

13:30 hrs.

HIMACHAL PRADESH LEGISLATIVE ASSEMBLY (CONSTITUTION AND PROCEEDINGS)
VALIDATION BILL—contd.

Mr. Speaker: The House will now take up further consideration of the following motion moved by Shri Datar on the 3rd December, 1958, namely:

"That the Bill to validate the constitution and proceedings of the Legislative Assembly of the New State of Himachal Pradesh formed under the Himachal Pradesh and Bilaspur (New State) Act, 1954, be taken into consideration."

Shri Jogendra Sen may continue his speech.

13:31 hrs.

Shri Jogendra Sen (Mandi): I was saying the other day that it was impossible to say anything on the merits of the Bill in the absence of very important material, namely, the Acts and the resolutions that were passed by the defunct Himachal Pradesh Legislative Assembly. Since then, the hon Home Minister has been kind enough to circulate at least a list of 37 Bills which had subsequently become Acts.

Mr. Speaker: Why was it not found necessary to give a list of those Bills earlier?

The Minister of State in the Ministry of Home Affairs (Shri Datar): The list has been circulated.

Shri Braj Raj Singh (Ferozabad): Only the list. Copies of all the Bills are not available in the Library.

Mr. Speaker: Are not copies of the Bills available?

Shri V. P. Nayar (Quilon): There is only one Bill available and that relates to the Act which has been impugned. Unfortunately the copy

available is a Hindi copy. There were certain substantial issues raised in it.

Mr. Speaker: We have proceeded sufficiently ahead.

Shri Naushir Bharucha (East Khandesh): When the House is asked to validate blindly 37 Bills the contents of which are not known to us, surely the Government should take this matter into consideration and supply all the Acts which they seek to validate now.

Mr. Speaker: Why did not the hon. Member move for reference to a Select Committee?

Shri Braj Raj Singh: We did.

Shri Datar: It was stated that a list should be submitted and the list has been submitted already. The Chairman, Pandit Thakur Das Bhargava, who was then in the Chair stated that it is not necessary to get copies of all the Bills.

Shri V. P. Nayar: He did not say so.

Shri Datar: He did. He said that a list should be submitted. That has been done.

Pandit Thakur Das Bhargava (Hissar): I was in the Chair at that time, and I presumed that the Bills would be found in the Library. Shri V. P. Nayar raised an objection. I told him that unless and until some hon. Member comes here and says that they are not available, it would be difficult to presume that they are not available, because generally all the Acts of the State Assemblies are available in the Library. I did not know then that the Acts will not be available there.

Shri V. P. Nayar: I have verified from the Library and I first found that most of the Bills were not available. Subsequently I learn that no Bill except one Bill is there, and the copy that is available is a Hindi copy. We are now called upon to revalidate certain enactments and we do not

[Shri V. P. Nayar]

know whether they contain penal provisions in which case it becomes more complicated. Some of the Acts referred to must inevitably have certain penal provisions. One cannot construe them as having retrospective effect.

I may also make one suggestion. In this case, even at an earlier stage, we submitted that a copy of the judgment of the Supreme Court itself was not available. Later on we asked for copies of the Acts. It is not an ordinary question, because, as I go through the list, I find that inevitably there must have been certain penal provisions in some of the Acts at least. We are now called upon, by the powers vested in Parliament, to revalidate certain Acts which may include many other provisions including certain penal provisions which are very difficult for us to approve unless we know the extent of those provisions. The hon. Minister will do well to supply copies of all the enactments so that we can find out how far we can go with this legislation, because it is a question of giving Parliament's approval to revalidate certain Acts. We should, therefore, be very careful about it, especially in view of the decision of the Supreme Court.

Shri Datar: Is it necessary to go into the merits of every Act? My submission is, it is not necessary. I will try, if necessary, to place on the Table a copy of such Acts. I have got copies of certain Acts, except the Appropriation Act.

Shri V. P. Nayar: Even the Minister does not have copies.

Shri Bimal Ghose (Barrackpore): If we are called upon to revalidate those Acts, are not copies of those Acts necessary?

Shri Datar: May I point out that only on a technical ground the Supreme Court stated that one Act had not been passed by a duly or validly constituted Assembly. Beyond

that, nothing has been stated. Therefore, so far as the other question is concerned, the Supreme Court did not go into it. So, what we have to do now is only to consider whether these Acts should be revalidated because the body that considered and passed them, though not technically a valid body, was a representative body. It went into all the questions and then passed those Acts.

