

श्री अभिमन्यु राय : हम समझते हैं, आप समझते नहीं हैं। How is all this related to the Bill? How is it allowed to go on?

श्री पा० ना० राजभोज : हम उपसभापति जी से बात कह रहे हैं, आप लोग ऐसा क्यों कर रहे हैं। यह ठीक नहीं है।

MR. DEPUTY CHAIRMAN: Mr. Rajabhoj, I have been telling you that you are irrelevant. What you are talking is irrelevant. If you have anything to say on the Bill, you can speak; otherwise you can close your remarks. Please sit down.

SHRI B. R. BHAGAT: Mr. Deputy Chairman, Sir, I am sorry the hon. Member has left. Perhaps he has not made the remarks seriously. He has charged me with speaking unpalatable and unreasonable words. I am not given to speak unpalatable words. I might explain to the hon. Member very briefly that the excesses that he meant are not the excesses that are meant here. I can assure him and the House that no wastage has occurred. What happens is that money is . . .

श्री जयराज राय काटू : (उत्तर प्रदेश) आप राजभोज जी को समझा नहीं हैं तो हिंदी में ही यह बता देंगे।

SHRI B. R. BHAGAT: The hon. Member was not present. I am replying to the Member who sits behind him, Mr. Saksena. The excesses are of this nature. Now, when the accounts are compiled it is found that something more has been spent. First, some more money goes out and the accounts are compiled a few months later. Then we find that some excess in expenditure has been incurred. Then the Public Accounts Committee looks into it and recommends to Parliament for regularising it, that is to say, any amount spent in addition to the amount voted by Parliament can only be regularised by Parliament. So, such excess does not mean any wastage here or any

excess in the usual sense. So, the hon. Member may rest assured that so far as Government is concerned, it takes care that money is spent fruitfully and very usefully and no money is wasted.

MR. DEPUTY CHAIRMAN: The question is:

"That the Bill to provide for the authorisation of appropriation of moneys out of the Consolidated Fund of India to meet the amounts spent in respect of the former Part C States of Delhi and Himachal Pradesh on certain services during the financial year ended on the 31st day of March, 1957, in excess of the amounts granted for those services and for that year by the Legislature of each of those States, as passed by the Lok Sabha, be taken into consideration."

The motion was adopted.

MR. DEPUTY CHAIRMAN: We shall now take up clause by clause consideration of the Bill.

Clauses 2 and 3 and the Schedule were added to the Bill.

Clause 1, the Enacting Formula and the Title were added to the Bill.

SHRI B. R. BHAGAT: I move:

"That the Bill be returned."

MR. DEPUTY CHAIRMAN: The question is:

"That the Bill be returned."

The motion was adopted.

3 P.M.

THE MISCELLANEOUS PERSONAL LAWS (EXTENSION) BILL, 1959

THE DEPUTY MINISTER OF LAW (SHRI R. M. HAJARNAVIS): Sir, I move:

"That the Bill to provide for the extension of certain personal laws

to parts of India in which they are not now in force, be taken into consideration."

SHRI AKBAR ALI KHAN (Andhra Pradesh): May I request the hon. Deputy Minister, through you, Sir, to come near the mike?

SHRI R. M. HAJARNAVIS (After moving nearer the mike): Sir, this Bill is a simple one and its aim is to unify the personal laws . . .

DR. R. B. GOUR (Andhra Pradesh): Why are you nervous?

SHRI R. M. HAJARNAVIS: Nervous, this is the first time that that adjective is used about me. Either there seems to be some defect with my hon. friend's eye or his impressions.

DR. R. B. GOUR: That is evident.

SHRI R. M. HAJARNAVIS: Sir, when the Part B States Act of 1951 was enacted, it omitted from the list of laws—which were applicable to the Part B States—the personal laws for two reasons. One was that time was necessary in order to ascertain what the personal laws were in each of the Part B States. As we are aware, most of the Part B States did not have many statutory provisions with respect to personal laws. Secondly, the Hindu law was being attempted to be codified for the rest of India. Therefore, when this law was on the anvil, the Part B States Act did not embrace these personal laws. What we are trying to do now is to extend the laws which are mentioned in the Schedule I to Part B States. These laws are:

The Convert's Marriage Dissolution Act, 1916,

The Anand Marriage Act, 1909,

The Hindu Disposition of Property Act, 1916.

The Hindu Inheritance (Removal of Disabilities) Act, 1928,

The Hindu Gains of Learning Act, 1930,

The Muslim Personal Law (Shariat) Application Act, 1937,

The Dissolution of Muslim Marriages Act, 1939.

