

**THE HIMACHAL PRADESH LEGISLATIVE ASSEMBLY (CONSTITUTION AND PROCEEDINGS) VALIDATION BILL, 1958**

THE MINISTER OF STATE IN THE MINISTRY OF HOME AFFAIRS (SHRI B. N. DATAR): Mr. Vice-Chairman, I move:

"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, as passed by the Lok Sabha, be taken into consideration."

This Bill has been necessitated, as you are aware, by a recent decision of the Supreme Court in a case known as Vinod Kumar Vs. the State of Himachal Pradesh. In order to appreciate that decision, it is necessary to state a few facts. You are aware, Sir, that under the Constitution, there was a scheme under which we had Part C States in certain parts of India. So far as this area is concerned, we had a Part C State known as Himachal Pradesh and there was also a small Part C State known as Bilaspur. Both of them functioned as Part C States for some time and then in the year 1951 the then Provisional Parliament passed an Act known as the Part C States Act of 1951. According to this Act what was done was that in certain areas like Himachal Pradesh and others, a Legislative Assembly was formed and with it naturally a Ministry or a Cabinet also was formed, and Himachal Pradesh was one of those Part C States for which a Legislative Assembly was provided for and duly formed. So far as Bilaspur Part C State was concerned, it continued as it was under the direct control and supervision of the Government of India. Then subsequently, Sir, round about 1954 it was considered advisable to have a merger of the Bilaspur State and the Himachal Pradesh areas so as to form the new Himachal Pradesh under an Act passed by Parliament known as the

Himachal Pradesh and Bilaspur (New State) Act, 1954. This Act was passed by Parliament, I believe, on 8th May 1954, and subsequently the Act was brought into force on 1st July 1954. The provisions in this particular Act may kindly be noted, Sir. As I have stated, in respect of the former Himachal Pradesh there was Legislative Assembly consisting of 36 Members. Now under this Act of 1954, which was passed by Parliament, it was stated specifically that all the 36 Members from the Himachal Pradesh area should be deemed as having become Members of the Legislative Assembly of the new State of Himachal Pradesh comprising also the Bilaspur area. In respect of the representation of the Bilaspur area it was provided in the Act that there should be 5 more seats and elections should be held so far as this Bilaspur area forming a part of the New Himachal Pradesh Part C State was concerned. Now, Sir, this was the position. There was unfortunately a feeling entertained in certain quarters that the original Legislative Assembly of the former Himachal Pradesh continued. The Lieutenant-Governor there, Sir, held the view—which is now found to be wrong—that it was the original Legislative Assembly that was continued. In fact, Sir, the title of the Act is clear; it says: "The Himachal Pradesh and Bilaspur (New State) Act, 1954." Whatever it is, Sir, unfortunately what happened was that the Lieutenant-Governor issued a Notice on 7th July 1954. As I have pointed out, Sir, this Himachal Pradesh and Bilaspur (New State) Act, 1954, was passed on 8th May 1954 and came into force on 1-7-1954 so that, Sir, according to the strict terminology of this Act the former two States ceased to be separate States and they formed a new State, and for the new State the old Legislative Assembly could not continue. The Lieutenant-Governor, however, believed, Sir, that the old Legislative Assembly could continue. So working under this impression, which was naturally erroneous, he called for a