Shri V. P. Nayar: In the Statement of Objects and Reasons, the hon. Minister says:

"This judgment would have the effect of rendering invalid a large number of enactments passed by the Himachal Pradesh Legislative Assembly during the period from the 1st July, 1954, to the 31st October, 1956, when the new State of Himachal Pradesh was in existence. To meet the situation...." etc.

Now, the position is that we are called upon to revalidate certain Acts one of which has been declared to be *ultra vires* of the Constitution or is invalid. On that ground, the hon. Minister takes this opportunity to revalidate a set of 37 Acts the contents of which we do not know.

My difficulty is this. As you very well know, one cannot apply the same standard of construction to all the provisions, and we have to be very very careful in giving retrospective effect to provisions which contain penal clauses. It is very difficult for us to think in terms of revalidating penal statutes at all at this stage. Therefore, I submit that the hon. Minister may be pleased to hold over this Bill, and supply us copies of all the enactments without which it is difficult for us to go into the merits of the various enactments.

Shri Datar: May I again say with all deference to my hon. friends that a peculiar and anomalous position was raised by the particular judgment of

the Supreme Court. What they did was in respect of a particular Act, and they stated that it was passed by a body which was not duly or validly constituted. Now, as a result of that order, or as a result of the implications of that particular judgment, other Acts which were passed are likely to be considered as invalid. In order to cover those Acts from being invalid, we have brought forward this Bill. It has no other purpose at all.

Secondly, let us not place ourselves in the position of the Legislative Assembly of Himachal Pradesh. As a matter of fact, the Himachal Pradesh Legislative Assembly did carry on its work, though on account of the technical defect it was held that it was not duly constituted. Therefore, so far as the merits of the particular Act are concerned, they were fully debated and all the matters were considered by that body. Only on account of a technical defect, that body was not considered to be a duly or validly constituted body. Beyond that, there is no difficulty at all.

I therefore submit that the question we are now considering here is only a limited one, namely, on account of the position arising out of the judgment of the Supreme Court, whether it is necessary or not to validate those Acts and to declare that those Acts have been validly passed. Beyond that, there is no other question.

Mr. Speaker: This is a simple point. The hon. Members have already argued this matter. The point consists of two portions. The first is this: whether we have got any jurisdiction or whether it is open to us to say that somebody who passes a law and who had no right to do so can be treated as a legislature and accept that law or those laws. That is a matter for the House to decide. The Speaker does not take the responsibility of saying whether it is constitutional or not.

Secondly, there is still time. Today is only the 5th and we are adjourning on the 19th only. So, I am thinking

if it would be too much for this House to have a small committee to go into those various Acts and find out if there are any provisions which offend Article 32 or any other article, and if there are some provisions, to that extent those provisions may be removed. It is only for the purpose of safety. Only one matter was decided by the Supreme Court. But once again if some other thing goes to the Supreme Court, we may get into trouble. To avoid all that kind of thing, we can have a small committee to go into the Bills and report on Monday or Tuesday, i.e. in less than four or five days. Let it be a Select Committee consisting of a few hon. Members who have taken interest in this matter. Copies of the various Acts may be supplied.

An Hon. Member: In English

Mr. Speaker: of course, in English. They can sit across the table and find out if there is any provision offending any article, so that this enactment that we pass may be absolutely valid. The hon. Minister himself might say that this matter may be referred to a Select Committee consisting of such and such Members, the names may be given and the committee may report, say, by the 10th. Then we can pass it that very day—we will waive notice—and it may go to the other House. The hon. Minister may kindly consider this. After we pass this, the Supreme Court should have no doubts regarding the validity of these Acts, whatever the Himachal Pradesh Government might have done.

Shri Datar: There are two questions. The Supreme Court have considered only one question. Is it necessary for us to go into the other question? The Supreme Court have not gone into that.

Mr. Speaker: In the light of these objections, we can anticipate these objections and see whether these objections are likely to be raised against the various Acts and some modifications are necessary and they will be valid as they are.