We attempt to do this by omitting the words "except the territories which immediately before the 1st November, 1956, were comprised in Part B States", and substituting in their place the phrase "except in the State of Jammu and Kashmir and the Union Territory of Manipur." So these laws will now extend to the whole of India.

SHRI ABHIMANYU RATH (Orissa): Including the State of Jammu and Kashmir?

SHRI R. M. HAJARNAVIS: No, except the State of Jammu and Kashmir. And then there were some corresponding Acts which were in force in those territories. We are trying to displace those laws, because the laws there will be brought into line with the law which obtains in the rest of India. This, Sir, is the Bill. I move.

MR. DEPUTY CHAIRMAN: Motion moved:

"That the Bill to provide for the extension of certain personal laws to parts of India in which they are not now in force, be taken into consideration."

SHRI H. P. SAKSENA (Uttar Pradesh): Mr. Deputy Chairman, I would like to request the Law Minister to clarify the legal position in this respect once and for all. What is it that we read in the newspapers? We read that the entire mechanism of the administration of India has been adopted by the State of Jammu and Kashmir or rather that it has been voluntarily adopted by them and so it seems there is no necessity for making any exception with regard to that State. Yet matters relating to the exception of that State come to us in

[Shri H. P. Saksena.]

the form of this unsavoury expression which finds a place in the Bill, that it will apply to the whole of India except the State of Jammu and Kashmir. So I would like the hon. Law Minister to make the position very clear so that a common individual like myself will be able to understand the exact position where we stand. So far as our relationship with the State of Jammu and Kashmir is concerned, I am not unaware of the position that the State of Jammu and Kashmir occupied when we were framing the Constitution and I am aware and am very conscious of that section or article 370 of the Constitution, which says certain things. But that stage is over now and on many occasions we have read it in the press that the State of Jammu and Kashmir has accepted the jurisdiction of the Election Commission in that State and so many other things. So why this exception here which seems to have become a perennial one, I would like to know. I could have found no better spokesman of the Government than the hon. Law Minister to explain the position very clearly and to satisfy me on that score.

SHRI AMOLAKH CHAND (Uttar Pradesh): Mr. Deputy Chairman, I would like to understand from the hon. Deputy Minister the position regarding the Converts' Marriage Dissolution Act, 1866, which is Act 21 of 1866 and also the other Acts, Act 7 of 1909 and Act 8 of 1939. I would like to know when they were extended to Part B States and what the position regarding them about the State of Jammu and Kashmir and the Union Territory of Manipur was. You will find in Schedule I that regarding the Converts' Marriage Dissolution Act, 1866, it is stated there:

"Substitute 'except the State of Jammu and Kashmir and the Union territory of Manipur'."

I do not know why in the other Acts mentioned here, they want to substi-

tute only the words "except the State of Jammu and Kashmir". In three Acts you will find another formula used. For instance, in the Hindu Disposition of Property Act, 1916 they say that it shall extend to the whole of India except the State of Jammu and Kashmir. I do not know whether the Hindu Disposition of Property Act was not enforceable in the whole of India and I do not know the State to which they refer. It is rather misleading. There it is stated:

"It extends to the whole of India except the State of Jammu and Kashmir."

Again, you will find in respect of the Hindu Inheritance (Removal of Disabilities) Act, 1928, there is no reference to Manipur. So, I would like to understand from the Deputy Minister of Law why distinctions are being made like this regarding Manipur.

Then in Schedule II I find a number of Acts mentioned like The Anand Marriage Act, The Madhya Bharat Dissolution of Muslim Marriages Act, The Saurashtra Dissolution of Muslim Marriages Act and the like. What is their force at present and what is going to be the effect of this amending measure?

These points may please be clarified.

श्री निरंजन सिंह (मध्य प्रदेश): मैं जो बातें कहना चाहता था उनमें से कुछ तो मेरे पूर्वक्ताओं ने कह दीं लेकिन असल बात यह है कि जहाँ तक सोशल लेजिस्लेशन का सवाल है, वहाँ पर जम्मू और काश्मीर में और रेस्ट आफ इंडिया में डिफरेंशियेट करना अनुचित सा मालूम पड़ता है। हो सकता है दूसरी चीजों में, जैसे पोलिटिकल लेजिस्लेशन है, उनमें यह जरूरी हो तो मैं मान सकता हूँ। उदाहरण के लिये, यदि आप देखें तो देश के अंदर कई लेजिस्लेशन हैं, जैसे मैरिज के ही संबंध में आनंद मैरिज ऐक्ट है, हिन्दू गैस आफ लनिंग ऐक्ट है, हिन्दू

