that this unification is brought about by empowering the Supreme Court to make rules for the purpose. Just as the Supreme Court now is given the power to frame rules for the advocates practising before them, now that the Supreme Court is the highest court in the land it is only proper that it should be empowered to make rules regarding the practice of the advocates before them so as to enable them to practise in courts subordinate to them including High Courts according to the discretion of the Supreme Court. Even now as stated, there is a provision in the Constitution which says that the Supreme Court can make rules with respect to the practice of advocates before them. I do not know whether that provision is not sufficiently wide to cover a case where the Supreme Court can say that the advocates practising before them can also practise in High Courts. Even if a restricted meaning is given to that provision, my submission is that now that it is contemplated to amend the Constitution it would be better that the Supreme Court was empowered to frame rules with respect to rights being given to practitioners to practise also in the High Courts subordinate to them. Also power might be given to the Supreme Court to bring about the unification of the Bar, which is so much desired by all Bar Associations which pass resolutions to that effect year after year. Then piecemeal legislation of this kind can be avoided. Therefore my suggestion is that at the time when the Constitution is amended power might be given to the Supreme Court with respect to all matters of this kind so that practitioners might be empowered to practise in the high courts etc.

Shri Naziruddin Ahmad (West Bengal): I wish to submit one or two matters in connection with this Bill. I congratulate the Law Minister for agreeing to accept the proposal to remove proviso (a) to clause 2. I think it is a happy decision. Proviso (a) to clause 2 was a survival of an anomaly: It was an anachronism. When the High Courts were created in India only British Barristers were allowed to practise on the Original Side. Later of course Indian barristers were allowed. It was meant for the exclusion of Indian trained lawyers. It was an anomaly to give a superior status to Barristers even without experience. It must be conceded, however, that though barristers have a wide background knowledge, they are not necessarily superior to advocates trained in India. So, these anomalies agitated the public minds a great deal. There were Bills before the Bengal Legislative Council to correct the situation. Later on the Judges felt that men like the late Sir Rasbehari Ghose and others were certainly superior to barristers of any amount of experience and so they were gradually introduced into the practice

the original side. This proviso empted to enshrine within its bosom survival of an anachronism, and refore I again congratulate the hon. w Minister for agreeing to accept deletion.

With regard to proviso (b) I have a int to submit. Proviso (b) is to the ect:

"(b) to practise in a High Court of which he was at any time a Judge, if he had given an undertaking not to practise therein after ceasing to hold office as such Judge."

I submit that the prohibition to actise in the High Court by a man no is an ex-Judge of that High ourt should not depend on any ndertaking. Public policy requires at an ex-Judge of a High Court ould not practise in that Court, but ie proviso makes it conditional upon n undertaking having been given. here are many High Courts where o undertakings have been taken. herefore, if ex-Judges are to be prohibited from practising in the partiular Court, it should be independent f any undertaking given. There is an rticle in the Constitution prohibiting ll ex-Judges from practising in any Court—not merely in the Court where ie was a Judge but in all other Courts. submit proviso (b) militates against hat. This proviso would allow an exfudge to practise in a High Court if he as not given an undertaking. The Constitution, however, says that all ex-Judges are prohibited from practising in any High Court.

Dr. Tek Chand (Punjab): Judges appointed after the coming into force of the Constitution.

Dr. Ambedkar: Yes, that is the rule.

Shri Naziruddin Ahmad: In any case I believe proviso (b) should be entirely deleted or should be recast. The proviso allows an ex-Judge of a High Court, who has not given an undertaking, to practise in that High Court. That is against the Constitution. Therefore, this proviso (b) should require redrafting. Though I congratulate the hon. Minister for accepting the deletion of proviso (a), I wonder how it was inserted in the Bill at all.

Then I wish to draw the attention of the hon. Minister to another legal question, namely that of the agents of the Supreme Court, although it does not come as a relevant factor so far as this Bill is concerned, but it is an important question. These agents are advocates of at least five years' standing. They are not allowed to practise in the High Court, but I submit they should be allowed to practise in the subordinate courts because they are advocates. This question also may be considered, and if it is acceptable a suitable Bill may be presented before the House. These are some of the points which I wanted to submit.

Pandit Krishna Chandra Sharma (Uttar Pradesh): I congratulate the hon. Law Minister for bringing forward this Bill and removing the difficulties of the litigant public. But I would like to point out that though the question of removal of litigants' difficulties may be important, the more important question is the creation of an All-India Bar Council so that the legal profession may be organised on an all India basis. After independence we have had to face many important questions and this question of an all India Bar Council is one such question. In this great country the function of the legal profession in the administration of justice was up to this time confined to disputes between one citizen and another. We have now passed on to the stage of dispensing justice in disputes between the citizen and the State Later on with our greater importance we shall pass on to the time when justice may have to be dispensed in disputes between one nation and another. In this the lawyers will play a more and more important role in interpreting the law, in making new laws or in putting new meaning on the law. With this background of the question I would urge that the question of an all India Bar Council is a necessity. With all the learning, erudition, ability and advocacy that the High Court lawyers possess even today, we find that the common fact today is that there is not much of what is called independence of outlook in the profession. It is now-a-days difficult to find a man like the late Pandit Motilal Nehru or Sir Tej Bahadur Sapru. The profession is passing from the professional level to the degradation of a trade and the names of those great men of the past have become memories to be cherished. In the present generation you may have people who may be thought clever at law but they cannot compare to the great advocates of fame of the past. Therefore, with all the emphasis at my command, I would urge that the situation demands early action to take up the question of the creation of an All India Bar Council to deal with the problems of enrolment of advocates, enforcement of discipline against delinquents and improvement of the condition of the profession.

Shri Meeran (Madras): After the hon. Law Minister has agreed to accept the deletion of proviso (a) to clause 2, I do not think I need dilate upon the necessity for its deletion. But I would like to make a few general observations. There are no two opinions on the question of the necessity for a unified bar. As a matter of fact, ever since 1921 when the first Resolution for the unification of the bar was brought by one Mr. Munshi Iswar Saran which resulted finally in the Indian Bar Councils Act of 1926, the tendency has always been towards the unification of the bar.

[SHRIMATI DURGABAI *in the Chair*]

As a matter of fact, the distinctions and gradations that existed in the bar are due to historical reasons than anything else. The Britisher introduced certain systems which were peculiar to England, especially the constitution of the three High Courts in the Presidency towns of Calcutta, Madras and Bombay wherein he imported all the traditions of the English bar resulting in the division of the Indian bar into different grades. That was a matter of historical development. Rightly or wrongly, it continued for some time and it is being done away with and the tendency is for complete abolition. I will be looking forward to the day, which I hope will not be very distant, when there would be a complete abolition of even the minor distinctions that exist. I am sure the hon. Minister will bring a comprehensive Bill to abolish them once and for all.

I now turn to the objection raised by Dr. Deshmukh. He said that this might be in conflict with the rules framed by the various High Courts in regard to the rights of practitioners to plead in different sections of the High Court. For example, in Bombay and Calcutta there are certain rules with reference to the advocates practising on the original side. In Bombay, I understand that the distinctions are now practically absent and it is not necessary now for advocates on the original side to appear through an attorney when they appear on the appellate side. Both are inter-changeable and advocates on the appellate side can appear on the original side and *vice versa*. In Madras, this distinction had long ago been done away with when the Indian Bar Councils Act of 1926 came into force. But in the Calcutta High Court these restrictions are still maintained on the original side. Now, the question that Dr. Deshmukh raised was whether the provision that we are making will not conflict with the rules which have been framed by these respective High Courts. My submission is that it will not. On investigating into this matter, I find that those rules are practically non-existent or have gone out of use after the Constitution has come into force. The constitution, powers and jurisdiction of the High Courts are now governed by our Constitution, whereas prior to the Constitution they had been governed by the Letters Patent of Calcutta, Bombay and Madras. Clauses 9 and 10 of the Letters Patent gave them power to frame rules to regulate the rights and privileges of practitioners who appeared before them as also their enrolment. Once these High Courts had that right, they framed rules making certain distinctions. Certain rights and privileges were given to certain types of advocates and certain rights and priviliges were denied to other types of advocates. For example, in the original side of the Calcutta and Bombay High Courts, they had the rule that only Barristers could appear or only original side advocates who had passed certain examinations could appear and these advocates had to appear through an attorney. This was done under clauses 9 and 10 of the Letters Patent. But after the Constitution came into force, there is no such provision enabling the High Courts to frame rules with reference to the enrolment or to define the rights and privileges of advocates. It is very important to note this. Even supposing we do not pass this Bill, I have my own doubts whether under the present Constitution those rules which had been framed under the Letters Patent will be valid today.

Shri C. Subramaniam (Madras): Are not the powers which the High Courts enjoyed before the Constitution retained by a specific provision?

Shri Meeran: No. If my hon. friend will wait, I was going to refer to it myself. I am aware of Article 225. I submit that we must read this article in the light of article 145 of the Constitution. Article 145 (1) says:

> "Subject to the provisions of any law made by Parliament, the Supreme Court may from time to time, with the approval of the President, make rules for regulating generally the practice and procedure of the Court including—
>
> (a) rules as to the persons practising before the Court; . . ."

and then it gives the rules as to the procedure to be adopted in hearing appeals and so on. A similar provision

th reference to the High Courts en-ling them to frame rules as to the rsons practising before them is nspicuously absent. This must be ted first of all. If at all there is any ovision in the Constitution which can said to refer to the powers of the gh Courts to frame rules in regard enrolment of advocates and so on, is article 225 and it reads like this:

"Subject to the provisions of this Constitution and to the provisions of any law of the appropriate Legislature made by virtue of the powers conferred on that Legislature by this Constitution, the jurisdiction of, and the law administered in, any existing High Court, and the respective powers of the Judges thereof in relation to the administration of justice in the Court, including any power to make rules of Court and to regulate the sittings of the Court and of members thereof sitting alone or in Division Courts, shall be the same as immediately before the commencement of this Constitution."

iat is the only provision which can relied on for continuing the rule-aking power of the High Courts. But I said, there is no provision in the onstitution corresponding to clauses and 10 of the Letters Patent. Therere, whether we enact this Bill or not, have my own grave doubts whether e High Courts have got those rule-aking powers now. That is as far as at objection is concerned.

With regard to the other point, it is ry good that this proviso (a) goes, cause but for the deletion of this oviso, you will have cases like the es that have happened in the past ce or twice. For example. Sir Tej ihadur Sapru was refused the right audience in the Bombay High Court d Shri Alladi Krishnaswamy Ayyar so was refused the right to appear fore the same High Court merely cause these two leaders of the pro-ssion were not Barristers or were t original side advocates and thus i not comply with the rules. This sulted in an unseemly squabble tween the High Courts. As a easure of retaliation, the Allahabad d Madras High Courts denied per-ssion to advocates of eminence from mbay to appear in their respective gh Courts. This Bill at least now ables the leaders of the Bar, who e recognised as such all over India, practise as a matter of right in all e High Courts, including the original le of the High Courts. It is there-e a matter for congratulation that e hon. Minister has brought this Bill, though of course it has not gone to the extent to which members of the Bar would like it to go. It is a step in the right direction, especially after the deletion of clause (a) in the proviso.

With these words, Sir, I support the Bill.

Mr. Chairman: May I suggest to hon. Members that most of the objections of Members have been met, I think, by the hon. Minister's acceptance of the deletion of the proviso. May I have the permission of the House to straightway put the motion, or should I ask the Minister to reply

Shri Radhelal Vyas (Madhya Bharat): Though I support the Bill I would like to bring to the notice of the hon. Minister one point. The passage of this Bill would enable the advocates of the Supreme Court to practise in other High Courts also, but the difficulties experienced by advocates of other High Courts will not be removed. This will only augment the list of advocates of the Supreme Court.

As the hon. the Law Minister knows the difficulty that is experienced by the lawyers is that, for example, an advocate of Gwalior cannot appear in a court in Jhansi or an advocate of Indore cannot appear before the Chief Commissioner's court in Bhopal. This difficulty can be removed only by bringing a more comprehensive enactment prescribing the qualifications for the enrolment of advocates of the High Courts of India. This would enable the advocates to practise in all the High Courts and also in the subordinate courts throughout the country. If such an enactment is not passed, the result would be that most of the advocates who really want an opportunity, or seek the advantage of, practising in other High Courts or in the subordinate courts, though not actually practising in the Supreme Court would get themselves enrolled in the Supreme Court. I would, therefore, suggest that to check this, that is unnecessarily augmenting the list of advocates of the Supreme Court, a separate enactment should be brought early so that those who really want to practise in different High Courts only may be separately enrolled and they need not come to the Supreme Court for enrolment only with the purpose of seeking permission to practice in other High Courts.

Shri S. N. Sinha (Bihar): With respect to clause (b) of the proviso which says that an ex-Judge of a High Court cannot appear or practise before the Court of which he was a Judge, will he be free to practise in a court subordinate to that High Court. That is not clear from the proviso?

Mr. Chairman: High Court includes the courts subordinate to that High Court.

Shri S. N. Sinha: It is not clear, because sub-section (1) (b) of Section 14 of the Bar Councils Act, 1926 says:

> "An advocate shall be entitled as of right to practise
>
> ...(b) save as otherwise provided by sub-section (2) or by or under any other law for the time being in force in any other court in British India, or before any other tribunal or person legally authorised to take evidence."

In this Act, a High Court, and other courts as laid down in sub-section (b) are differently treated.

Shri Jnani Ram (Bihar): The hon. the Law Minister explained that the term "High Court" includes "Judicial Commissioner's Courts". But there are Judicial Commissioners under High Courts. For example there is a Judicial Commissioner in Ranchi. Therefore, I think the words "Judicial Commissioner" appear to be ambiguous. I would, therefore, request the hon. the Law Minister to accept my amendment or to give instructions to the High Courts to that effect.

Mr. Chairman: The question of amendments will come later. Perhaps it may be that after the hon. the Law Minister has given his reply many of the doubts of the hon. Members may be cleared up. Then we can think of the amendments.