Dr. Krishnaswami (Chingleput): We must know what we are validating

Pandit Thakur Das Bhargava: The hon Minister is quite right when he says that when we are validating the legislature, any acts done by the legislature become valid. At the same time, this House will be responsible for validating so many Acts, the contents of which we do not know. The result will be that we will be also putting our seal on those Acts. So, it is fair that we should know the contents. Unless we know what we are validating, it is not proper for us to give our vote. At the same time, so far as the Supreme Court is concerned, any one of those Acts can again go to the Supreme Court for testing their validity.

Shri Datar: The passage of this Bill will have the effect of removing the first and most fundamental objection. Why should we take upon ourselves the burden of going into the second question?

Pandit Thakur Das Bhargava. Mr Speaker, you have adopted a very good course. In two or three hours, hon Members can go through those Acts.

Mr. Speaker: The hon Minister feels his own doubt whether it ought to go to a Select Committee or not. It consists of two portions. Only one case went up to the Supreme Court and this decision applies to the other Acts also, so far as the jurisdiction or the validity of that Assembly is concerned. There are some other objections also raised, on which the Supreme Court did not give any decision. On a preliminary point, they disposed of it and evidently they did not find it necessary to go into the other matters, whether those provisions are *ultra vires* or *intra vires*. So, it is not right that this House should be asked to decide a matter without even looking into those objections raised there. Let us be satisfied that the objections are invalid. So, my suggestion to the hon. Minister is this. We have got Saturday and Sunday.

The Select Committee can go through the whole matter and report to this House on Monday or Tuesday. There is an ordinance and Parliament has to pass it within six weeks. I think that is the proper course. Let it never be said by any person in this country that Parliament did not go into the various matters, but Members merely raised their hands. That is my fear.

Shri Datar: I suggest that the matter may be held over till Monday. In the meanwhile, we shall consider the scope of the present debate and also the suggestion that you have very kindly made.

Mr. Speaker: Why does he not agree informally?

Shri Datar: Informally I have no objection.

Mr. Speaker. The hon Minister will sit with those hon Members who are interested and go through every one of those provisions, as if a regular Select Committee is constituted. This matter will again come up on Tuesday. In the meanwhile, tomorrow and day after, the hon Minister will sit with all hon Members who want to be present and take interest in this matter and go through item after item to see what can be done.

Shri V. P. Nayar. There is a little difficulty. The hon Minister himself has said sometime ago that he does not have copies. Will he be able to give us copies? Secondly, I do not say that the Supreme Court will be bound to act according to our wishes here, but certainly the legislative intent will be made clear, in which case, without a formal Select Committee, it will not do justice, because we cannot produce the proceedings of the informal consultative committee to make it clear that the legislature intended to do this.

Mr. Speaker: There is no hurry. The hon. Minister says he will take some time. Let him consult the hon.

Home Minister also. Both of them may consider if a formal Select Committee will be advantageous.

Dr. Krishnaswami: How can the debate go on?

Shri Jogendra Sen: I have started my speech.

Mr. Speaker: The debate can go on whether we should validate those Acts or not.

Shri V. P. Nayar: When we get copies of the Acts, will we get some other chance to comment on the provisions by reading them out and saying that Parliament should not affix its seal on them? (Interruptions).

Mr. Speaker: The hon. Minister will look into the matter. Hon. Members will have an opportunity.

Shri Jogendra Sen: I want to place my point of view before the House and the hon. Minister. The hon. Minister remarked that the Supreme Court has only decided the case on a technical ground. But I would like to point out that this is not the only ground on which the Supreme Court has declared the H P Assembly invalid. Hon. Members have raised the objection as to copies of Acts not being with us. I would like to support that. I was just going to say that it is not possible for this House or any of us to validate anything which we have not seen. So far as I am concerned, I have seen only one Act which was challenged in the Supreme Court. Therefore, I was going to say that it is a very reasonable request by my hon. friend that we cannot ditto anything which we have not seen. That is a valid point. I have one thing to say before I say anything on the merits of the Bill which has been brought here to validate those enactments. If the House will bear with me for a short time I will give a brief background of this Bill, which is sought to be cloaked with the cloak of respectability.