डिस्ट्रिक्ट ऑफ प्रायर्टी ऐक्ट है और मुसलमानों में मुसलिम शरीयत ला है, डिस्ट्रिक्ट ऑफ मुसलिम मैरिज ऐक्ट है, तो क्या काश्मीर के हिन्दुओं में और रेस्ट ऑफ इंडिया के हिन्दुओं में कुछ फर्क है। क्या उनके यहां शादियां दूसरी तरह से होती हैं, उनके यहां इंटरटेन दूसरी तरह से होता है। यदि आप समझते हैं कि यहां में और जम्मू और काश्मीर में इन सब चीजों के बारे में फर्क है तो मैं मान सकता हूं। हो सकता है कहीं पर फॉर्मेज के द्वारा इंटरटेन चलता है, यदि इस तरह का जहां झगड़ा हो, पेवोडा सवान हो तो वहां यह लाइओ, हमें ऐतराज नहीं है। लेकिन जहां सारे हिन्दुस्तान के अंदर हिन्दुओं का एक सा इंटरटेन ला हो, एक सा गवर्न होता हो वहां कौन सी कठिनाई सामने आती है। इसी तरह से जहां तक पूरे हिन्दुस्तान के मुसलमानों का संबंध है, चाहे वे काश्मीर के हों चाहे देश के किसी दूसरे पार्ट के हों, उनका जो शरीयत का कानून होगा वह सभी जगह के लिये लागू होगा। तो फिर यहां पर भी जम्मू और काश्मीर क्यों न लगाया जाय, जम्मू और काश्मीर के भीतर भी जो हिन्दू ला हो या मुसलिम ला हो उसको इसमें क्यों नहीं लाया जाता ? यह मेरी समझ में नहीं आता कि हम दोनों के, बीच में क्या फर्क है। आखिरकार अगर उनका अलग ऐक्ट बनता है तो यह स्थिति क्यों रहने दी जाय जिससे अलग से उनका समय बर्बाद हो।

तो मेरा यह कहना है कि जहां पर यह एक्सेप्शन किया है . . .

SHRI ABHIMANYU RATH: There are 395 articles in the Constitution and only one article, that is to say, article 81, has got jurisdiction over the State of Jammu and Kashmir. The other articles have no jurisdiction over that State which has its own flag. दो निशान, दो विधान, दो प्रधान ।

श्री पा० ना० राजभोज (मुम्बई): आपस आपस में बात चलने लगी क्या ?

श्री निरंजन सिंह: मुझे तो यह कहना है कि जहां पर सोशल रिलेशंस का सवाल आता है वहां वह हिन्दुस्तान का ही पार्ट एंड पारसज है। मैं यह बात मानता कि वहां दो निशान हैं, दो प्राइममिनिस्टर हैं, हमें इससे कोई ऐतराज नहीं है, यद्यपि बुरा लगता है लेकिन यह बात कांस्टिट्यूशन में है। लेकिन इस तरह से लेजिस्लेशन के लिए तो कांस्टिट्यूशन में कोई बंधन नहीं है। आपके विधान में यह कभी नहीं कहा गया है कि वहां का हिन्दू हिन्दू नहीं कहलायेगा वहां का मुसलमान मुसलमान नहीं कहलायेगा और यहां का हिन्दू हिन्दू कहलायेगा और यहां का मुसलमान मुसलमान कहलायेगा। तो इस तरह के जो सोशल लेजिस्लेशन हैं वे वहां पर लागू होने चाहिये। पहले काश्मीर जाने के लिए परमिट सिस्टम था वह आपने हटा दिया है। जिस तरह से यहां का एक निवासी एक प्रान्त से दूसरे प्रान्त में जा सकता है, मद्रास ट्रावनकोर या दूसरे प्रान्तों में जा सकता है, उसी तरह से वह अब जम्मू काश्मीर में भी बिना किसी रुकावट के जा सकता है। यहां पर भी जो सिस्टम है उनको यदि आप देखें तो उनमें ही हिन्दू ऐक्ट के अनुसार बहुत ज्यादा डिफरेंशियेशन होता है कहीं मिताक्षरा होता है, दूसरे हों हैं। इसी तरह से महाराष्ट्र के इन्टैरिटेन्स ऐक्ट में और यू० पी० के इन्टैरिटेन्स ऐक्ट में फर्क है। इस तरह की जो चीजें हैं वे बहुत पुरानी हैं, इन्हें आपको छोड़ देना चाहिये लेकिन आज भी परम्परा हम बना रहे हैं उसमें इस तरह का जम्मू काश्मीर के लिये मतभेद करना आजकल की हालत में जबकि वह हिन्दुस्तान का एक पार्ट है उचित मालूम नहीं देता है। उपतभापति महोदय, माननीय मंत्री श्री इस चीज पर ज्यादा प्रकाश डालेंगे और यदि हां सकता है तो गवर्नमेंट को एडवाइज करेंगे जिससे यह चीज इनकारपोरेट हो सके।