Dr. Ambedkar: Most of the questions that have been raised in the course of speeches delivered by hon. Members have very little to do with the merits of the Bill. They deal with a subject which is more relevant to the unification of the Bar. As I said yesterday, this Bill primarily does not aim at the unification of the Bar. The aim of the Bill is a very limited one and is to remove the difficulties that are caused by enrolment of advocates by the High Court and by the Supreme Court in their independent jurisdiction. Clients have suffered on account of the fact that lawyers whom they engage in the Supreme Court are not permitted to appear in a High Court when the same matter is remitted by the Supreme Court to the High Court. That is the limited purpose of this Bill. But in view of the general desire that while achieving this limited purpose something might be done in the direction of unifying the Bar, I have accepted two proposals which really are outside the immediate object of the Bill.

One is to permit all lawyers who are enrolled in the Supreme Court to practise in all the High Courts which of course means right to practise in all courts subordinate to the different High Courts.

The second point which I have accepted is to remove the restrictions originally placed in the Bill that the right to practise which is being given by this Bill to advocates enrolled on the Supreme Court shall be confined only to the appellate side. The clause is being deleted.

I have listened to the various speeches and all that I can say is that I realise the difficulties and I have a great deal of sympathy with the point of view that has been expressed by the various Members. When there is an opportunity and time the Government of India will no doubt consider this matter and bring forth a comprehensive measure which would bring about the unification of the Bar in India which is a subject at the heart of many Members here. I will, therefore, not go into that aspect of the question.

Then there remains only one question which was raised by my friend Pandit Thakurdas Bhargava which also, I think, is quite outside the merits of the Bill. There is no doubt about it that anything that we do here in Parliament must always be subject to the provisions of the Constitution. If article 22 of the Constitution permits a legal practitioner to be engaged by an accused person to defend himself and if by the rules of enrolment enforced either by the High Court or by the Supreme Court a certain person does not become a legal practitioner within the meaning of the Constitution, in my mind there can be no doubt that the rules made by the High Court or by the Supreme Court would be at variance with the Article of the Constitution and the Constitution would prevail. At this moment all I would like to say is that I am not quite certain in my mind in what sense the term 'legal practitioner' is used in the Constitution. Whether it is used in the general popular sense that anybody who can go to a court of law and appear in any matter is a legal practitioner, or whether the Constitution uses the term in the technical sense that a legal practitioner means a person defined to be a legal practitioner either in the Legal Practitioners Act or in the rules made by the High Court

or the Supreme Court, is a matter on which I do not propose to express any opinion. My friend Pandit Thakur Das will also realise that even the Legal Practitioners Act does not give the general right to practise to all those who are defined as legal practitioners. There are fields which are earmarked or rather which are limited to certain classes. For instance the pleaders and the *mukhtiars* are no doubt legal practitioners within the meaning of the Act, but as he knows they have no general right to practise, nor is their right to practise a permanent one. Their certificates are annual certificates and when those certificates are exhausted they cease to be legal practitioners. All these things to my mind are quite irrelevant for the purposes of the Bill and they will no doubt take care of themselves when the matter is raised before a court of law. I do not think there is any other thing that calls for any explanation.

Mr. Chairman: The question is:

"That the Bill to authorise advocates of the Supreme Court to practise as of right in any High Court, be taken into consideration."

The motion was adopted.

Clause 2.— (*Right to practise in any High Court*)

Mr. Chairman: May I know whether the hon. Minister, is accepting any of the amendments?

Dr. Ambedkar: I am not accepting any amendment except No. 7 by Shri Ahmad Meeran to delete part (a) of the Proviso. But of course my friend will realise that some little redrafting will be necessary because if (a) goes (b) will have to be renumbered.

Shri Naziruddin Ahmad: I will move No. 6.

Mr. Chairman: I think that amendment No. 7 is practically the same as No. 6. Will not the hon. Member's point be met by No. 7?

Shri Naziruddin Ahmad: No. 7 deals with the deletion only of part (a) of the Proviso while mine, that is No. 6, seeks to delete the entire Proviso—(a) and (b).

Mr. Chairman: Then he may move it.

Shri Venkataraman: On a point of order, Madam. I am afraid if the hon. Member moves his amendment and it is negatived, it may be interpreted that the House has negatived the deletion of part (a) of the Proviso. I would therefore request the Chair to put the other amendment first and then the hon. Member's amendment.

Shri C. Subramaniam: Both may be moved. While putting them to the House the other amendment may be put first and the hon. Member's amendment afterwards.

Mr. Chairman: If No. 6 is put and ruled out I do not think that No. 7 will be out of order. They can be independently moved and put.

Shri Naziruddin Ahmad: I suggest, Madam, that parts (a) and (b) may be put to the vote separately. That will obviate all the difficulties.

Mr. Chairman: The hon. Member's amendment is to completely delete parts (a) and (b). Therefore, would the hon. Member allow No. 7 to be moved first?

Shri Naziruddin Ahmad: It does not matter, Madam. That is a matter to be considered at the time of putting it to the House.

Mr. Chairman: Then he may move his amendment.

Shri Naziruddin Ahmad: I beg to move:

"That the Proviso to clause 2 be omitted."

The Proviso is divided into two parts (a) and (b). The next amendment in the list seeks to delete part (a) of the Proviso. I want to eliminate the entire Proviso—that is both (a) and (b).

Mr. Chairman: I think the amendments are two different amendments, because Mr. Naziruddin's amendment is completely to omit the Proviso whereas No. 7 is just to omit part (a) of the Proviso. Therefore they are two distinct amendments.

Shri Naziruddin Ahmad: They are two distinct amendments, but I think my amendment covers No. 7 also.

Mr. Chairman: That we will see.

Shri Naziruddin Ahmad: So far as the deletion of part (a) is concerned, the hon. Minister has agreed to accept it, and I need not say anything further. I want to confine myself to that part of the proviso, namely part (b), that is, "Provided that nothing in this section shall be deemed to entitle any person, merely by reason of his being an Advocate of the Supreme Court to practise in a High Court of which he was at any time a Judge, if he had given an undertaking not to practise therein after ceasing to hold

[Shri Naziruddin Ahmad]

office as such Judge." It says that an Advocate of the Supreme Court, if he has ever been a Judge of a High Court and also if he has given an undertaking that he would never practise in that court, in that case he will not be entitled to practise in that High Court. It therefore suggests that an Advocate of the Supreme Court who has ever been a Judge of a High Court but who has never given an undertaking not to practise in that High Court should be entitled to practise in that court. It is evident that that is the interpretation of this provision, if any rational meaning is to be attached to it. Otherwise it would be meaningless.

Mr. Chairman: I think that the hon. Member's amendment is inconsistent with the Constitution, because I think the object of the amendment is to bring the ex-Judges of a particular High Court and entitle them to practise in a High Court where they have given an undertaking not to practise. I think it is also in the Constitution that they should be debarred—those who have given an undertaking not to practise in the High Court. Therefore this amendment is inconsistent with the Constitution.

Shri J. R. Kapoor (Uttar Pradesh): No, Madam.

Mr. Chairman: I am just stating my point. That may be debated.

Shri Naziruddin Ahmad: I am grateful to you, Madam, for raising the question. My suggestion is that part (b) of the Proviso is against the Constitution. In fact, if you agree to delete part (a) of the Proviso, the deletion of part (b) of the Proviso would follow as a matter of course from a consideration of the Constitution itself. That means that the whole Proviso should be eliminated. This may be considered as a Constitutional point or as a point of order or as a mere argument as you may deem fit or as the House may deem fit. Article 220 of the Constitution says:

> "No person who has held office as a Judge of a High Court after the commencement of this Constitution shall plead or act in any court or before any authority within the territory of India."

So that, if there is a person who has been a Judge of a High Court after the commencement of the Constitution, he can never practise in any court. But the proviso rather permits him to practise if he has not given an undertaking. Article 220 absolutely prohibits him from practising in any High Court, if he has been a Judge. Therefore a man who has been a judge after the passing of the Constitution, whether he gives any undertaking or not, would be debarred from practising in a High Court, under Article 220, while proviso (b) allows any such judge to practise in that High Court if he has not given any undertaking. I believe, therefore, that proviso (b) contravenes Article 220. Article 220 is absolute, and there is nothing to modify it. On the other hand, proviso (b) absolutely contradicts Article 220. It also contravenes another important article of the Constitution, namely, Article 124 (7) which reads as follows:

> "No person who has held office as a Judge of the Supreme Court shall plead or act in any court or before any authority within the territory of India."

Let us suppose that there is a Judge of a Supreme Court and he ceases to be a judge by resignation or retirement. In that case, he cannot by virtue of clause (7) of Article 124 practise in any Court or before any authority within the territory of India. So the prohibition of an ex-Judge of the Supreme Court or an ex-Judge of a High Court, after the passing of the Constitution, is absolute. But the prohibition in proviso (b) is conditional upon his having given an undertaking not to practise. I think the giving of the undertaking is absolutely irrelevant, because otherwise, he has a right to practise according to the Bill, but according to the Constitution, whether he is an ex-Judge of a Supreme Court or an ex-Judge of a High Court and irrespective of the undertaking is absolutely debarred from practising and therefore the deletion of proviso (b) should follow as a matter of course. Therefore I was suggesting that instead of my amendment going against the Constitution, rather proviso (b) goes against the Constitution and that my amendment should be accepted as a matter of course, because it follows the lines of the Constitution. There is also another important point to be considered, namely, clause 2. It has been argued by the hon. Law Minister that an advocate of the Supreme Court is entitled to practise not only in the different High Courts in the State but also in the subordinate courts. That according to him follows from clause 2, but I submit that if we give a literal meaning to this clause, I think his right to practise will be confined to the High Court only. I shall draw the attention of the House to clause 2, which reads thus:

> "Notwithstanding anything contained in the Indian Bar Councils

Act, 1926 (XXXVIII of 1926) or in any other law regulating the conditions subject to which a person not entered in the roll of Advocates of a High Court may be permitted to practise in that High Court, every Advocate of the Supreme Court shall be entitled as of right to practise in any High Court whether or not he is an Advocate of that High Court:"

He cannot practise in the subordinate courts. Proviso (b) is *ultra vires* and therefore it should not be accepted. Even if it is accepted, it offends against the Constitution and therefore it would remain a dead letter; even if it is passed, it becomes inoperative.

Mr. Chairman: Amendment moved:

"That the Proviso to clause 2 be omitted."

Shri Hyder Husein (Uttar Pradesh): With regard to clause (b) a certain amount of confusion has stepped into the discussion. Before the Constitution came into force, there was no law in the country prohibiting the ex-judges of High Courts from resuming their practice at the Bar after retirement. It was for the first time that the Constitution brought about that disqualification in the two Articles 124 relating to the Supreme Court and 220 relating to the High Court Judges.

Mr. Chairman: This does not restrict the right of the ex-judge before the passing of the Constitution. This is only after the passing of the Constitution.

Shri Hyder Husein: Because there is nothing in the Constitution to give its provisions a retrospective effect so far as this matter is concerned and therefore the ex-judges of the High Courts are continuing to practise in the various States of the country. There being no law before the Constitution, a practice was started that at the time of their appointment an undertaking was taken from them in two respects: First of all that they will retire at the age of 60 and secondly, that they will not practise after retirement in that court or in the courts subordinate to that court. That practice continued I think from about 1925. (*Interruption*). I am quite clear about it. The undertaking was that after retirement a judge is not to practise in that court or the courts subordinate to that court. The question arises mostly in Uttar Pradesh because in that State at least two judges are practising and the position has become anomalous because of the transposition of some of the districts from the old Chief Court's jurisdiction to that of the High Court. Anyhow, it is not necessary for me to discuss the anomalies here but the undertaking was that they will not practise. Therefore, this undertaking which has been preserved by sub-clause (b) is really confined to those persons who have given the undertaking. Once the Constitution has come into force, the question of undertaking does not arise and no undertaking is being taken from the judges appointed after the Constitution came into force. Therefore sub-clause (b) refers only to those cases to whom the Constitution does not apply. Hence I submit that there is no inconsistency between the two.

With regard to clause (a), it was a retrograde step and I must say that the hon. Minister has very rightly accepted that amendment because I do not want this Parliament to give its blessings to discrimination between different classes of lawyers as existed in some of the Presidency towns.

One other small matter, though not strictly within clause (b), I would like to mention. One of the hon. speakers appeared to say that the object of this Bill could be fulfilled by the Supreme Court making rules in that behalf. I may say that I gave some thought to this question some years ago and when Sir Patrick Spence was the Chief Justice, I wrote to him and also spoke to him in connection with making a rule of the Federal Court which would permit the Advocates of that court being permitted to practise throughout India. He considered the matter but he could not see his way to making a rule to that effect. This necessity could be fulfilled only by legislation and that is why I welcome this Bill.

Shri Meeran: May I formally move my amendment that part (a) of the Proviso to clause 2 be omitted?

Mr. Chairman: I think the hon. Minister wishes to reply so far as this part of the question is concerned.

Dr. Ambedkar: My hon. friend has really explained the position and I do not think I have very much to add; but to make it simpler than he has done, the position is this. Article 220 of the Constitution applies to future Judges who have taken the position of High Court Judges after the commencement of the Constitution. Their going to practise either before the Supreme Court or before any Court, whether a High Court or subordinate court, cannot arise at all.

Dr. Tek Chand: In India.

Dr. Ambedkar: Yes, in India. Because, article 220 specifically says so. We are really dealing with the case of High Court Judges who were Judges before the Constitution came into existence. As my hon. friend pointed out, those Judges of the High Court before the commencement of the Constitution may be divided for the purpose of argument, into two classes: those who had given an undertaking that they will not practise in their court and those who had not given an undertaking. All that this proviso seeks to do is to bind down those High Court Judges who had already given an undertaking. That is the simple position. Of course, it would be perfectly possible for this House to widen the scope of the proviso and to say that no High Court Judge even though he may not have given an undertaking should be permitted to practise; that is within the power of the legislature. But, the point is this. Those people accepted the positions on the definite understanding that they will be permitted to practise after their retirement and it would be wrong and unfair now for us to make a retrospective piece of legislation and say that even though they did not give an undertaking, they will still be bound down to this new rule, namely, that they shall not practise. That is why sub-clause (b) is so restricted and is made applicable only to those who have given an undertaking. Therefore, it creates no kind of injustice.

Shri Naziruddin Ahmad: May I point out that the proviso (b) is not confined to those Judges who were Judges before the Constitution? The proviso says "to practise in a High Court of which he was at any time a Judge....."; not before the Constitution.

Dr. Ambedkar: The point is, the other question does not arise because it has been dealt with categorically by the Constitution.

Shri Naziruddin Ahmad: That is what I say.