The President of India gave his assent to a Bill called "Himachal Pradesh and Bilaspur (New State)

Bill" 1954, on 28th May, 1954, which was passed by Parliament on the 8th of May 1954. The words "New State" are very important and may please be carefully noted. With the passing of this Act, the old State of Himachal Pradesh, which the rulers and the people of Punjab Hills State had given birth to as far back as the 15th of April 1948, ceased to exist, and a new State came into being by the joining together of the two Part C States, one Himachal Pradesh and the other Bilaspur which I have the great privilege to represent in this august House along with a part of the former Mandi State. That Act also envisaged in the constitution of the new State a new Assembly consisting of 41 Members. The House will be surprised to learn, or perhaps not so surprised today as when the Bill was taken up three days ago, that that Legislature, which was to consist of 41 Members, had never met. I repeat that it never came into being, and finally on the 1st of November 1956 that very State was abolished and the Legislature with it.

Shri Braj Raj Singh: Death without birth?

Shri Jogendra Sen: Yes. This is a sad day which the people of Himachal Pradesh and other hill areas have never forgotten and will never forget. In fact, we have all been strongly determined ever since to dedicate ourselves to the formation of a new hill State as the 15th State of the Union of India. But that is a matter which I hope I shall have the opportunity to throw some light on at some other time.

I would humbly request the hon. Home Minister, who introduced this Bill the other day, to kindly withdraw it, and I will give the reasons why it should be withdrawn. If this Bill is withdrawn in this session, then separate Bill can always come up in the next session, and there will be plenty of time for all the hon. Members to get copies of the 37 enactments which naturally we all have to examine if we are to pass them.

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As I said before, the Legislature of the new Himachal Pradesh and Bilaspur was to consist of 41 Members. There is one point, which I do not think is so technical as it is being made out, which we all have to remember. In the old Himachal Pradesh Legislature, which died on the 1st of July 1954, there were 36 Members representing the people of Himachal Pradesh. But then they represented four districts and not the fifth district of Bilaspur, which was added much later. It was added by this very new Bill which the old Assembly had passed. The new Assembly had never met. These 36 Members, in my humble opinion, by no stretch of imagination, even if they had been duly summoned, which they were not—for 28 months they were not summoned,—could usurp to themselves the powers to legislate for one hundred thousand and odd people of Bilaspur, who were never part of Himachal Pradesh till Parliament passed the new State Act on the 8th of May 1954.

Pandit Thakur Das Bhargava: With your permission, may I put a question to the hon. Member to elicit information? When the Bill was passed, were there 41 Members including 5 Members from Bilaspur or only 36 Members?

Shri Jogendra Sen: I thought I made myself clear I am sorry. The new State came into being on the 1st of July 1954. The Government at that time was in such a great hurry that they could not wait for the election of the five new Members. Within a month or so, by August 1954, only 37 Members had been summoned by the Government, and, as the hon. Judges of the Supreme Court have said, they have summoned only those Members who were Members of the old Assembly. The five Members, who along with 36 Members would have constituted the Himachal Pradesh Assembly, had not yet been elected. In fact, no elections were held. It

was not till ten months later—to be exact, 13th May 1955 I think—that the five Members were elected and were summoned to take oath. But the tragedy of it is that they took oath as Members of the old Assembly, not as Members of the new Assembly.

The hon. Home Minister has already mentioned in reply to Pandit Thakur Das Bhargava that the Himachal Pradesh Abolition of Big Landed Estates and Land Reforms Act was passed in 1954 by that Assembly. That Assembly had ceased to exist, because 5 Members from Bilaspur were not there. It is not as if this is passed by the present Himachal Pradesh Assembly, which ceased to exist on the 1st of November 1956, and therefore, it is valid. Therefore, the people of that area, who had nothing to do with the passing of this Act, who were not part of Himachal Pradesh and who were not Members of that Assembly, could never tolerate this.

I would again like to submit that this Assembly was not properly constituted. As I said, there was no Assembly. The new Assembly was never called by the Governor. He had no intention to call it. If you look into the judgment of the Supreme Court, it is clear, as hon. Members will find out, what was the intention in the mind of the Lt Governor at that time. The intention was clear from the notification which called the session as "second session" of the Assembly. It could not be the second session of the new Assembly. It is very clear. The Members of Bilaspur were not present in the earlier session. The real session was called eight months later when all the Members were present. From the date of the first session till the 1st of November 1954, 37 Acts and other Bills were passed by an Assembly which had ceased to exist, as I said, from the 1st July 1954. In the face of this, I would humbly submit, I do not see how the Supreme Court has decided that it is only a technical objection.