second session of the Legislative Assembly. That is what he did. As I have pointed out, Sir, on 1st July 1954 the new Act came into force and the new State was formed. Under these circumstances the proper and the valid course would have been a Notification issued under section 73 of the Representation of the People Act. Now, when the New State of Himachal Pradesh consisting of the former Himachal Pradesh area and the Bilaspur area was formed, for the valid constitution of a Legislative Assembly for the New State, what was required, Sir, was a Notification under section 74 of the Representation of the People Act. Unfortunately, Sir, that Notification was not issued, and the then Lieutenant-Governor thought that after the first session of the Himachal Pradesh Assembly, a second session could be called. That is what he did, Sir and on 7th July 1954 he issued a Notice to the Members of the Legislative Assembly to assemble and to have a second session from 16th August 1954. This is how, Sir, the erroneous position arose, I mean, on account of the notice issued by the Lieutenant-Governor to the Members of the former Legislative Assembly of Himachal Pradesh. Now what happened was, as a result of thus convening a second session of the Himachal Pradesh Legislative Assembly, a lot of legislative work was done, and in respect of that, Sir, one Bill which was passed by that Assembly and since became an Act has to be taken into account. That Act was called the Himachal Pradesh Abolition of Big Landed Estates and Land Reforms Act, 1954. Now this particular Bill had been introduced validly in the first Assembly of Himachal Pradesh and then, afterwards, it was passed into law by a body which purported to be the Legislative Assembly for the New State of Himachal Pradesh. In addition to this a number of other Acts were passed—they are more than 30. Now, Sir, it was a mistake, which has to be admitted. Now that mistake lay in the fact that the second session of the

old Legislative Assembly was called. It could not be a second session of the Legislative Assembly because by the passing by Parliament of the Act of 1954, the Legislative Assembly of the former Himachal Pradesh ceased to function. Now one more thing ought to have been done and that was the issue of a Notification. After the issue of the Notification, then naturally it would have been valid to have a Legislative Assembly for the New State for the time being consisting of the 36 Members of the former Legislative Assembly who, according to this law, continued to be valid Members. There was another thing which had to be done, which was subsequently done. It was, Sir, the holding of elections in respect of the five seats for the Bilaspur area. That had not been done.

SHRI V. K. DHAGE (Bombay): Five seats.

SHRI B. N. DATAR: Yes, five seats in addition for the new Legislative Assembly. The 36 Members for the old Himachal Pradesh Legislative Assembly, under the new Act, were deemed to be Members of the new Legislative Assembly of the new State. About that there was no difficulty at all because automatically they became, but what was necessary was that a Notification ought to have been issued that the new Legislative Assembly has been formed. That was not done; that was an omission which has created this trouble.

SHRI V. K. DHAGE: May I just interrupt the hon. Minister? While the Act said that the 36 Members of the old Himachal Pradesh State Legislative Assembly will continue to be Members of the new State, that merely meant that there shall be no new elections but that they were required after the formation of the new State, to take the oath that was prescribed in the Constitution. Without the taking of the oath they could not be considered as Members of the new Assembly.

**SHRI B. N. DATAR:** I have not disputed the position that the hon. Member has stated. In fact I was going to state the same thing. Now what I stated was this, that they would automatically become Members of the new Legislative Assembly had a Notification been issued and had certain further formalities been gone through. Now that was not done, Sir. And secondly, Sir, it has no bearing on the constitutional question that has now arisen that no elections were held for the remaining five seats. But in regard to that question, Sir, at best, it can be an irregularity and not any kind of illegality. As you are aware, Sir, as a matter of fact, what was done was this. This Assembly which purported to be the Legislative Assembly was called. From 16th August, 1954 onwards it had a number of sessions, and it continued to function till 1st November, 1956. As you are aware, Sir, on 1st November, 1956, the States Reorganisation Act came into being, and from that time onwards, naturally, the Part C States Act ceased to have any effect, and when it ceased to have any effect, there were no Part C States, much less any Legislature. And during the period when it met, automatically a number of Acts were passed; there were more than 30 Acts. Now, Sir, the real difficulty arose only when the Supreme Court gave its decision. Of course, actually, Sir, the Abolition of Landed Estates and Reforms Bill had been passed, and it received the assent of the President. There was no difficulty at all. But then it was a very progressive piece of legislation, dealing with land reforms. And naturally, Sir, some classes of people were affected, and some of them raised the matter before the Supreme Court of India. Their contention was entirely with regard to the principle involved in that particular Act. But naturally what the Supreme Court decided has affected certain other Acts also. It decided that that particular Act was *ultra vires*, because the Legislative

Assembly had not been properly formed. That was point number one. There were only two points raised by the petitioners. One of their points was that that particular Act was void because it was not passed by a duly constituted Legislature. Their second point was that in any event the provisions of Chapters III and VIII were repugnant to the Constitution. Now, Sir, so far as the other question is concerned, the Supreme Court did not go into that at all, for the simple reason that it had decided the first question in favour of the petitioners and against the Himachal Pradesh State. The Supreme Court went into the whole question and found that the contention of the petitioners was valid because no new Legislative Assembly had been validly formed. There had been no Notification issued to that effect and therefore, Sir, the Supreme Court held that that particular Act was void, because it had not been passed by a validly constituted Legislature. Now, Sir, that decision was given by the Supreme Court on the 10th October, 1958.