Dr. Ambedkar: Why do you want to do something that the Constitution has done? There is no question of undertaking as such. That matter has been finally settled by the Constitution both in the case of the Judges of the Supreme Court and in the case of the Judges of the High Courts. We are dealing with a pass which was uncovered by law and was regulated only by promises, conventions and undertakings.

Mr. Chairman: Would the hon. Minister clarify one point more? Were those Judges who wanted to get their right of practice after the Constitution was passed, given an option to resign and cease to be Judges?

Dr. Ambedkar: They knew the position and some of them, when the Constitution was on the anvil,—I know two or three gentlemen—resigned, because they would not accept that position. Everybody knows that.

Shri J. R. Kapoor: May I say for the information of the House that Judges were given the option to resign and there have been some cases of resignation. There was one in Allahabad. One of the Judges of the Allahabad High Court resigned merely because of this new article.

Mr. Chairman: There was one in Calcutta High Court also.

Dr. Ambedkar: For the information of the House, I might mention that every Judge of a High Court now who has retired has given an undertaking not to practise. There are only two gentlemen, fortunately they are alive, who have not given that undertaking. (*An Hon. Member*: One is here) The scope of what was called a trouble is so limited.

Mr. Chairman: Mr. Meeran may move the amendment.

Dr. Ambedkar: That has already been moved.

Shri Venkataraman: I only spoke on it in the general discussion.

Mr. Chairman: May I know whether hon. Members agree that this Bill could be put through in five minutes?

Several Hon. Members: Yes.

Shri J. R. Kapoor: I would like to have a couple of minutes while clause 1 is taken up, because I have strong feelings on the subject.

Mr. Chairman: The House will stand adjourned to 2-35 P.M.

The House then adjourned for Lunch till Thirty-five Minutes Past Two of the Clock.

The House re-assembled after Lunch at Thirty-five Minutes Past Two of the Clock.

[PANDIT THAKUR DAS BHARGAVA *in the Chair*]

Mr. Chairman: We are on clause 2 of the Bill. Does Shri Shiv Charan Lal want to move his amendment No. 8 in the list?

Shri Shiv Charan Lal (Uttar Pradesh): No, Sir.

Shri Meeran: Sir, I have not moved my amendment—No. 7.

Mr. Chairman: Very well.

Shri Meeran: I beg to move:

"That part (a) of the Proviso to clause 2, be omitted."

I do not know whether I should make any speech as the hon. Minister of Law has already agreed to accept it.

Mr. Chairman: And the other amendments are not being moved?

Shri Jnani Ram: I do not move my amendment. But I would like to have some clarification on the points I had referred to in my previous remarks.

Mr. Chairman: And so only two amendments have been moved. I shall now put them to vote.

Shri Meeran: And No. 7 may be put before No. 6.

Shri Kapoor: With your permission, and if the Law Minister agrees, may I suggest that the "explanation" may be deleted?

Dr. Ambedkar: No, the explanation is necessary. I will explain why it is necessary, later, when Mr. Kapoor moves his amendment to another Bill.

Mr. Chairman: The question is:

"That part (a) of the Proviso to clause 2, be omitted."

The motion was adopted.

Mr. Chairman: The question is:

"That the Proviso to clause 2 be omitted."

The motion was negatived.

Mr. Chairman: The question is:

"That clause 2, as amended, stand part of the Bill."

The motion was adopted.

Clause 2, as amended, was added to the Bill.

Clause 1.—(*Short Title and Extent*)

Shri J. R. Kapoor: If I venture to speak on this clause, it is because I feel rather strongly on a proposition which though related to this Bill is also of a general nature. In every new Bill that is brought before the House we are asked so far as the extent of the application of the Bill is concerned, to approve of the proposition that the Bill or the enactment should extend to the whole of India, except the State of Jammu and Kashmir. Time and again we are reminded of this rather not very palatable thing. It is true that it is not open to this Parliament to enact any law which should be applicable to the State of Jammu and Kashmir unless and until under article 370 of the Constitution the President, in consultation with the Government of that State specifically declares that we can enact the legislation extending it over the State of Jammu and Kashmir also in respect of the three subjects in respect of which the State has acceded to the Union of India. If the Government of the State is in concurrence with the President then of course, it is open to us to legislate in respect of any other subject also. So in the Constitution it has been specifically laid down that none of our laws shall be applicable to the State of Jammu and Kashmir unless the President expressly declares or specifies as the case may be. There the matter rests definitely and absolutely. Therefore my submission is that we need not in every Bill reiterate this constitutional position. It is there definite and absolute already and to state it again is superfluous and unnecessary. We need not again be asked to specifically limit the operation of our laws to the whole of India, except the State of Jammu and Kashmir. We should find out a suitable formula which may be applicable to all our Bills hereafter and we need not be asked every time to subscribe to this sort of proposition which is rather jarring to our ears. Therefore, my submission is that sub-clause (2) should be omitted from this Bill and also from other Bills which may come before us. If that is done, I think nothing would be lost and much would be gained. It is obvious that a Bill passed by the Parliament is applicable to all parts of the country in respect of which we can legislate under the Constitution. It need not be repeated again and again. Even if it be necessary to specifically put down to which a law shall be applicable, we may say that the particular legislation shall extend to all those parts of the Union, in respect of which it is open to Parliament to legislate. I am not suggesting any-

[Shri J. R. Kapoor]

thing novel. Whatever is already provided in the Constitution should not be unnecessarily repeated. This proposition has already been accepted by the Law Minister in regard to almost every legislation and even in regard to clause 2 of this Bill. In clause 2 we have been asked to legislate that whoever is duly enrolled as an advocate of the Supreme Court shall be entitled to appear in any High Court of India. A person who is a duly enrolled advocate of the High Court may be a judge of the Supreme Court also. Or he may be a judge of the High Court also. If he ceases to be a judge of the Supreme Court and after he ceases to be a judge of the High Court under the Constitution he cannot practise in the Supreme Court or the High Court. But in clause 2 we have laid down specifically that even such a person shall be entitled to appear in any High Court. Obviously though we have said so specifically we could not have intended to do anything against the provisions of the Constitution. I had even tabled an amendment in respect to clause 2 of the Bill to the effect that after the words "shall be entitled as of right" we may say "subject to the provisions of article 220 or 124 of the Constitution of India". I had a talk with the hon. Law Minister on the subject and he explained to me that it was not necessary because whatever there is in the Constitution over-rides any other provision of our law. Quite true and I readily agreed with him. But I want him to extend this very proposition to every other clause of this Bill as also to other Bills. If it is obvious, certain and definite that none of our legislation can be made applicable to the State of Jammu and Kashmir, why should it be repeated every time? I would therefore ask the hon. Minister to carefully consider this aspect of the question to see whether for all future occasions he cannot find out a suitable formula and avoid bringing forward this unpalatable and jarring note in every piece of legislation.

Mr. Chairman: Does the hon. Minister want to reply?

Dr. Ambedkar: A reply is unnecessary.

Mr. Chairman: The question is:

"That clause 1 stand part of the Bill."

The motion was adopted.

Clause 1 was added to the Bill.

The Title and the Enacting Formula were added to the Bill.

Dr. Ambedkar: I beg to move:

"That the Bill, as amended, be passed."

Mr. Chairman: The question is:

"That the Bill, as amended, be passed."

The motion was adopted.

CODES OF CIVIL AND CRIMINAL PROCEDURE (AMENDMENT) BILL

The Minister of Law (Dr. Ambedkar): I beg to move:

"That the Bill further to amend the Code of Civil Procedure, 1908, and the Code of Criminal Procedure, 1898, be taken into consideration."

This Bill seeks to make a change in the jurisdiction of the subordinate judiciary. As the House knows the Constitution gives courts in India the right to declare whether any particular law made by the legislature, Central or provincial, is *intra* or *ultra vires* of that legislature. This power is now being exercised by all the subordinate judges and Members of Parliament must have been aware that some very curious decisions have been given by various subordinate courts holding certain laws to be *ultra vires*. It is felt that it would not be right to leave this power of declaring whether the laws made by the State are *intra* or *ultra vires* to the subordinate judiciary.

First of all, without meaning any offence to members who are holding it, the subordinate judiciary cannot be said to be qualified to deal with problems involving *intra vires* or *ultra vires* of a law. Secondly, the bar which appears generally before the subordinate courts cannot also be said to be competent to help the courts to come to a correct decision on such points. It is therefore felt that in the interest of uniformity of decision on questions of constitutional importance it is right that the power to declare any law *ultra vires* should be withdrawn from the subordinate judiciary. The Bill follows the procedure which exists in some of the States in the U.S.A., where also by law the subordinate judiciary is prevented from giving judgments on questions of constitutional importance.

Besides this there is nothing very special in this Bill. We propose to amend by this Bill section 113 of the

Civil Procedure Code by the addition of a proviso whereby the subordinate judge is required, in case he is of opinion that any particular law is *ultra vires*, to refer the matter to the High Court and to await the decision of the High Court. It is also proposed to amend section 432 of the Criminal Procedure Code requiring a magistrate also to refer the case to the High Court if the magistrate thinks that the Act is *ultra vires*.

This is all there in this Bill, which I commend to the House.

Mr. Chairman: Motion moved:

> "That the Bill further to amend the Code of Civil Procedure, 1908, and the Code of Criminal Procedure, 1893, be taken into consideration."

Shri Shiv Charan Lal (Uttar Pradesh): Before the Constitution Act the High Court strictly had no power to deal with questions arising about the constitution or declaring any Act *ultra vires* or *intra vires*. Therefore suits had to be filed in the civil court, either in the court of the munsif or of the subordinate judge and they declared those Acts *ultra vires* or *intra vires* as they thought proper. But now that the power, under the Constitution Act, has been given to the High Court where applications for writs can be moved and these questions can be dealt with, it is no longer safe and proper to keep that power with the subordinate courts. Therefore, this Bill was very necessary and I welcome it.

Now, I would like to point out one or two words which I think have been left out. I have tabled amendments in this connection and I hope the hon. Law Minister would accept them. In clause 3 of the Bill under, "432-*Reference to High Court*", after the words "Act, Ordinance or Regulation" there ought to be "Order" also because under some Acts the State Governments make orders also according to which persons may be brought before the court. If it is necessary that those orders should also be declared *ultra vires*, this Bill will not help. Therefore, the word "Order" should be added after "Regulation" in lines 5 and 6 of clause 3 of the Bill.

Then, section 432 formerly gave the Presidency Magistrate the power to refer any matter to the High Court where the question of law was involved. Only the Presidency Magistrate was given this power because in those days the Presidencies of Madras, Bengal and Bombay were given more importance. If the words "sessions judge" also are added before "presidency magistrate" that also will save a lot of trouble. That is, wherever the sessions judge also finds any question of law or legal importance he may refer it to the High Court.

Except for these few changes which I have suggested the Bill is to be welcomed and I support it.

Shri Ethirajulu Naidu (Mysore): I wonder whether the judiciary may not be left to deal with this matter by themselves. In the statement of objects and reasons it is mentioned:

> "It is no doubt possible for parties who are vigilant enough, to apply to the High Court in time under Article 228 of the Constitution for withdrawing a case from a subordinate court, instead of allowing that court to pronounce on the validity or invalidity of an enactment, and this is equally true of Government in criminal cases."

There seems to have been a misapprehension that unless a party applies to the High Court the High Court could not withdraw the case by itself, but you will see that article 228 reads thus:

> "If the High Court is satisfied that a case pending in a court subordinate to it involves a substantial question of law as to the interpretation of this Constitution the determination of which is necessary for the disposal of the case, it shall withdraw the case and may—
>
> (a) either dispose of the case itself, or
>
> (b) determine the said question of law and return the case to the court from which the case has been so withdrawn....." etc. etc.

Therefore, there is no restriction that the High Court can act only at the instance of a party and cannot act *suo motu*. The question would then arise, how is the High Court to know that any question is pending before a subordinate court? It is quite possible that on the administrative side the High Court could call for reports from subordinate courts regarding cases where questions of *ultra vires* of the constitution are raised, and may then decide whether to withdraw the case or leave the subordinate court to deal with it. That is a very important aspect of the matter. I am afraid this legislation was brought under the impression that unless the party was

[Shri Ethirajulu Naidu]

vigilant to apply, the High Court cannot withdraw the case.

One other matter I would like to mention. The Constitution is new to us and we can expect that before long judicial opinion will crystallise itself on all controversial matters, and it is therefore premature to withdraw the powers of the subordinate courts to decide each and every matter that comes up before the court for disposal. I would therefore suggest, particularly after the discussion that is going to take place in the House, that the High Courts may be trusted to deal with the matter. Even assuming that in some cases the subordinate courts may pronounce upon matters of law etc. without bringing the pendency of such cases to the notice of the High Court on the administrative side, the High Court should be allowed to make proper provisions for that. The subordinate courts would also very soon realise the seriousness of pronouncing a decision on such matters as *ultra vires*.

3 P.M.

Before I conclude, I would like to make another observation. This Bill now before us seeks to amend two Codes and is entitled, "*The Codes of Civil and Criminal Procedure (Amendment) Bill*, 1951". This kind of legislation, I would submit, leads to all sorts of confusion. I can understand, when a certain legislation is put forward introducing a uniform principle in several Acts, of one amending Bill being brought forward, but when we are dealing with only two Codes which have all along been dealt with as two distinct Codes, I do not see why the amendments to two Codes should be clubbed together in one amending Bill.

Shri K. Vaidya (Hyderabad): I welcome this Bill but I want to draw the attention of the hon. Minister to clause 2 (ii) which says:

> "in Order XLVI of the First Schedule,—
>
> (a) after rule 4, the following rule shall be inserted, namely:—
>
> "4A. The provisions of rules 2, 3 and 4 shall apply to any reference by the court under the proviso to section 113 as they apply to a reference under rule 1"; and
>
> (b) in rule 5, after the words and figure 'under rule 1' the words and figures 'or under the proviso to section 113' shall be inserted."

With regard to this, I would submit that the provisions of rule 2 cannot be made applicable in this case because here it is said that no decision should be given regarding a particular point as to whether any particular regulation is *ultra vires* or not. Therefore, what I submit is that no judgment can be passed in such cases because the definition that is given of "judgment" in the Civil Procedure Code Order XX, rule 4(2) is:

> "Judgments of other courts shall contain a concise statement of the case, the points for determination, the decision thereon, and the reasons for such decision."