If we read the judgment of the Supreme Court they have given further indication of their view on the contention of those who went before them to obtain justice that they felt that the old Assembly, which no longer existed, had passed Bills which were contrary to some of the provisions of the Constitution. They had also done something which they could not do. Therefore I for one fail to read in the judgment just a technical mistake.

14 hrs.

It would perhaps have been slightly different if the new Assembly of Himachal Pradesh had been duly constituted, this very Act had been passed by that Assembly and some flaw had been left in it. Then had the Government come to this House and said that this mistake has been discovered, that would have been nothing new. After all, Acts are held invalid by the High Courts and the Supreme Court often. So, had they come saying that that Act passed by that Assembly should now be validated or that a fresh Act be passed, that would have been something different. But a wholesale validation of Acts of which we did not have a list and which we did not know is a strange thing. I am coming from Himachal and I might know some of the Acts but there are 500 hon. Members here coming from all parts of India. I would be presumptuous if I thought that they were so interested in such a State territory as Himachal Pradesh that they know of all the Acts which were passed.

Then the strange thing is that when we asked for the Acts in the Library here, we found there were none. I have a lot to say, but in view of what you have suggested I would reserve my remarks when the Bill comes. I would just add my support—only if that support is necessary—for the proposal that this whole matter should be referred to a proper Select Committee where we may see which Acts should or should not be brought in

this Session and which perhaps could be left over like the challenged Act, to which I have moved an amendment also, for the next Session so that nothing is done in haste. Otherwise the respect which we all have—and rightly have—for the pronouncements of the highest judicial forum in the country is likely to be undermined. I do not say anything more but that it is likely to be misunderstood by the average man in the street because they would naturally think as to what is the use of going to the last refuge where justice can be obtained if the very next day, when we wake up next morning, an Ordinance is issued validating the Act.

About the validity also I would not like to say anything because it is a delicate matter. It is a moot point whether it is valid or invalid. I am not a lawyer and I leave it to the judgment of other hon. Members who are lawyers. But I want to say that the Bill, as it comes, is exactly in the form of an Ordinance. Therefore if the Ordinance is not passed then of course the Bill also would not be passed. It is very doubtful whether this House could pass it as it is. But that I would just say in passing.

I think it is very necessary that the challenged Act particularly and all other Acts and business transacted by an Assembly which was only in dream should be examined. They were discussing an Act which had also lapsed. A lapsed Act was no wonder to be discussed in an Assembly which was functioning as if in a dream. Therefore, I think it will be a great injustice to the people of Himachal Pradesh if they were to be treated so lightly that this august Parliament would not have the opportunity to examine each and every one of those Acts.

This is the only legislature we have till this Parliament is pleased to give us a legislature. This is the only legislature we have and therefore we

[Shri Jagendra Sen]

would like that hon. Members should look into this legislation. Then we would feel more satisfied.

An hon. Member said yesterday that the people of Himachal Pradesh wanted those Acts. They wanted what was done by the Assembly. They wanted that to be passed. I would, with due respect, say that that is not the view of the thousands and lakhs of people of Himachal Pradesh. If that was the view then they would not have gone to the Supreme Court. They would not have waited for three years to get justice which that Assembly did not give, which that Government did not give and which it did not give in spite of the fact that it was a Part C State. When that could have been remedied, it was not remedied. Therefore, now that we have the opportunity to have that Act and other Acts looked into, we should do that. Naturally, we do not want to be behind other States of India.

It is said that we are the spearhead and that we have passed a very modern piece of legislation. May be so, but legislation cannot be modern if it destroys one class and on the remains of that class raises another class. We are trying to equalise everything. We are trying to have a socialist pattern. I am for a socialist pattern. I am even more for socialist pattern but I do not want that socialist pattern to be built on the grave of other citizens. It is for this reason that I thought that it would have been quite natural that at least the challenged Act should be excluded from this Bill and all the other Acts could come. But now as I feel and as hon. Members feel that they want to look into the other Acts also, let us do that. I thank all the hon. Members, no matter from what side of the House they came, that they evinced great interest in this little mountain State where political rights have been taken away which, we hope, with God's grace will be restored one day.