**SHRI H. P. SAKSENA** (Uttar Pradesh): Presided over by the Chief Justice himself.

**SHRI B. N. DATAR:** Now, Sir, all the Judges of the Supreme Court are entitled to reverence from us; they are all on the same footing.

Anyway, Sir, I was pointing out that that particular Act was a very important Act, because a number of other Bills had been passed and action had been taken on the basis of that particular Act by the State Legislature, and more so, by the State Government also. And the result was that all the Acts that were passed, or I might add, that were purported to have been passed by this body that called itself the Legislative Assembly of Himachal Pradesh, all of them, were equally vitiated by the serious objection upheld by the Supreme Court of India. Therefore, Sir, that

created not only an anomalous position, but also an embarrassing position, because as a result of the passage of all these Acts, under a *bona fide* belief, the Government acted upon them, gave effect to them and spent a lot of money over certain matters for the implementation of those Acts. Now all this was done under a *bona fide* belief that the body was competent to have passed such Acts. Sir, we know that Parliament then was not in session. Therefore the President had to issue an ordinance, and that ordinance was issued for the purpose of laying it down that the whole thing had to be considered as valid. And immediately after Parliament met, Sir, this Bill was introduced in the other House. The other House has passed this Bill, and now I am requesting the hon. Members of this House to do likewise.

May I briefly, Sir, refer to . . .

THE VICE-CHAIRMAN (SHRI P. N. SAPRU): We have only one hour for this Bill.

SHRI ANAND CHAND (Himachal Pradesh): Sir, may I make one submission, This is a very important piece of legislation. It involves certain constitutional points. I believe in the Lok Sabha it was discussed off and on for four days. Now, Sir, it is true that the Business Advisory Committee has allotted only one hour, but then, if the hon. Minister takes 25 minutes out of that one hour, what are we going to do? After all, Sir, we have some contribution to make also.

SHRI B. N. DATAR: I merely explained the position so as to lighten the task of the hon. Members here.

Well, Sir, it is not for me to go further into this question. But a point was made whether Parliament could validate all the Acts of a body which purported to be the Legislative Assembly of Himachal Pradesh. Now, Sir, Parliament has certainly got

supreme powers. In the Part C States Act, as you might have seen, there was a provision according to which Parliament's authority was not abrogated at all. Residuary powers were there, Now, Sir, in view of this constitutional difficulty that has arisen, all that we are requesting this House to do is to validate that particular body, only so far as the objection that has been raised by the Supreme Court is concerned. Now the Supreme Court has not gone into the other question. Therefore it is not necessary at this stage to go into the other question. In order to validate the whole procedure it became necessary to issue an ordinance. And now it has become necessary to bring forward this Bill for the consideration of the hon. Members of this House.

THE VICE-CHAIRMAN (SHRI P. N. SAPRU): Motion moved:

"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, as passed by the Lok Sabha, be taken into consideration."

There is an amendment by Shri Anand Chand for reference of the Bill to a Select Committee. He may move it without making the speech just now.

SHRI ANAND CHAND: Mr. Vice-Chairman, I beg to move:

"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 referred to a Select Committee of the Rajya Sabha consisting of the following Members, namely:

Shri V. K. Dhage  
Shri Bhupesh Gupta  
Shri P. C. Bhanj Deo  
Shri H. D. Rajah

[Shri Anand Chand.]

Shri Faridul Haq Ansari

Shri Rohit M. Dave, and

Shri Anand Chand (Mover)

with instructions to report by the  
22nd day of December, 1958."