This means that when there is a question as to whether a particular regulation is *ultra vires* or not, then a decision on that issue cannot be given. That is what is intended by this provision here. So, there can be no judgment and when there is no judgment there is no difficulty.

I shall now invite the attention of the House to rule 2 of Order XLVI. It says:

> "The Court may either stay the proceedings or proceed in the case notwithstanding such reference, and may pass a decree or make an order contingent upon the decision of the High Court on the point referred;
>
> but no decree or order shall be executed in any case in which such reference is made until the receipt of a copy of the judgment of the High Court upon the reference."

This rule 2 contemplates that a judgment has been given and therefore it says:

> "notwithstanding such reference, may pass a decree".

In this particular case there cannot be any decree because that will be an important issue and that issue will not be decided, therefore there cannot be any judgment, and therefore this rule 2 cannot be applicable to such cases. My submission, therefore, is that this rule 2 may not be made applicable as it is sought to be made applicable under clause 2(ii). Similarly in sub-clause (ii) of clause 2, in part (b) it is stated:

> "in rule 5, after the words and figure 'under rule 1' the words and figures 'or under the proviso to section 113' shall be inserted."

This rule 5 of Order XLVI is also of that nature and it is applicable only to judgments and decrees. Rule 5 says:

> "Where a case is referred to the High Court under Rule 1, the High Court may return the case for amendment, and may alter, cancel or set aside any decree or order which the court making the reference had passed or made in the case out of which the reference arose, and make such order as it thinks fit."

This rule contemplates only such cases where the judgment has been passed and the High Court gives its judgment on those points also. What it means is that the High Court may return the case for amendment, or it may alter or cancel or set aside any decree or order. But as I said just now, there cannot be any judgment or decree in this case and therefore this rule 5 will be absolutely inapplicable. The provision that is made, namely, that "in rule 5, after the words and figure 'or under rule 1' the words and figures 'or under the proviso to section 113' shall be inserted" means that it would be applicable to rule 5. I submit that so far as rule 5 is concerned, this would be rather inconsistent. This should not be made applicable to rule 5. It should not be made applicable to rule 2 also. In regard to rule 3, I agree. That rule says:

> "The High Court, after hearing the parties if they appear and desire to be heard, shall decide the point so referred, and shall transmit a copy of its judgment, under the signature of the Registrar, to the Court by which the reference was made; and such court shall, on the receipt thereof, proceed to dispose of the case in conformity with the decision of the High Court."

This is quite all right. This is a matter in which a reference has been made but no decree or final orders have been passed. But so far as Nos. 2 and 5 are concerned, this should not be made applicable to them as they would be quite inconsistent with the intention of this legislation. Therefore, only rules 3 and 4 should be made applicable.

Shri C. Subramaniam (Madras): I welcome this measure. In very many cases, the constitutional point has been raised whether a certain Act offends certain provisions of the Constitution, and if we only study recent cases, it makes a very interesting study by itself. Recently, a question was raised in the Madras High Court as to whether the section in the Indian Penal Code making the offence of adultery punishable offends the Fundamental Rights under the Constitution. Under the I.P.C. it is only the man who is made punishable for adultery and the question raised is: Is it not discrimination on the ground of sex? (*Some Hon. Members*: Hear, hear.) Being a very interesting point, the High Court Judge before whom this was raised thought that he should refer it to a Bench of the High Court. So, the matter is pending before the High Court. Then there is another case. There is an Act passed by the Madras Legislature for the prevention of bigamy. Bigamy is punishable for the Hindus. If a Mohamedan marries two wives, he is not punished; if a Hindu marries two wives, he is punished. Therefore, the point has been raised: Is it not discrimination on the ground of religion? These are two interesting cases which have recently come up. Where such interesting and intricate points arise, it will not be easy for a subordinate judge or magistrate to give a decision, and once we allow the subordinate judiciary to pronounce judgment on the validity of these Acts, perhaps we shall be faced with a bewildering mass of contradictory pronouncements varying from one court to another. Therefore, it is better that where a court is justified in thinking that a valid constitutional point for consideration is involved it should refer that matter to the High Court to have an authoritative pronouncement from that Court. It is not necessary to wait till the matter is crystallized and then go to the High Court for ultimate decision. It is during the transition period when the points are being raised that any provision of this sort ought to prove useful. Therefore, I feel that it is completely necessary that such a provision should be made.

In this connection, I want to mention that whenever an Act is held to be *ultra vires* of the Constitution or the powers of the legislature, the legislature feels as though the courts are infringing upon its rights. Similarly, whenever certain defects are pointed out and another amending Act is brought forward for removing those defects, the courts begin to feel that the legislature is trying to fill the gap. After all, the legislature and the judiciary should be co-ordinating and complementary authorities and if there is any defect and it is pointed out by the judiciary, it is the duty of the legislature to fill the gap. If we look into the proceedings in some of the courts

[Shri C. Subramaniam]

it looks as though the judiciary is at war with the executive and it seems as if the courts are taking the attitude that the legislature is trying to overreach them and trying to go back on their orders and judgments whenever the latter take action for the purpose of filling the gaps. The legislatures should also realize for their part that after all the courts of our land have got the right and the duty to give their opinion on the validity of the Acts passed by themselves and the judiciary also should realize that after all Parliament and the legislatures are there as representatives of the people for the purpose of making laws for the smooth administration of the country. It is in this view that the judiciary and the legislature should work. This seeming war between the judiciary and the executive and the legislature should be put an end to at an early date. After all, these are two limbs of the administration and there is no question of one being at war with the other. There is no question of the judiciary existing without the executive or the legislature. With these words, I support the Bill.

Shri Hathi (Saurashtra): I rise to welcome this Bill. After the passing of the Constitution, there have been so many cases involving interpretation of the Constitution. Of course, very interesting illustrations have been provided by the previous speaker Mr. Subramaniam. I may add one more instance, namely rationing. An ingenuous lawyer may take it to a court of law and challenge it on ground of discrimination for a man staying in a town who gets only nine ounces of ration can say that the other man in an unrationed rural area gets more than he and that amounts to discrimination. Numerous such cases would arise, and it is not at all safe that decisions on these questions should be left to the subordinate judiciary. In that respect, the Bill is very well conceived and it is proper that the House should pass it in the form in which it is presented. Under article 228 the parties have been given a right to move the High Court. But there is some doubt because it provides that this can be done only when it involves a question of law as to the interpretation of the Constitution. There may be cases where an Act of a State may be *ultra vires* the Constitution; it may be that an executive order of a State or an executive act of a State may be *ultra vires* the Constitution; it may be that a bye-law may be *ultra vires* the Union Statute; or it might be that a Union Statute may be *ultra vires* the Constitution. There may be so many cases arising and which may not really relate to the actual interpretation of the Constitution itself. Perhaps the parties may not move the High Court in this behalf. Anyway whatever doubt, if at all there was, has now been removed and it has been made obligatory upon the subordinate judiciary to make a reference to the High Court in all cases in which the question of validity of a law or enactment arises.

Another point that arises is whether the decision of a High Court of another province or State is binding on the subordinate court. For instance a case arises in Madras before a subordinate court and a similar case has been decided by the High Court of Bombay. Would that decision of the other High Court be binding on that subordinate court? The whole point is that we do not want to leave the decisions of such important matters in the hands of the subordinate judiciary. It may perhaps be argued that when another High Court has applied its mind to a particular piece of legislation and declared whether it is valid or invalid, the subordinate judge might get a guidance from the judgment of that court. But he may take into his head not to follow the decision of that High Court as he is not bound to take that decision as binding. Therefore, it is but proper that unless a case or the very point at issue has been decided by the High Court to which that court is subordinate, it should be referred to the High Court.

Shri Nazirudding Ahmad (West Bengal): I am afraid I cannot lend my whole-hearted support to this Bill. Every point of difficult and complexity which arises before a judge or magistrate, of even the lowest class, has to be decided by him. On no account can a magistrate or judge be excused from facing even the most difficult and abstruse legal point. It is assumed that a judge or magistrate has a right to decide matters and also to take the responsibility of deciding questions of law, however difficult and however important and abstruse they may be. I do not see, therefore any reason why we should not allow the judges and magistrates of first instance to decide questions of constitutional law, namely the validity or otherwise of an Act or law before him.

The fear which seems to have prompted this provision is that a magistrate or judge of first instance may make mistakes. The Constitution has been made so complicated and so difficult even for High

Court Judges and Supreme Court Judges that this fear is not unfounded. The fear is that the subordinate judges and magistrates may too easily declare a law to be invalid. That is the fear. But I think that judges of first instance in the *mofussil* would be rather inclined to hold that a law is not invalid on account of the Constitution. On the other hand he would be too ready to hold that the law is valid and that it is not *ultra vires* of the Constitution. There are many magistrates and judges of the first instance in the *mofussil* who go out of their way to declare a law to be valid.

Rather the fear that the law may be declared invalid may arise in the case of the High Courts and Supreme Court who are absolutely independent. But I do not think that even this fear is really justified. Whenever a question of the validity of a law arises it should be decided by a magistrate or judge in the usual course, as other questions of law are decided by him. I think it is wrongly assumed in this Bill that the question of the validity of a law would be too much and beyond the legal or judicial capacity of a magistrate or judge of the first instance. It does not follow that merely because the question of the validity of a law is involved it is a difficult question to be decided. Questions of law on Civil Procedure, Criminal Procedure and on Evidence Act and other Acts often involve extremely difficult questions. But a judge or a magistrate has to decide all these. Why should a magistrate or judge be thought incapable of discharging his duty here as in other important or difficult questions of law?

The effect of this law would be that if there is a rich party which wants to delay matters he may take objection that a certain law on which the case depends is invalid and it would be rather easier for a magistrate or judge of the first instance to be inclined to agree without deciding it that the law is invalid on account of the Constitution. He would rather be inclined to think that the law is invalid and just get rid of the case. The effect of that would be that the case goes up to the High Courts. In the *mofussil* in most cases the parties are poor men. The result would be that these cases would go to the High Courts without any lawyers to argue and the High Courts would be called upon to express their opinion without sufficient or proper argument. We have seen that in the Supreme Court arguments of an elaborate character are addressed. So it seems to me that the case will go up before the High Court, a tried case without any argument, and the Judges also will be deprived of the assistance which may be derived from an able and complete argument. After all, Judges are entirely different people than Members of the Legislature. They require and appreciate really sound argument and real help before they would come to a finding on law. But we are too ready to come to conclusions on anything. I therefore submit that the real purpose of having a proper decision on the constitutional question would be really frustrated, because without sufficient argument the most competent and able Judges will rather feel it difficult to express any opinion. I should rather have thought that it was far better to leave the courts of first instance to decide constitutional questions. After all they would deal with small and petty cases and a wrong decision on this matter would not very much matter or more than any other wrong decision would matter. For instance any wrong decision on limitation or the admissibility of evidence or on procedural law or substantive law would lead to injustice. Any wrong decision in these matters will not lead to greater injustice than can be expected from a wrong decision of law on a constitutional question. So I submit that in small cases the Magistrates and Judges should better be left to decide things for themselves. The reference to the High Court would not in all cases be very satisfactory or the decisions cannot always be right in the absence of full and complete argument which will happen in most cases. It will benefit the rich and at the cost of the poor. If there is a rich litigant who can come to the High Court and get his points heard, he will get an advantage over his poorer adversary. I therefore should have thought that the law should have been left exactly as it is, namely, to allow the Judges and Magistrates to function in the ordinary way and decide a matter. After all, it will affect only the cases in which those decisions are given. The decisions of the High Court and the Supreme Court stand on a different footing altogether. Those rulings are authorities and would be binding upon all. But not so the decisions of a subordinate judiciary. Therefore the mischief that may be expected from a wrong decision on constitutional questions is not very great. And decisions against the validity of an Act would not be easily given by a subordinate judiciary, as easily as would be done by the High Court or the Supreme Court. I therefore should have thought that the matter should have been left exactly where it is and not make confusion worse confounded. It will lead to multiplication of suits and points before the High Court and probably there will be an impasse.

[Shri Naziruddin Ahmad]

With regard to sub-section (2) in the proposed section 432, power is purported to be given to a Presidency Magistrate to refer a question of law, which may arise during the pendency or the hearing of a case, to the High Court. I think this is a most unusual position. There are authorities which show that many Magistrates and Judges, being unable to decide a question of law or unwilling to undergo the labour, have referred such cases for the opinion of the High Court. The High Court in its turn returns them with the finding that the question does not arise, it is rather premature, and the question of law however difficult it may be the Magistrate or Judge must decide for himself. If he comes to a wrong conclusion and if the case comes up properly before the High Court then will be the time for them to interfere. So there are cases like this. Therefore a Presidency Magistrate should be allowed, and it should be obligatory on his part, to decide a question of law which may arise in the course of the hearing and not merely delay matters by referring the question of law to the High Court. I also fail to see why this power should be given to the Presidency Magistrate and not to other Magistrates and other Judges. If a question of law is difficult for a Presidency Magistrate, who is a superior Magistrate with much judicial and executive experience, it would be more difficult for an ordinary Judge and a Magistrate to decide a question of law arising before him during the pendency of a case. Therefore, if a Presidency Magistrate is to be given this power of referring a question of law to the High Court, it is all the more desirable that the other Magistrates and Judges of an inferior rank should also be given this power to refer this matter to the High Court. But I submit that the question of reference of a point of law which arises in the course of a case to the High Court is absolutely unusual. It is contempt for the High Court and such reference of questions was confined hitherto to a stage when the Judge refers the matters in civil and criminal cases to the High Court. They arise at a suitable stage and it is only then that the matters are referred to the High Court for decision. The Presidency Magistrates should not be given this power and, as I said, the thing is absolutely unusual. The case

[MR. SPEAKER *in the Chair*]

should not be referred to during the midst of an argument of a case or the hearing of a case. This also would be fully exploited by the rich party who wants to delay matters. And then it may be that a Magistrate or a Judge has expressed an inclination towards a particular party and it often happens, especially in a criminal case, that applications are made for transfer. And then again a point will be taken of a question of law and the Magistrate or Judge may be inclined to agree that it is a difficult point and he would be glad to get rid of the point for the time being by referring to the High Court. In these circumstances I submit that this power of the Presidency Magistrate, or for that matter of any Magistrate or Judge, to refer the questions of law which arise during the hearing of the case, which is so unusual, should not be accepted without sufficient thought.