Mr. Speaker: We will proceed to the other business. We will stop at this stage so far as this Bill is concerned.

Shri Hem Raj rose—

Shri Braj Raj Singh: He is also from Himachal Pradesh.

Shri Hem Raj (Kangra): I am not from Himachal Pradesh. I belong to the Mandi area.

Mr. Speaker: We will hear him on Monday.

Shri V. P. Nayar: We want to know whether the hon. Home Minister is accepting your suggestion or not.

Mr. Speaker: What is the meaning of forcing it like this?

Shri V. P. Nayar: Otherwise, we must take a chance and speak. Let him not think that we have nothing to contribute.

Mr. Speaker: Whatever time is left over will be utilised. The present state of affairs will not be disturbed. If I allow him to speak, I will allow him on that day. If he cannot speak then, he will not speak.

Shri V. P. Nayar: The Committee has fixed only three hours and it is not possible that by that time we will finish all the speeches unless you may be pleased to extend the time.

Mr. Speaker: Status quo at this minute.

Shri V. P. Nayar: Then I would like to speak.

Mr. Speaker: He may request that day.

Dr. Krishnaswami: He will report on Monday or Tuesday.

Mr. Speaker: That is all right. Hon. Members must know that the present situation will not be disturbed in any way to the prejudice of hon. Members. If there are only 15 minutes more, I

will conclude it in 15 minutes on that day if nothing happens in the meanwhile. If anything happens in the meanwhile, we will note that.

Shri V. P. Nayar: I must speak having regard to all these difficulties.

Mr. Speaker: This portion is excluded, i.e. whatever time is now not taken up.

14.08 hrs.

**ASSAM RIFLES (AMENDMENT)
BILL**

The Deputy Minister of External Affairs (Shrimati Lakshmi Menon):
Mr. Speaker, Sir, I beg to move:

"That the Bill further to amend the Assam Rifles Act, 1941, be taken into consideration."

In asking the House to take into consideration the Assam Rifles (Amendment) Bill, 1958, I would like to point out that it is not a major amendment at all. It is necessitated by the fact that the area where the Act was applicable has extended and the sphere of administration has extended. It is therefore, found necessary to enlarge the powers of the Assistant Commandant in order to meet the exigencies of changed conditions.

Clause (a) of sub-section (I) of section 8 of the Assam Rifles Act, 1941, confers on an Assistant Commandant of the Assam Rifles powers to award, without a formal trial, for commission of any petty offence against discipline to certain riflemen, imprisonment in the quarter guard or such other suitable place for a term not exceeding seven days. This power is not adequate for disposal of cases which are brought before an Assistant Commandant in charge of a Wing Headquarters.

In 1941, when the Assam Rifles Act was last amended and re-enacted

during the British regime, the major portion of the N.E.F.A. (North Eastern Frontier Agency) was unadministered and Assam Rifles outposts were normally located within a few days' march of road head or rail head in a belt of tribal territory rarely extending more than 50 miles from the plains. In other long administered areas, such as Manipur and the Mizo District, the same considerations applied as communications there were better. Now, however, due to the expansion of the administration, outposts and Wing Headquarters have had to move far into the interior right up to the Tibetan border and for some of them, such as, Along and Ziro, the normal line of communication is by airlift.

It is essential, therefore, that officers on the spot have adequate powers to deal with breaches of the Assam Rifles Act, otherwise they are faced with the problem of either awarding the man in question too light a punishment or of delaying the case indefinitely, while a man from a location such as Mechuka or Tuting marches some 20 days back to the air base and then awaits an airlift often again delayed due to uncertain weather, before he can reach his Battalion Headquarters where he will perhaps be awarded a summary punishment of 28 days rigorous imprisonment after a delay of several months. Apart from the time and Government money wasted in moving such a person about, the psychological effect of punishment is lost, if it is so long delayed. There is also the problem of witnesses, who, in many cases, would have to be moved similar long distances back to the Battalion headquarters. Tribal witnesses would often refuse to go so far out of their area. To meet the situation it is proposed to increase the necessary powers of the Assistant Commandants of the Assam Rifles to award similar punishment up to 28 days by amending the Assam Rifles Act, 1941 as provided for in this Bill. The object in empowering the Assistant Commandant to impose a punishment which