DR. R. B. GOUR: Mr. Deputy Chairman, Sir, I do not think there is generally anything very controversial about this Bill. But I should like to say one thing to seek information about it from the hon. Minister. I should like to know whether similar legislation exists in Jammu and Kashmir locally. As for example, in the old Hyderabad State there was a certain law about the Hindu Gains of Learning or Muslim Wakfs. Now, it is only those laws that you are repealing and making all-India laws applicable to these States. I want to know whether there is a similar law locally applicable to Jammu and Kashmir. If Jammu and Kashmir does not have these laws, in such circumstances at least we can approach them and persuade them to allow such Indian laws to be extended to the territory of Jammu and Kashmir whose equivalent do not exist in that territory. That is, I think, a very reasonable demand on our part. I would like to know from the hon. Minister if the laws mentioned in Schedule I are obtaining in Jammu and Kashmir. If not, they should be legislated.

Secondly, as I understand from my experience in Hyderabad, all the laws that were prevalent in the old Hyderabad State were *ipso facto* Urdu translations of the English laws passed by the all-India Legislature. For example, the Hindu Gains of Learning Act of 1930 is, more or less, a translation. Of course, a number of sections may be different and all that. But there are also cases where in certain respects either the all-India Act was superior or the State Act was superior. I should like to know from the hon. Minister whether the matter has been examined from that angle. If particular sections or provisions of the State Act, that are sought to be repealed now, were superior, damage would not be done to these superior provisions. In fact, you have already provided that they would not be nullified with retrospective effect. But have you taken care to

see that those provisions which are decidedly superior to the provisions of the Central Act are not repealed. There are many Acts. For example, there is the Act governing the Endowments in Hyderabad. It is not related to this Bill, but I am giving this just for example. The Endowments regulation, which is applicable to the Telengana part of Andhra Pradesh, is it very superior legislation? I should like to know whether this point has been examined because we do not have with us the Acts that are being repealed or the Acts that are being enforced in those areas. I would, therefore, like to know from the hon. Minister at this stage whether this precaution has been taken.

SHRI J. S. BISHT (Uttar Pradesh): Mr. Deputy Chairman, Sir, there seems to be some misunderstanding about the application of the Bill to Jammu and Kashmir. Some hon. Members raised certain points with regard to that. My friend, Mr. H. P. Saksena, said that this was a sort of a perennial formula that is being repeated in all these Bills and he wanted to know when we could expect uniformity. The same point was raised by another hon. Member. Sir, I might here repeat a little history of Jammu and Kashmir.

The Maharaja of Jammu and Kashmir acceded to India only on certain specified subjects. It is not like other States. The Constituent Assembly of Kashmir later on acceded to certain other points. That was the understanding.

SHRI H. P. SAKSENA: If the hon. Member recalls the old history, I shall be compelled to relate the modern history.

DR. R. B. GOUR: If you do not mind, kindly allow me an interruption. The point is that it was definitely told to this House by the Government of India that in these matters and similar matters they will negotiate with the Kashmir Government, and

on the basis of negotiated understanding, laws could be extended to Jammu and Kashmir. So, provisions can be extended. We are extending so many things. The Census Act was extended to Jammu and Kashmir. Therefore, I do not think if the Constitution bars that extension.

SHRI J. S. BISHT: What we are concerned with here is the constitutionality of the whole thing. How can Government bring in a Bill which is not warranted by the Constitution? I will read out article 246 in Chapter I, Part XI, of the Constitution which relates to Legislative Relations. It says:

"(1) Notwithstanding anything in clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (in this Constitution referred to as the 'Union List')."

Sub-clause (2) relates to the Concurrent List. Sub-clause (3) relates to List II which is the State List.