Dr. Tek Chand (Punjab): Not every question of law, under clause (1).

Shri Naziruddin Ahmad: So far as the Presidency Magistrate is concerned, clause 2 says "any case pending before him". It is any question of law, not even a constitutional question of law. The Bill really deals with constitutional questions. The grave question involved is any wrong decision about the invalidity of a law by virtue of the Constitution. But in dealing with that subject, in sub-section (2) of the proposed section 432 of the Criminal Procedure Code, entirely new matter has been brought in. It is not a Constitutional question at all. So this should have been dealt with separately. For the time being I suggest that clause 2, sub-section (2) of the proposed new section be deleted. It does not appertain to the immediate matter in hand. It is not germane to the subject and it should therefore form part of another Bill, if necessary. This should be resorted to after taking sufficient opinion of the State Governments, the High Courts and the Supreme Court and other authorities. I therefore submit that this sub-section (2) should be deleted. On the whole I am against an enactment of this kind which would rather absolve the magistrates and judges from facing the consequences of a decision and the fear of a premature or unnecessary declaration of the invalidity of a law is rather practically unjustified. It is to be feared from an Apellate court because these courts are very independent and though in theory magistrates and judges of inferior rank are independent, still it is common experience of all that they feel that they are also independent. Under these circumstances, I beg to oppose the principle of the Bill and particularly clause 2 of the proposed new section 432 of the Code of Criminal Procedure.

There is another small matter. Clause (2) runs as follows:

> "A presidency magistrate may, if he thinks fit in any case....."

In the Criminal Procedure Code the words "presidency magistrate" are capitalized also. Somehow or other there is a contempt of judicial authority so far as the draftsmen are concerned. They always treat them as matters of insignificance. I simply draw the attention of the House to this so that the attention of the proper authority may be drawn to this matter.

Dr. Deshmukh (Madhya Pradesh): I think I am destined to differ from the hon. Law Minister in many particulars and I am sorry to find myself in disagreement with him on the advisability of passing this Bill also. By this Bill, we are amending not only the Code of Civil Procedure but also the Code of Criminal Procedure. Our fear naturally is that at the present moment the constitutional safeguard provided by Article 228 is not being sufficiently resorted to and therefore, it is necessary to make all these interpretations of the Constitution as well as all other Acts referable as early as possible to the High Court and the Supreme Court so that the lower courts do not dabble in them and arrive at their own conclusions. Now this point has been very well argued by my hon. friend, Mr. Naziruddin Ahmad and I am in substantial agreement with him, because here the interpretation is not limited only to the Act of the Constitution but it refers to all Acts, ordinances, regulations and to any provisions contained in any Act and incidentally to any rules framed under any Act.

Shri Naziruddin Ahmad: Any question of law leading to an interpretation of a ruling.

Dr. Deshmukh: Yes. The Bill covers that also. So my submission is that this Bill really involves the whole range of cases in such a wide sense. It would result in so many different points being left undecided by the trying courts and one would not be surprised if a very large number of cases really come to a standstill as a result of this position. As everybody knows it is our business as lawyers to see wherever we can find a defect to make as much of it as possible and even in a palpably sound case where there is little possibility of doubt or of raising the question of interpretation of any Act or ordinance, it is quite within our capacities to make out case and convince the judge as well as the jury wherever that may be necessary that our point of view is correct, that it involves not only the interpretation of a particular Act or ordinance but that it goes substantially against the interpretation of the Constitution also and then what will happen, Sir? We can very well imagine that such kinds of issues would arise in innumerable cases and then the cases will have to be reported to the High Courts and their decision awaited. Already we find the hon. Law Minister envisaging the difficulty about the accused persons and so he has had to make this provision:

> "Any court making a reference to the High Court under sub-section (1) or sub-section (2) may, pending the decision of the High Court thereon, either commit the accused to jail or release him on bail to appear when called upon."

So here a lot of difficulties will arise. There are many important cases where constitutional questions may and do arise and therefore when the cases are not bailable, the accused will have to be in jail for a very long time. The Bill does not provide that because a constitutional issue has been raised and the High Courts and the Supreme Court are likely to take long, that he should be released on bail. There is no provision like this. So in many cases it is likely to prolong the life of a prisoner in a jail who might ultimately be judged innocent and be acquitted. Moreover the provisions that exist regarding references so far are very much limited. The capacity of the judge to make a reference and to put both sides of the question is also limited because I find from the quotation that has been made here that the lower magistrates are not held in very great respect or regard by the hon. Law Minister. Therefore the way and the ability with which they make the reference is bound to vary so much. I do not know if there is going to be any provision for the parties to go on and argue the cases before the High Court. I do not know what provision there is or whether it will be possible for them to do so. If that is possible, even then, Sir, this is bound to be at a preliminary stage of the case when most of the other issues are not determined, when no evidence has been taken and it is perfectly imaginable that the view that the High Court may take on such a preliminary and insufficient evidence and arguments before them may be altered when the facts of the full case are stated and the whole case comes before them. I do not wish to oppose the Bill but as in

[Dr. Deshmukh]

the other case, we have had instances in which the cocksureness of the Treasury Benches has been falsified. So I would not be surprised if in this case also, we ultimately do not rectify the situation, but make it worse. The Act means every possible Act and any Act even passed by the provincial legislature as also regulations and rules and such other things. A host of law points and questions of interpretation that would be coming in various different cases are bound to be most enormous and from that point of view and from the point of view also that the High Courts while giving their opinions in many cases, will probably say: "Let this await the trial of all the issues". We are not in a position to give our opinion; then again what will happen to the amount of work that the High Courts will have to do? I do not know how many more judges would be necessary to comply with this Bill promptly because the interpretation of an Act is not a simple matter.....

Mr. Speaker: May I just point out to the hon. Member that, so far as I see, this does not mean a reference in every case in which a question is involved or raised. It definitely is restricted to cases, where the trying court is of opinion that it is invalid. Therefore it will not be in every case where a question is raised that there will be a reference. It is perfectly clear that it involves a question of validity of an Act or an Ordinance or a Regulation.

Dr. Deshmukh: I am speaking with full realization of what you have pointed out, Sir. As we know the amount of legislation that is being pushed there in all the State Legislatures is immense. We are living in extraordinary times. We have to pass ordinances, several amending Bills and so on and I do not know if the hon. Minister has heard, but it is the experience of many people that those who are authorized to deal with law themselves do not know what exactly is the position of law at any given moment. So, under these circumstances, I think it would certainly create many difficulties. I do not wish to take any more time of the House, but I think ultimately we will find that this has raised many issues and the strength of the High Court judges —probably some of us may find a place there and that might be a good fortune or a windfall for lawyers—will have probably to be increased enormously.

Dr. Tek Chand: I had no intention to take part in this debate; but after hearing the speeches of my hon. friends Mr. Naziruddin Ahmad and Dr. Deshmukh, I feel it my duty to say a few words. With great respect to both the hon. Members, I feel that they have entirely misconceived the position. I consider that this Bill is a very necessary measure and it should be passed in the form in which it has been introduced by the hon. Law Minister.

After the present Constitution had been passed, questions have been arising not only with regard to the interpretation of certain articles of the Constitution, but also whether a particular existing law is in accordance with the Fundamental Rights which have been guaranteed by the Constitution. Questions have been raised in the courts as to whether some Acts, which were passed by the various provincial legislatures or the Central legislature years ago, are still valid. When such questions arise, it is very necessary that they should be decided by the High Court and settle the law with regard to the territory comprised in the jurisdiction of that High Court. I will give an instance: that of the Punjab Alienation of Land Act. That Act was passed in 1900. For fifty years it had stood on the statute book. It was an Act which was of a highly discriminatory character. Under it, the Executive could declare certain tribes as agricultural tribes. That is to say, persons born in certain tribes, merely because of their birth were entitled to certain privileges with regard to the alienation of land. Efforts were made to contest the validity of this Act during the British regime but they were all turned down, and rightly as the legislature was supreme and within the sphere of the power delegated to it by Parliament it could pass any law. There being no fundamental rights guaranteed to the people, their validity could not be challenged. The position, however changed after the present Constitution was passed last year, and the question arose whether certain provisions of this Act are valid. So far as I know, in almost every district of the province of East Punjab, suits had been filed and were pending as to the validity of this Act. Lengthy and expensive litigation was in progress and there was likelihood of contradictory judgments being delivered by subordinate courts. Luckily, so far as that particular Act was concerned, the President of the Indian Republic intervened and on the advice of the Ministry, has declared this Act to be *ultra vires*, and all that litigation has thus ended. If this had not been done, the position would have been very serious. Different subordinate judges

would have gone on hearing those cases for months and years; then, the cases would have been taken to the District Judge in appeal, and then to the High Court, and, the High Court, after four or five years or more would have come to a decision. During all this period the law would have been in a state of uncertainty. Similar questions arise with regard to some other Acts, but in all of them the President cannot take action. A simpler remedy has to be provided and this Bill seeks to do so. It is not in the public interest that all such cases should continue to be fought out by the litigants in various courts in each province and then after so much time and expense, the matter should go to the High Court for an authoritative decision. The Bill lays down that as soon as a question is raised about the validity of any Act the Court should consider it and if it is of the opinion there is a serious doubt about the validity of the Act or any particular provision in it, it will make a reference to the High Court forthwith. I think, Sir, if you look at the matter from the general point of view and not from the point of view of any particular individual you will agree that this is a measure which will lead to simplification of litigation and to definite decisions being come to on points which may be raised in hundreds of courts in the same province.

With regard to the interpretation of the Constitution itself there is already a provision in article 228, which, in a way, meets many of the objections which Mr. Naziruddin Ahmad has raised. Article 228 says:

> "If the High Court is satisfied that a case pending in a court subordinate to it involves a substantial question of law as to the interpretation of this Constitution, the determination of which is necessary for the disposal of the case, it shall withdraw the case and may—
>
> (a) either dispose of the case itself, or
>
> (b) determine the said question of law and return the case to the court from which....."

That power is given to the High Court, and it has been exercised by the High Courts in some cases. As an instance, a party moved the High Court at Simla with regard to the validity of section 124-A and section 153-A of the Penal Code after the passing of the Constitution. The High Court transferred the case to its own file and decided that it was *ultra vires*, and with that decision, so far as the province is concerned, the law was settled. Otherwise, the matter would have been pending before twenty or thirty magistrates and we do not know how long it would have taken to come to a decision. That power now rests with the High Court alone and with regard to the interpretation of the Constitution only. This Bill goes further. It provides that when a matter is raised before a subordinate court and if that court is satisfied that a provision in an Act or Ordinance or Regulation is *ultra vires*, it shall refer that particular point to the High Court; and the High Court shall decide it and its decision will be binding on the court. I submit that this is a very appropriate procedure.

If I may give a similar instance. The Punjab legislature passed the Sikh Gurudwara Act in 1925. A special Tribunal was set up to decide certain questions arising with regard to the Gurudwaras. Similar questions were involved in suits pending in the ordinary courts. A provision was made that if one of the issues related to the particular points which could only be decided by the Gurudwara Tribunal, the subordinate judge or district judge before whom the case was pending should draw up a statement relating to that particular point and refer it to the Gurudwara Tribunal, and in accordance with the decision of that Tribunal, the subordinate Judge or District Judge shall decide the suit. That was a salutary provision and it cut down litigation to a considerable extent. Similarly, with regard to cases involving points regarding the validity of Acts, as being repugnant to the Constitution, this provision is very necessary. I submit, therefore, that the apprehensions which my hon. friends have, are baseless; on the other hand, it will lead to saving of time, saving of expense, and certainty of the law.

Reference has been made to the provisions relating to the Criminal Procedure Code. With regard to this, criticism has been levelled by both the hon. Members against clause (2) of section 432 as sought to be substituted by this Bill. This clause (2) however exists already in the present Criminal Procedure Code, section 432, and I believe, has stood there since 1882, if not earlier. That has been repeated word for word in clause (2) of this section in this Bill. Section 432 of the Code reads as follows:

> "A Presidency Magistrate may, if he thinks fit, refer for the opinion of the High Court any question of law which arises in the

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> hearing of any case pending before him, or may give judgment in any such case subject to the decision of the High Court on such reference and pending such decision, may either commit the accused to jail, or release him on bail to appear for judgment when called upon."

That is exactly incorporated in clause (2) of the Bill. It had to be done because the whole section has been recast and has to be substituted by a new section. The only new thing that is added is clause (1), which is a repetition of the provision relating to the amendment of the Civil Procedure Code. The arguments which have been adduced in its favour hold good here also. Therefore, there is no danger of any accused persons being thrown into the jail and their getting old and dying there as Dr. Deshmukh apprehends...

Dr. Deshmukh: I did not say, dying.

Dr. Tek Chand: ..... or escaping punishment as Mr. Naziruddin Ahmad thinks. Therefore, I submit that this Bill is based on very sound principles and that it should be passed without further discussion.

I have to say a word with regard to the observations made by my hon. friend Shri Shiv Charan Lal. He thinks that after the words "Act, Ordinance and Regulation." which are already in the Bill, should be added the words "rules or orders", that is to say, when a question relating to the validity of a particular rule or particular order passed under an Act, Ordinance, or Regulation arises and this should also be referred to the High Court in the same manner as the Bill provides for points relating to the validity of an Act, Ordinance or Regulation itself. With respect, I would say that it is not necessary nor desirable that every little case in which is involved the validity of an order passed by a Collector or some other officer to whom power has been delegated to frame a rule or pass an order, be sent to the High Court. This will unnecessarily swell the number of cases in which references are to be made to the High Court What the Bill proposes to take there are three cases of maior importance: (i) Act of the Central Legislature or Act of one of the State Legislatures, and (ii) Ordinances which stand on the same footing as Acts of the legislature and (iii) Regulations. It is not every Regulation, but only those passed in Bengal, Bombay and Madras, or regulations as defined in the General Clauses Act of 1897. These are Regulations of old days, promulgated before legislatures had been established but which have been retained on the Statute Book and, therefore, they have the same force and are on the same footing as Acts and Ordinances; as for instance Regulation III of 1818. The Bill, therefore, applies to those cases only in which the validity of an Act of a Legislature is involved and not the validity of an order passed by a Collector or by a Secretary to Government or some other officer, acting under power delegated to him. These do not come within the purview of the Bill and rightly.

Sir, I think this is a salutary provision and the Bill should be passed as it is.

Dr. Ambedkar: May I be permitted to adopt the observations of my hon. friend Dr. Tek Chand in view of the fact that there is very little time and also because there is very little that I need say in addition to what he has already said here? We discussed these questions and he has now expressed what I would have expressed if I had the chance. I think that should suffice. If there is any point arising out of any amendment or things like that, then certainly I shall deal with them.

Mr. Speaker: The question is:

> "That the Bill further to amend the Code of Civil Procedure, 1908, and the Code of Criminal Procedure, 1898, be taken into consideration."

The motion was adopted.

Clause 2.—(*Amendment of Act V of 1908.*)

Shri Shiv Charan Lal: I have an amendment to this clause which I shall move, in case the hon. Law Minister is willing to accept it. Otherwise I will not move it.

Dr. Ambedkar: No, it is not the intention to accept it.

Shri K. Vaidya: Sir, Rule 2 of Order XLVI and Rule 5 of the same Order seem to be inconsistent and I would like to have some clarification of the position from the hon. Law Minister. I am referring to my amendments Nos. 2 and 3 of List No. 3. Amendment No. 1 I am not moving. I had already raised this point before and I would like to hear what the hon. Law Minister has to say.

Dr. Ambedkar: I am not prepared to accept the amendments proposed by my hon. friend because I do not think it is right and proper that all the proceedings in a case should be stayed.

Mr. Speaker: But Mr. Vaidya is not moving his amendment No. 1 asking for that.

4 P.M.

Dr. Ambedkar: Yes, Sir. But the other amendments he refers to are consequential to his amendment No. 1 If that is not moved, then there is no substance in the other amendments.

Shri K. Vaidya: They are not consequential because.....

Mr. Speaker: Let him explain the position first.

Dr. Ambedkar: As I understand it, the position is this. It is suggested that when a reference is made by the subordinate court to the High Court, all further proceedings in the matter should stay. That is the fundamental point of the hon. Member. That court should do nothing until the High Court returns the papers with its interpretation. With that position I entirely disagree for this reason that a case might involve one issue of a constitutional nature and many other issues which may have nothing to do with the Constitution. And I do not understand why a magistrate who is required under this Bill to make a reference to the High Court on one of the many points which are involved in the case, should be debarred from proceeding further with the other issues. Therefore I am not prepared to accept his first amendment whereby he wants:

That in part (i) of clause 2, in the proposed Proviso to section 113 of the Code of Civil Procedure, 1908, the words "and shall stay the further proceedings in the case" be added at the end.

The rest of them are purely consequential.

Shri K. Vaidya: They are not, I submit, consequential because Rule 2 of Order XLVI as well as Rule 5 of Order XLVI relate only to cases where judgments are given and in a case where an issue has been referred to the High Court there will be no judgment. Under Rule 4 of Order XX the issue should be decided and only then can there be a judgment, and Rule 2 of Order XLVI refers only to cases in which judgment is given. Rule 5 also refers to cases where judgment is given. Therefore these two rules are inconsistent or inapplicable to this Bill.

Dr. Ambedkar: I would point out that it is left to the discretion of the subordinate judge. He may make an order staying proceedings or he may not. My hon. friend wants that the discretion of the subordinate judge should be taken away and in all cases he should make an order staying the proceedings. Therefore I am not going to accept his amendment.

Mr. Speaker: Is the hon. Member keen on moving his amendment?

Shri K. Vaidya: No, Sir.

Mr. Speaker: Then I shall put clause 2 to vote. The question is:

"That clause 2 stand part of the Bill."

The motion was adopted.

Clause 2 was added to the Bill.

Clause 3.— *Substitution of new section*

Amendment made:

In clause 3 for the words "said Code" substitute the words and figures "Code of Criminal Procedure, 1898".

—[*Dr. Ambedkar*]

Shri Shiv Charan Lal: So far as the Civil Procedure Code is concerned, an Order has not got much importance. But so far as the Criminal Procedure Code is concerned, Orders have the same force as an Act. I may point out that under the Defence of India Act, so many orders were passed by the different State Governments and these orders had the force of law. So if you are placing the words "Act, Ordinance and Regulation", then the word "Order" also must be there, because in the Criminal Courts, these Orders have the force of law. I do not mean the ordinary Orders, but Orders like the Cotton Yarn and Cloth Control Order, the Sugar Control Orders and other such orders which have the force of law. They are sometimes challenged in the courts whether those orders are valid or not. Simply putting the word "Act" before will not do.

The other amendment of mine is that in sub-clause 2 of section 432 along with presidency magistrate if the words sessions judge are added that will give a great scope for the Sessions Judge also to refer the matter to the high court. If the Minister accepts the amendments I will move them: otherwise not.

Dr. Ambedkar: With regard to the first amendment to clause 3 introducing the words "or order" the position is

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that an order is generally issued under a law made by the legislature. If the contention of a party is that the law under which the order is issued is *ultra vires*, then obviously the matter will have to be referred by the judge to the high court, if he is satisfied with the contention. But if the contention of the party is that the law is valid but the order is not, then it is the deliberate intention of this Bill that such a matter should be decided by the subordinate judge or magistrate, because we do not propose to overburden the High Court with all kinds of litigation which can be easily determined by the subordinate judge and it does not affect the generality of the public but the particular individual affected by that legislation.

With regard to the last amendment seeking to extend the privilege or the opportunity given to the presidency magistrate to sessions judges, if he will refer, for instance, to sections 436, 437 and 438 of the Criminal Procedure Code there is ample power given both to the magistrate and the sessions judge to deal with cases of this sort to correct the error or refer the matter to the high court to get the error corrected. There is ample provision already.

Mr. Speaker: The question is:

"That clause 3, as amended, stand part of the Bill."

The motion was adopted.

Clause 3, as amended, was added to the Bill.

Clause 1 was added to the Bill.

The Title and the Enacting Formula were added to the Bill.

Dr. Ambedkar: I beg to move:

"That the Bill as amended be passed."

Mr. Speaker: The question is:

"That the Bill, as amended, be passed."

The motion was adopted.

CODE OF CIVIL PROCEDURE (SECOND AMENDMENT) BILL

The Minister of Law (Dr. Ambedkar): I beg to move:

"That the Bill further to amend the Code of Civil Procedure, 1908, be taken into consideration."

It is a very simple measure. Hon. Members will recall that after the partition of India certain difficulty has arisen in the matter of serving summonses and processes by courts in India to persons resident in Pakistan and issued by courts in Pakistan to persons resident in India.

[PANDIT THAKUR DAS BHARGAVA *in the Chair*]

There are now two foreign territories and this matter has not been governed by any treaty so far. Consequently all processes had to be served through the post office which can never be depended upon as a sure method of communication. Recently an agreement has been made between India and Pakistan where both countries on a reciprocal basis have agreed that the processes issued by courts in one country may be sent to the courts in the other country and they will undertake to serve the summonses or the processes on the party resident there. The Bill seeks to give effect to this agreement. I might say that Pakistan has already given effect to this agreement and there is a law existing there. I hope the House will accept this Bill.

Mr. Chairman: Motion moved:

"That the Bill further to amend the Code of Civil Procedure, 1908, be taken into consideration."

Shri Sidhva (Madhya Pradesh): This is a welcome measure. Many of the displaced persons who have come here and who have claims over persons in Pakistan are confronted with the difficulty of not being able to recover the sums decreed on suits. I am glad that agreement has been arrived at between India and Pakistan and that Pakistan has also enacted a similar law. The question of serving a summons on the other side has been overcome. I want to enquire from the Minister in the event of a decree passed here against a person in Pakistan, is there any agreement arrived at by which they will see that it is executed and the amount is recovered and sent to the plaintiff in India. That is the main point involved in this question. Merely serving a summons will not do. The defendant may be indifferent and an ex-parte decree may be obtained. So long as there is no law regarding the execution of a decree why should the defendant spend money to engage a lawyer. Nothing is mentioned in that respect. I would like the Minister to enlighten us whether this question was considered in the discussion with Pakistan and if not, what will be the effect of the judgment of a court in India, which might pass a decree

against a defendant in Pakistan? Without this provision the Bill will have no meaning.

Dr. Ambedkar: As a part of the comity of nations every country agrees to execute judgments given by courts in other countries. Of course different countries have different rules of procedure but there is no difficulty with regard to the enforcement of the judgments. Some evidence that the judgment is a true one may be required. Section 13 of the Civil Procedure Code regulates it.

Shri Naziruddin Ahmad (West Bengal): A foreign judgment cannot be executed in any country at all. The Civil Procedure Code does not provide for it. A foreign judgment gives only a right of suit and a fresh suit has to be instituted and a fresh decree has to be obtained.

Dr. Ambedkar: That is only a matter of procedure.

Shri Naziruddin Ahmad: The whole thing has to be fought out again. The point I am raising is that a foreign decree cannot be executed.

Shri Sidhva: I want your guidance. I remember a case filed in India against a defendant in England. The decree was passed here but they could not execute it. A fresh suit had to be filed in London. I wonder whether without any such agreement a decree will have any value.

Dr. Ambedkar: Section 13 of the Civil Procedure Code does deal with the matter. There is no question about the enforcement of a foreign decree. The question is what procedure each country may adopt.

Shri Sidhva: That has no meaning.

Dr. Ambedkar: What has no meaning? It may say just as in the case of an award you will have to file an application when only it becomes enforceable. In the same way, section 13 of our Civil Procedure Code says:

> "A foreign judgment shall be conclusive as to any matter thereby directly adjudicated upon between the same parties or between parties under whom they or any of them claim litigating under the same title except—
>
> (a) where it has not been pronounced by a Court of competent jurisdiction;".

The question of jurisdiction is always fundamental. It can never be stopped. It must be proved that the court which has given the decree had the jurisdiction to make the decree.

Shri Sidhva: That is all right.

Dr. Ambedkar: What is all right? If you go to a subordinate court and get a decree beyond its jurisdiction, nobody can execute it because it is not valid.

Mr. Chairman: The question is:

> "That the Bill further to amend the Code of Civil Procedure, 1908, be taken into consideration."

The motion was adopted.

Clause 2 was added to the Bill.

Clause 1 was added to the Bill.

The Title and the Enacting Formula were added to the Bill.

Dr. Ambedkar: I beg to move:

> "That the Bill be passed."

Mr. Chairman: The question is:

> "That the Bill be passed."

The motion was adopted.

JALLIANWALA BAGH NATIONAL MEMORIAL BILL

The Minister of Law (Dr. Ambedkar): I beg to move:

> "That the Bill to provide for the erection and management of a National Memorial to perpetuate the memory of those killed or wounded on the 13th day of April, 1919, in Jallianwala Bagh, be taken into consideration."

The event which is known as Jallianwala Bagh is well-known to every Indian and I do not think it is necessary to say anything more about it. What is relevant for purposes of this Bill is that soon after the incident certain well-known Indians decided to perpetuate the memory of those who were killed and wounded on that particular day.

Dr. Tek Chand (Punjab): The session of the Indian National Congress held at Amritsar under the presidency of Pandit Motilal Nehru decided it.

Dr. Ambedkar: Yes, and they collected an amount of money—some ten lakhs, I understand.

Dr. Tek Chand: Yes, ten lakhs.

Dr. Ambedkar: Out of that they purchased two or three pieces of land as are mentioned in the Schedule, which are being held as part of this trust. There is already a trust and trustees, but they are of informal character. It is now proposed to give this trust a statutory basis and the proposal is this, that the trustees will fall into three different classes: certain trustees who are to be life trustees, another set of trustees who are to be *ex-officio* trustees, and three other persons who will be nominated by the Central Government. They will hold the land and the properties mentioned in the first part of the Schedule and the cash and movable property which according to my calculation comes to about Rs. 3,13,757-1-0. The object of the trust is to maintain this Memorial and to see that it is kept up and looked after properly.

There is only one point that requires to be considered and that is that the original trustee mentioned in the Bill, the late Sardar Vallabhbhai Patel is now no more, and the House has to consider a substitute for him. The rest of the Bill is just as it was proposed by the original trustees who were acting as trustees for these purposes.

Mr. Chairman: Motion moved:

> "That the Bill to provide for the erection and management of a National Memorial to perpetuate the memory of those killed or wounded on the 13th day of April, 1919, in Jallianwala Bagh, be taken into consideration."

Shri Kamath (Madhya Pradesh): It is in the fitness of things that a Bill of this nature has been brought before this House. It is over thirty years ago that this massacre at Jallianwala Bagh took place and hundreds of our countrymen and women were either killed...

Dr. Tek Chand: Two thousand—not hundreds.

Shri Kamath: Killed?

Dr. Tek Chand: Yes, two thousand killed.

Shri Kamath: .....thousands were either killed or wounded. The Congress, as the statement of objects and reasons shows, passed a resolution in 1919 proposing to acquire a piece of land and to build a memorial thereon to the martyrs of Jallianwala Bagh. We have not been told by the Law Minister who moved the Bill what amount exactly was collected for this purpose. He said, "about ten lakhs", but he has not got the exact figure with him.....

Dr. Ambedkar: I said about ten lakhs—I can give the exact figure later.

Shri Kamath: .....and how much of that amount has been utilised in acquiring the site whereon the proposed memorial is to be erected. It is wholesome that Government, the first Government of Free India, should take note of a resolution passed by the Congress many years ago and try to give effect to it. But, Sir, alongside of this certain other questions also arise. As I have already said, the Bill seeks to perpetuate the memory of the martyrs of Jallianwala Bagh and to implement the resolution of the Indian National Congress of December, 1919. That marked the beginning of the Gandhian era in our politics, and during that period the Congress raised, or has raised, several funds of different kinds. An important point, therefore in connection with this Bill which has been moved by the Law Minister is, how far the Government will take note of, or take cognizance of, other funds also raised by the Congress for a specific purpose.

Shri Bharati (Madras): On a point of order, Sir. How far is that relevant to the Bill before us? The hon. Member is referring to funds raised by the Congress for other purposes. Are we concerned with that in this Bill?

Shri Kamath: Of course, it is a resolution passed by the Congress that is the genesis of this Bill.

Mr. Chairman: There is no point of order. Let the hon. Member develop his argument.