The footnote to article 246 further says:

"In its application to the State of Jammu and Kashmir in article 246, the words, brackets and figures "Notwithstanding anything in clauses (2) and (3)" occurring in clause (1), and clauses (2), (3) and (4) shall be omitted."

So, article 246, so far as the State of Jammu and Kashmir is concerned, means only one clause. Clauses (2), (3) and (4) are omitted. Only clause (1) says:

"... Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (in this Constitution referred to as the 'Union List')."

Parliament has no power to make laws regarding Lists II and III. The other things are completely omitted. In so

far as the State of Jammu and Kashmir is concerned, it is not within the competence of the Ministry of Law to bring forward such a Bill at all.

DR. R. B. GOUR: I do not think the Law Minister will say that. I would like to know how the Census Act has been extended to Jammu and Kashmir.

SHRI R. M. HAJARNAVIS: Sir, my task has been made considerably easy by my friend, Mr. Bisht, and I do not think I can improve upon his statement of law except that I might, again, read article 370 with which Mr. Saksena said he had acquaintance. I shall read article 370(1)(b):

"the power of Parliament to make laws for the said State shall be limited to—

(i) those matters in the Union List and the Concurrent List which, in consultation with the Government of the State, are declared by the President to correspond to matters specified in the Instrument of Accession governing the accession of the State to the Dominion of India as the matters with respect to which the Dominion Legislature may make laws for that State; and

(ii) such other matters in the said Lists as, with the concurrence of the Government of the State the President may by order specify."

Therefore, we have limited power, and so long as article 246 stands in its present form and so long as article 370 is not expanded to include more powers, well, I am not answerable as to why we are not bringing forward measures which we have no power to pass. As far as the actual state of the law is concerned . . .

DR. R. B. GOUR: May I know how the Indian Census Act was made applicable to Jammu and Kashmir?

SHRI R. M. HAJARNAVIS: It is in the List.

SHRI J. S. BISHT: List I.

SHRI R. M. HAJARNAVIS: So far as the Hindu Code is concerned, I am informed that the Jammu and Kashmir State has a law which is almost the same as our own.

SHRI H. P. SAKSENA: May I know how the jurisdiction of the Election Commission was adopted by the Jammu and Kashmir Government?

MR. DEPUTY CHAIRMAN: That is also in the List.

SHRI R. M. HAJARNAVIS: As regards the information which was sought by my friend, Mr. Amolakh Chand, the Converts' Marriage Dissolution Act, 1866, was not applied to the State of Manipur under the Union Territories (Laws) Act, 1950. If he goes through the Schedule, part (a) item (i) of that Act, it says that the Converts' Marriage Dissolution Act, 1866, has not been extended to Manipur, nor does that State now want that Act to be extended to it. Therefore, it has been excluded. The remaining Acts extend to the whole of India except the State of Jammu and Kashmir. So far as their application is concerned, there has been no objection raised in the House, and I therefore commend my motion for the acceptance of the House.

DR. R. B. GOUR: What about my point? I asked you . . .

SHRI R. M. HAJARNAVIS: Did the hon. Member make any point?

DR. R. B. GOUR: That thing is good in the lobby, not in the House. I asked whether he has examined this point: Are there any superior provisions in the State laws that are sought to be repealed now?

SHRI R. M. HAJARNAVIS: We have examined all the State Acts, which we are trying to repeal, very

carefully, and we do not think that there is any provision occurring in any of the State Acts which should be extended to the rest of the country.

SHRI AMOLAKH CHAND: What about the exclusion of Manipur?

MR. DEPUTY CHAIRMAN: He answered that. Probably you were not here. The question is:

"That the Bill to provide for the extension of certain personal laws to parts of India in which they are not now in force, be taken into consideration."

The motion was adopted.

MR. DEPUTY CHAIRMAN: We shall now take up clause by clause consideration of the Bill.

Clauses 2 to 4, the First Schedule and the Second Schedule were added to the Bill.

Clause 1, the Enacting Formula and the Title were added to the Bill.

SHRI R. M. HAJARNAVIS: Sir, I beg to move:

"That the Bill be passed."

Sir, I would remind the House that this is another step in accordance with the direction contained in article 44 which requires the Government to formulate one uniform code for the whole of the country.

MR. DEPUTY CHAIRMAN: The question is:

"That the Bill be passed."

The motion was adopted.

MR. DEPUTY CHAIRMAN: We have no other business before the House now. The House stands adjourned till 11 A.M. tomorrow.

The House then adjourned at twenty-five minutes past three of the clock till eleven of the clock on Tuesday, the 8th September 1959.