Shri Kamath: The present Government composed as it is—and rightly so—of an overwhelming majority of Congressmen has got every right to give effect to important resolutions of the Congress which ultimately has brought this Government into being. But may I ask whether Government will in course of time—not necessarily today but sometime hence—also concern itself with some other funds raised by Congress for a specific public purpose?

Shri Bharati: And other bodies also. Why Congress alone?

Shri Kamath: I am at present concerned with the Congress, because the Bill deals with a fund raised by the Congress.

Shri Bharati: Funds were not collected by the Congress alone.

Shri Kamath: There is the Chairman to conduct the proceedings. My hon. friend need not try to usurp his power.

As the House knows and as the nation is very well aware, some time after this particular year 1919, the Congress raised a fund amounting to nearly Rs. 1 crore called the Tilak Swaraj Fund. That was also for a specific public purpose. Lately, the Congress has also collected from all sections of the nation, including Government servants who subscribed to it voluntarily, a huge fund known as the Gandhi National Memorial Fund, also for a specific public purpose. The Law Minister may not, of course, be in a position to tell us today as to whether Government will in any manner either actively or indirectly concern itself with the administration of these various funds raised by Congress for a specific national or public purpose.

Shri B. K. P. Sinha (Bihar): May I point out that the pith and substance of the proposed legislation is that Government are going to establish a memorial and incidentally they are taking over certain funds which had been raised by some institution? It is not a Bill primarily designed to control all the funds raised by any particular institution. I therefore consider that all this reference is not very much to the point.

Mr. Chairman: The Statement of Objects and Reasons of the Bill says that the 'object of the Bill is to place the trust on a permanent and statutory basis'. So a trust already exists and to place that trust on a permanent and statutory basis this Bill has been brought in respect of Jallianwala Bagh Memorial Trust alone. But at the same time, I must say that the hon. Member is not trespassing his rights in suggesting that even other funds may be similarly put on permanent and statutory basis. That is all that the hon. Member is saying. He is not questioning the right of the Government to bring a Bill to put the trust of this fund on a statutory footing. Although other trusts are not directly in issue, he is referring to them incidentally.

Shri Bharati: Is he referring to other trusts?

Mr. Chairman: Not directly.

Shri Kamath: I am thankful to you, Mr. Chairman, for the guidance that you have given to me and to the House and I hope that there will not be other interruptions of the kind which preceded the one just now.

Mr. Chairman: He may proceed with his speech rather than give a warning to hon. Members.

Shri Kamath: Pardon me, Sir, I did not catch what you said.

Mr. Chairman: The point is that when a ruling is given by the Chair, it is not the hon. Member's function to interpret it to others and ask them not to interrupt. There may still be further interruptions.

Shri Kamath: They are welcome. I always welcome interruptions, but I thought that the time of the House might be taken up in a more profitable manner.

I have dealt with this particular aspect of the matter and I shall not dilate upon it further. Another point in this connection is this. Today we decide to put this trust on a permanent and statutory basis and seek to perpetuate the memory of the martyrs of Jallianwala Bagh. I have urged in this House time and again that it is our national duty, now that India is a free nation, a free country, a sovereign democratic republic, it is our bounden duty to perpetuate the memory of the soldiers of freedom and not merely the memory of the soldiers who played their part heroically and well in a particular year or at a particular point of time. Our national struggle was waged, if I may say so, from 1857 onwards with different methods, under different conditions and circumstances and with different techniques and different *modus operandi*. It was waged more actively since the beginning of this century, beginning with the ill-fated Bengal partition. Hundreds of thousands of our countrymen and women have taken part in this struggle. They have sacrificed and suffered. Thousands have been reduced to penury and utter poverty. Millions, I might almost say, have taken part in their own way, in a humble manner or on a much grander scale. It is high time that when we consider the perpetuation of the memory of the martyrs of Jallianwala Bagh we should think of these other people too. It is in my opinion equally necessary for us—for Government and for this House—to bestir ourselves about the perpetuation of the memory of the unknown soldier of freedom. There are thousands—all nameless—who have contributed their mite, their strength, to our ultimate victory. But they tend to be forgotten today. I do not say that they will be forgotten, but unless we perpetuate or do something to perpetuate their memory, they will be forgotten. In all other countries of the world, after every patriotic

[Shri Kamath]

war, or after a war of liberation, or after a war against the enemy, there is always a monument erected to the unknown soldier. In our country, we have not yet even thought about the erection of such a memorial. In the United States, after the victorious outcome of the War of Independence which George Washington led, the Government of the United States took early steps to commemorate their victory and all the soldiers who had fallen in the struggle for American independence. Every country has got what is called a cenatoph, which is erected after the conclusion of every war. There were such monuments erected after the First World War as also the Second World War for the soldiers who sacrificed their all for their country's sake. But it is regrettable that in our own country we have not yet taken any steps in this direction. May I therefore humbly suggest that the Law Minister, along with his colleagues in the Government, should take up this matter also some time later, if the present time be not convenient, to perpetuate the memory of the martyrs of the struggle for Indian freedom ranging over nearly five or six decades or even more. If this is not done betimes, I for one feel that our Government will not have acted worthily of the trust and the confidence reposed in our leaders by the nation during the hard years of our independence struggle.

Shri Amolakh Chand (Uttar Pradesh): Some State Governments like Uttar Pradesh have already taken steps in this direction.

Shri Kamath: I am glad that the Provincial Governments have done that. But it is high time that the Centre erected a memorial to the unknown soldier of freedom. The House is very well aware that during the years when we were a slave nation—even as late as 1945, after the conclusion of World War II, a memorial built by Indians in distant Singapore was dynamited under the orders of Lord Mountbatten who happened to be the then Supreme Commander of South-East Asia. It was a shameful occurrence for us as a nation that a memorial erected for our unknown soldier who fought outside India should have been destroyed like that, and I am sure all my countrymen and women must have felt that just because we were not a free nation and not master of our own fate, the memorial built for our unknown soldier of freedom was dynamited and blown up by somebody who at that time had command in that area and he could do whatever he liked.

Mr. Chairman: I would request the hon. Member to come to the Jallianwala Bagh Memorial.

Shri Kamath: I was only pointing out incidentally that while a memorial was built outside India to the unknown soldier of freedom, no steps have been taken to build a similar memorial inside India and while welcoming this measure heartily and the provisions therein seeking to place the Trust on a permanent and statutory footing, I would at the same time urge with all the emphasis at my command and all the earnestness at my command that Government should take steps very early, even before the elections are upon us, and set the ball rolling to erect such a memorial either in Delhi, the capital, or in any other central place the Government may choose. Preferably it should be outside the Red Fort where the ultimate victory of "Quit India" and 'Delhi Chalo' campaign was achieved, and our national flag hoisted on the Red Fort. That is the most suitable place for the erection of a national memorial for the unknown soldier, both *satyagrahis* and others who waged the war of liberation. I hope, Sir, that the House will agree to the suggestion that I have just made and I shall be happy if Government take suitable steps in that direction at an early date.

I support the motion for consideration of the Bill, Sir.

Dr. Tek Chand: Being perhaps, the only Member in this House who was a member of the Committee appointed after the Congress session of 1919 to acquire the site of Jallianwala Bagh and raise funds for it, I seek the indulgence of the House to place a few facts relating to the origin of the memorial which is now sought to be placed on a statutory basis.

Most of the hon. Members are aware of the events of 1919 which led to the massacre of innocent persons in the Jallianwala Bagh. Mahatma Gandhi had proclaimed an all-India hartal to protest against the Rowlatt Act on the 30th of March 1919. That hartal was observed all over the country and it was of an unprecedented nature. In the Punjab, which had been ruled with an iron hand by Sir Michael O'Dwyer in the preceding four years, where the Defence of India Act of 1914 had been enforced with greater rigour than in any other part of the country, feelings which had been suppressed found vent in these hartals. The hartal was first observed on the 30th of March on a large scale. Then

on account of certain incidents, including the arrest of Mahatma Gandhi at Palwal, when he was proceeeding to the Punjab, the hartal was again ordered to be held on the 6th of April 1919. It surpassed in its extent and intensity even the hartal of the 30th of March. In Amritsar also the hartal was observed with more than usual enthusiasm. Amritsar, as hon. Members know, is the biggest commercial centre in the Punjab and the second biggest town in the province. Three days later, on the 9th April, was the *Ramnavami* festival and on that day a procession was taken out in the town. That procession showed unprecedented signs of Hindu-Muslim unity. The two leaders who led the procession were the two stalwart Congressmen of those days, Dr. Saifuddin Kitchlew, and Dr. Satyapal. On that day almost the whole town joined in the procession and Hindus and Muslims drank water from the same bowl. That was a thing which Sir Michael O'Dwyer and the other officials did not like. The procession was absolutely peaceful. No provocative speeches were made; no violence was preached; it was merely a manifestation of the unity of the various classes living in the town.

The next day the Deputy Commissioner, Mr. Miles Irving, sent for Dr. Satyapal and Dr. Kitchlew to his house and served upon them orders for their arrest and deportation. Both of them were handcuffed and sent to the jail at Dharamsala in the Kangra district. This news spread all over the town and on the 11th there were processions again. Feelings ran high; there were attacks by the police and in retaliation some violence was used by the mob in which some bank buildings were destroyed and some persons were manhandled and a few killed.

Two days later, on the 13th of April, was the Baisakhi day and as you know Amritsar is a town in which that day is celebrated with great rejoicings. People from all parts of the province come for a bath in the sacred tank. There is also fraternisation and other manifestations of joy in celebration of the New Year's Day. On that particular day, a large number of persons had collected at the Jallianwala Bagh, which is an open space in the heart of the city enclosed on all sides by double-storeyed houses. They had collected there and some speeches were being made. Some people recited hymns and sang songs; others spoke, protesting against the arrest of Dr. Satyapal and Dr. Kitchlew. Suddenly, an aeroplane flew over the *Bagh*, commanded by General Dyer. And without warning and without any notice he began to fire from the sky on the congregation. No less than 2,000 persons were killed on the spot! The place was such, as I have already described, surrounded on all sides by double-storeyed houses and there were only two small passages through which people could go. The result was that 2,000 persons were killed there and many were wounded. In the words of the late Mr. Andrews it was one of "the most cold-blooded massacres" in the whole history of British connection with India. These were the words of Deenabandhu Andrews, who visited the place shortly afterwards.

Subsequently, when the Hunter Committee was set up, General Dyer appeared as a witness before that Committee. He was asked whether he gave a warning before firing and in answer to that question he said "No warning was necessary". He remarked that firing from the sky in the manner in which he did "was the most merciful act" that he could conceive of in the circumstances. Then he was asked, "Did you not think it proper to give an opportunity to these persons to run away?" He said, "No, I had made up my mind to fire, and fire well". He was asked further: "How long did you continue the firing?" He replied, "I continued the firing until the last bullet in my command was exhausted"; he, indeed, was sorry that he did not have more bullets with which he could continue to fire. This was the incident and so many persons were killed. Well, the same day martial law was declared in Amritsar, Lahore and several other districts in the Punjab and I will not take up the time of the House in narrating the events that happened during the next two or three months. The whole Province was terror-struck; all kinds of atrocities were committed at Amritsar, Lahore, Gujranwala and various other places. The people were completely stunned. No person was allowed to come from outside—not even lawyers like Pandit Motilal Nehru, Sir Tej Bahadur Sapru, Mr. Jinnah, Mr. Hasan Imam, who had been engaged by relations of the persons arrested to defend them. The whole province witnessed a reign of terror unparalleled in the history of India. Ultimately, Sir Michael O'Dwyer was transferred and Sir Edward Maclagon was appointed Lieutenant-Governor and some of the restrictions were relaxed. And the first man from outside who came was Pandit Motilal Nehru. He first went to Lahore. People were afraid even to meet him, because in those days any person who met any outsider was himself considered to be guilty of treason and arrested. Anyway, he stayed in Lahore and collected

[Dr. Tek Chand]

some persons. He was followed by Pandit Madan Mohan Malaviya and later by the young Jawaharlal Nehru who was just entering his political life. They visited Amritsar and started enquiries. They helped in restoring a new life to the Province. Ultimately Mahatma Gandhi also went there. I will not go into the further details as to the revival of public life in the Punjab.

The Congress held its annual session at Amritsar during the Christmas week of 1919. It was presided over by Pandit Motilal Nehru. The Congress decided to acquire the Jallianwala Bagh and to raise a National Memorial there. The Resolution was moved by Pandit Madan Mohan Malaviya on the 27th December, 1919. It reads as follows:

> "This Congress further resolves that the site known as 'Jallianwala Bagh' in Amritsar be acquired for the nation and be registered in the names of the Hon'ble Pandit Madan Mohan Malaviya and the Hon'ble Pandit Motilal Nehru as Trustees and that it be used as a memorial to perpetuate the memory of those who were killed or wounded on the 13th day of April last during the massacre by General Dyer and in order to give effect to the intention of the Congress, the following be appointed a Committee:
>
> 1. The Hon'ble Pandit Madan Mohan Malaviya,
>
> 2. The Hon'ble Pandit Motilal Nehru,
>
> 3. Mahatma M. K. Gandhi,
>
> 4. Swami Shradhanand,
>
> 5. Lala Girdharilal,
>
> 6. Dr. Kitchlew, and
>
> 7. Lala Harkishen Lal
>
> with power to add to their number".

Soon after, the Committee added eight more Members including Lala Lajpat Rai and others, and I was also one of them. This Committee started raising funds and the entire site of the Jallianwala Bagh, which belonged to more than half a dozen persons, was purchased with Rs. 5,65,887-7-9.

Shri Hussain Imam (Bihar): What was the area of the Bagh?

Dr. Tek Chand: It is given in the Schedule to the Bill. The appeal that was issued at the time limited the amount of the fund to Rs. 10 lakhs. They said, "We will raise Rs. 10 lakhs and not more". Pandit Madan Mohan Malaviya in introducing this Resolution in the Congress said:

> "We have decided to raise the memorial not with any narrow motive. It is not to keep alive the dark deeds of General Dyer. We want it to be a Memorial to the Hindu-Moslem unity that had sprung out of the intermingling of Hindu and Moslem blood on that field of carnage. We want it to be a place of pilgrimage where every pilgrim would recall to his mind how the thousands of unarmed, innocent brethren assembled there had been shot down by Dyer's bullets, even in the act of running away for their lives, how Hindu and Moslem blood ran in one single stream, how their bodies had been piled one upon the other, how innocent children had been shot down, how infants, in the arms of their fathers, had met their deaths. It is a nation that is now weeping and grieving for them. I warn people in the projected scheme of the Memorial not to entertain any feeling of hatred or enmity towards anyone".

That was the speech with which the Resolution was moved. It was supported by Mr. C. R. Das and others and was unanimously adopted.

An appeal was then issued, drafted by Mahatma Gandhi. In it, it was expressly stated:

> "Our aim is to collect Rs. 10 lakhs and not more but not even less, if possible. Though we have come to no final conclusion, we propose that the Bagh should be converted into a Park whereon a simple memorial will be erected with a suitable inscription perpetuating the memory of the dead and commemorating Hindu-Muslim unity. There will not be a word in it calculated to promote or encourage bitterness or ill-will against anybody. We invite suggestions as to the inscription and also tentative proposals regarding the use of the ground. We consider that it should be used as a place of national pilgrimage.....
>
> "It is our bounden duty in some shape or other to cherish and perpetuate the memory of many hundreds of innocent men who were shot dead on the fateful 13th of April. It is a tragedy of national importance which cannot be allowed to be forgotten and we came to the conclusion that there

was no better method of achieving the object than by acquiring the site hallowed by innocent blood and using it in some such manner as we have suggested."

This was the appeal drafted by Mahatma Gandhi and issued by this Committee. Nearly 10 lakhs of rupees were collected in the course of less than a year. It was with great difficulty that this site was acquired because pressure was put on the owners by local officials and others not to part with the portions of the site belonging to them. However, the Committee succeeded in acquiring the whole of this area.

As regards the form of memorial that was to be raised, unfortunately, no definite decision could be reached, because soon after—on the 1st of August 1920—Mahatma Gandhi started the Non-co-operation Movement and money began to be collected for it and for other funds also. One crore of rupees was collected at the time of the inauguration of the movement. Then came the arrests, in which Mahatmaji and many other persons including Lala Lajpat Rai and others in the Punjab were all put behind the bars. So nothing could be done after that. The property originally remained in the names of Pandit Madan Mohan Malaviya and Pandit Motilal Nehru. Subsequently as they died, other names were added, but not even a formal trust was executed. The Members of the Committee, however, kept a watch over the funds and they have all remained intact and now amount to nearly 4 lakhs of rupees besides Rs. 6,65,000 odd which had been spent on the purchase of the property. This is the brief history. The last two trustees who were living at the time when this Bill was drafted were Sardar Vallabhbhai Patel and Pandit Jawaharlal Nehru. They were the only survivors after Mahatma Gandhi's death in 1948. It was suggested to them that this is a memorial of an event which should not be allowed to remain in the hands of one or two individuals, however, eminent, but that it should be perpetuated as a national memorial and the best way of doing it was to bring a Bill in the House, so that it may continue to be administered by a statutory body. That is the history of this legislation and it is in the fitness of things that the Bill be passed and the memorial be put on a permanent footing.

Sir, two thousand innocent Indians were killed and more wounded, but that was also the day on which General Dyer and his Chief Sir Michael O'Dwyer, laid the foundation of the extinction of the British Empire in India. It was after the Jallianwala Bagh incident that the struggle for freedom started which culminated on the 15th August 1947 in the departure of the British. It was a momentous event in the history of this country and it is fit and proper that this Bill should be passed and the memorial put on a statutory footing. With these words, I support the motion which has been moved by the hon. Law Minister.

5 P.M.

گیانی جی - ایس مسافر : اس بل کے سمبندھ میں میرا بھی یہی بچار ھے کہ بکشی ٹیک چند جی سے زیادہ ان حالات کو اور کوئی بیان نہیں کر سکتا تھا - کیونکہ وہ شروع میں ھی اس کمیٹی میں تھے جیسا کہ انہوں نے کہا ھے - وہ تمام ریزولوشن (Resolution) جو اس وقت پاس ھوا تھا وہ انہوں نے پڑھ کر سنایا ھے - اس کے سمبندھ میں صرف ایک بات کہنا چاھتا ھوں - آج ایسا کوئی شخص ھندوستان میں نہیں ھوگا جو جلیان والے باغ کے نام سے واقف نہ ھو - اس کا زیادہ ذکر کرنا میں ضروری نہیں سمجھتا ھوں - مگر ایک بات بڑی صاف ھے کہ جلیان والا باغ کا نام خواہ وہ کسی بل کی شکل میں آئے یا کسی اور شکل میں بھی آئے وہ ایسا نام نہیں ھے جو کہ ھر ایک ھندوستانی کے دھیان کو اپنی طرف متوجہ نہ کرے - ھزاروں نہیں بلکہ لاکھوں انسانوں نے ھمارے یہاں سے جلیان والے باغ کے حادثہ سے متاثر ھو کر آزادی کی مہم میں حصہ لیا - میں بھی ان تمام لوگوں میں سے ایک ناچیز

[کھائی جی - ایس - مسائر]

خیال پیدا ہوا کہ یہاں جو لوگ شہید ہوئے ہیں ان کی یہاں پر کوئی یادگار قائم کی جائے - اس لئے سمجھ لینا چاہیئے کہ آزادی کی لہر سے جلیان والا باغ کا نام جدا نہیں کیا جا سکتا - اور جلیان والا باغ سے کانگریس کا نام جدا نہیں کیا جا سکتا - کسی صورت میں بھی ایسا نہیں کیا جا سکتا - اس لئے میں سمجھتا ہوں کہ یہ جو بل بکشی ٹیک چند جی کے قیمتی مشورے سے تیار کیا گیا ہے اور ہمارے لا منسٹر کی پوری قابلیت جس میں شامل ہے میں مانتا ہوں اسے بڑے مناسب الفاظ میں تیار کیا گیا ہے اس لئے اس پر کچھ زیادہ ٹیکا ٹپنی کرنے کی گنجائیس نہیں ہے - میں جناب لا منسٹر صاحب سے بڑے عاجزانہ الفاظ میں یہ درخواست کروں گا کہ انہوں نے جو ٹرسٹیز (trustees) کا پرسانل (personnel) مقرر کیا ہے اس میں جناب کانگریس کے پریزیڈنٹ کا نام نہ آنا بڑی بھاری کمی ہے - کیونکہ جلیان والا باغ جو ہے وہ کانگریس ایکٹوٹیز (activities) کا سنٹر (centre) رہا ہے - جلیان والا باغ کا یہ مطلب سمجھا جاتا تھا کہ وہ آزادی کی لہر کا یعنی کانگریس کا ایک مرکز ہے اور کانگریس کا ہر ایک کام وہیں سے شروع ہوتا ہے اور اس جلیان والے باغ کے حادثہ سے متعلق ہو کر جن لوگوں نے کانگریس کے نام سہوادار ہوں جس نے جلیان والے باغ کے حادثہ کے بعد اپنی بھتیجی سے ہی زندگی کے رخ کو اس طرف بدلا - یعنی ۲۸-۲۹ سال تک - آزادی ملنے کے سال تک میں جلیان والے باغ کا نام لے لے کر لوگوں کے اندر آزادی کے لئے اتحاد کے لئے اپیل کرتا رہا ہوں - سچ مچ جو جلیان والا باغ کی مٹی میں جو سب کا خون بہایا گیا تھا اس میں سب کے خون نے مل کر ایک ایسی اتحاد کی عمارت تعمیر کی تھی جس اتحاد کی بنا پر ہم آزادی کی لہر میں ایفکٹو (effective) طریقہ سے لڑتے چلے آئے - میرے بھائی کامتھ جی اس بل کے متعلق کچھ کہہ رہے تھے - انہوں نے کانگریس کا نام لیا تو کچھ بھائیوں نے اس پر تھوڑا سا اعتراض کیا تھا - مگر یہ بات صاف ہے جیسا کہ اس بل کے اسٹیٹمنٹ آف آبجیکٹس اینڈ ریزنس (Statement of objects and Reasons) میں دیا گیا ہے کہ یہ بل کس لئے پیش کیا جا رہا ہے اس میں پہلے ہی یہ الفاظ ہیں کہ انڈین نیشنل کانگریس کے ایک ریزولوشن کی بنا پر ہی یہ سب کارروائی شروع ہوئی ہے - انڈین نیشنل کانگریس نے ایک ریزولوشن پاس کیا تو اس وقت تمام دیہواسیوں نے لپک کر کہا اور انہوں نے فنڈ جمع کیا اور ان کے اندر یہ

پر قربانیاں دی ہیں - اس میں
کوئی شک نہیں کہ اس میں جلیانوالہ
باغ والے سبھی لوگ ہیں جس
پرکار آزادی کی لڑائی میں سب
لوگوں نے اپنا حصہ ڈالا ہے - کسی
نے جان دی - کسی نے روپیہ دیا -
کسی نے قانونی مشورہ دیا - سب
لوگوں نے اس میں امداد کی جس
کی وجہ سے ہم کو آزادی ملی لیکن
ان میں ایک سنٹرل طاقت جو
تھی وہ کانگریس ہی کی تھی - آج
کانگریس کے لئے کسی کے دل میں
کوئی بچار ہو لیکن اس میں ذرا
بھی شک نہیں ہے کہ آزادی ملنے
تک کانگریس ہی آزادی کی لہر
کی سنٹر رہی ہے - اس واسطے میں
یہ ضروری سمجھتا ہوں کہ اس میں
پنجاب کانگریس کے پریزیڈنٹ کا نام
ضروری رکھا جائے - تبھی میں
سمجھوں گا کہ جو اس کے ٹرسٹیز
کی کمیٹی ہے وہ ایک مکمل کمیٹی
ہے -

جیسا کہ میں نے شروع میں
ہی کہا میں اس کے بارے میں
زیادہ کچھ نہیں کہنا چاہتا مگر
ایک بات اور ہے اس کے کلاز ۳ میں
جہاں آبجیکٹس کا ذکر کیا گیا ہے
اور اے - بی - سی کلاز رکھے گئے ہیں
میں سمجھتا ہوں کہ اسے اتنا محدود
نہیں کرنا چاہیئے - اس کے متعلق
میں کچھ بہت زیادہ نہیں کہوں
گا لیکن اتنا کہوں گا کہ اس کلاز کو
ذرا اور کھلا رکھنا چاہیئے - میموریل
(memorial) بنے مگر جو لوگ
وہاں شہید ہوئے ہیں.....

(English translation of the above speech)

Giani G. S. Musafir (Punjab): Regarding the bill under discussion, I also feel that nobody was more suited than hon. Dr. Bakshi Tek Chand to describe all these circumstances. The reason is that he has all along been a member of this committee. He has read out the complete text of the resolution that was passed then. I have to say only one thing regarding this issue. I feel there is none in this country who has not heard the name of the Jallianwala Bagh. I have no wish to enter into the details. But one thing is quite clear—that whether it is in a Bill or in some other context, the name of Jallianwala Bagh is not such as may be allowed to go bypassed by any Indian. Not thousands but lacs of our people have drawn inspiration from Jallianwala Bagh to participate in the struggle for freedom. I too am an insignificant servant of the Nation who had changed the course of his life after the tragedy of Jallianwala Bagh. That is to say that continuously for the last 28 or 29 years till the year of Independence, I have perpetually been invoking the name of Jallianwala Bagh while making appeals to our people for having unity among themselves. Indeed it was on the grounds of Jallianwala where blood of our people had freely mixed with each other. This very intermingling of blood subsequently proved to be the foundation of that structure of unity in the wake of which we put up an effective fight in the cause of Freedom. My hon. friend Shri Kamath's mention of the name of the Congress while speaking on the Bill had provoked some criticism by a number of hon. friends here. But it has been mentioned in the very first words of the Statement of Objects and Reasons of the Bill itself that the basis for this Bill is to be found in a resolution passed by the Indian National Congress, and this has been the inspiration to all subsequent actions in the matter. The entire country had given a hearty response when this resolution was passed by the Congress and a country-wide fund was collected. Then it was thought that some memorial to the martyrs should be erected at the site. It should, therefore, be understood clearly that it is impossible to

[Giani G. S. Musafir]

separate the name of Jallianwala Bagh from the freedom movement just as it is impossible to separate the name of the Congress from it. I, as such, consider that the Bill under discussion which has the valuable advice of hon. Dr. Bakshi Tek Chand and the professed ability of the hon. Minister of Law in its framing, has been drafted in the most suitable words and that there is not much scope for raising objections to this word here or that word there. I will, however, very respectfully point out to the hon. Minister of Law the serious omission that has been made by leaving out the President of the Punjab Provincial Congress Committee from the personnel of the trustees. I do so because the Jallianwala Bagh has been the centre of all Congress activities. Its name has been analogous with all the activities, and it has been fountain-head of all freedom movements and Congress work. The martyrs at the altar of freedom, who drew their inspiration from the Jallianwala Bagh tragedy, no doubt, include persons from all classes of our country's population. Our people as a whole have contributed their share in the struggle for freedom. Some did so by giving their very lives, while others gave money, legal advice and served the country in many other ways. All these factors have combined in winning freedom for us. But the Central power for all our efforts was that of the Congress alone. People may have doubts about the Congress today, but, definitely the Congress has been the centre from where all freedom movements radiated till the time of our achieving independence. I, therefore, attach importance to my request and pray for the inclusion of the name of the President of Punjab Provincial Congress Committee also in the trustees. Only then I can consider the Committee of the trustees to be complete.

As I said in the beginning, I have no wish to say much regarding this Bill. But there is one thing more. The clause 3 of the Bill which deals with its Objects and has further been subdivided into parts (a), (b) and (c), and therein the scope of the Bill has been much restricted, which I think should not have been done. Not saying much, I will only say that this clause should have been a little more comprehensive. Let there be a memorial but those who had fallen.....

Mr. Chairman: I hope the hon. Member is finishing. Is he likely to take a long time?

گیانی جی - ایس - مسافر : پانچ منٹ -

.[**Giani G. S. Musafir:** Five minutes.]

Some Hon. Member: We can wait for five more minutes.

Some Hon. Members: No, no.

Mr. Chairman: The Bill is not going to be finished today. The hon. Member can continue on the next day.

I have to announce that items 9 and 10 in the List of Business, relating to the Coal Mines Provident Fund and Bonus Schemes (Amendment) Bill will be taken up last, that is, after the Forward Contracts (Regulation) Bill.

The House then adjourned till a Quarter to Eleven of the Clock on Saturday, the 21st April, 1951.