THE VICE-CHAIRMAN (SHRI P. N. SAPRU): The motion and the amendment are open for discussion.

SHRI BHUPESH GUPTA (West Bengal): Sir, I want to ask a question. The hon. Minister has just now revealed that a serious error in law and Constitution took place. Whether we are validating it is a different matter. Naturally we are entitled to know from the Minister as to whether the Government of India made proper enquiries as to how such a serious error could occur with the Lt. Governor, the Advisers, Chief Secretary and so on and the whole hierarchy there. Who was responsible for it, we would like to know. This is very relevant. The whole thing, the Legislature did not exist in law, in the Constitution. Yet it passed measures, good measures some of them are and I am not contesting them. But how is it that an executive was in existence—the Lt. Governor whoever was there, the Secretary was there and even then such a grave error in law and Constitution not only did take place but was allowed to continue for some time. Whether an enquiry was held and the person responsible for this serious impermissible oversight had been called to account and book—this is what I would like to know from the hon. Minister.

SHRI B. N. DATAR: May I answer this?

THE VICE-CHAIRMAN (SHRI P. N. SAPRU): You may answer it later on.

Mr. Gupta's was a speech, not a question.

SHRI ANAND CHAND: Sir, I have listened with close attention to what the Minister has said about this mo-

tion. I will try very briefly to state the position because it is slightly different from what he has stated. In 1954 it is true that the House of the People and this august House passed an Act called the Himachal Pradesh and Bilaspur (New State) Act by which the two Part C States of Himachal Pradesh and Bilaspur were united and a new State was formed although the name of the new State was also Himachal Pradesh. Now this new State was formed under article 3 of the Constitution which provides for a new State being formed by uniting two or more States. But what has happened really is that it was not taken note of by the authorities here in Delhi, I might respectfully submit, not even by the Home Ministry, because even today the Minister, in making his opening remarks, has used the word 'merger'. That was at the back of the Home Ministry's mind even in 1954 when the Bill was drawn up. That is what gives a different colouring to the whole constitutional process because what they visualised was the merger of the State of Bilaspur into the Himachal Pradesh State. Under the Constitution there is no phraseology as merger. You yourself know the Constitution far more than I do, but there is none. There is the question of forming of new States, there is the question of forming them either by uniting two States or attaching the territory of one State to that of another but the word 'merger' was not there. But they understood it in the old terminology which had gone. Before the passing of the Constitution there was the merger of Indian States into Provinces but that was before the Constitution was passed by the Constituent Assembly and brought into effect in 1950. So the mistake really arose from there. Acting on the same basis, that it was a merger of Bilaspur and Himachal Pradesh, the Lt. Governor issued a notification for the conveying of the Legislature and when this Legislature was convened, of course the elections from the Bilaspur area had never been held. They were

allotted 5 seats under the Himachal Pradesh and Bilaspur (New State) Act. Bilaspur was to have 5 seats. The 36 existing Members of the old Himachal Pradesh Assembly were deemed by a legal fiction to have become the members of the New State Legislature. But their number was to be confined to 36. It was not a question of vacancies as the Minister has pointed out that if there is a vacancy in a Legislature it is competent to enact legislation notwithstanding that vacancy and the enactments of the Legislature are not invalidated on account of the vacancy. The Legislature was to consist of 41 people. These 36 people of the old Himachal Pradesh Assembly, by a fiction of law, were deemed to have been elected as 36 out of 41 and the election of the rest, of five Members, had not been held when he issued the notification and convened the old Assembly of 36 people, naming it as the Second Session but in reality it was the first session of the Assembly purported to be of the New State. Now no oath was taken and no election of the Speaker was held, which was natural. The Parliament in 1953, formed a new State of Andhra Pradesh. Certain territories were transferred from Madras. What happened there in the Andhra Legislative Assembly? There in the first session of the Andhra Assembly, oaths were taken and then the election of the Speaker and others followed. Therefore from the beginning the idea was that it was not a new State. Their understanding was that—not only in the mind of the Lt. Governor but in the mind—I respectfully submit—of even the Ministry of Home Affairs at the Centre. After this was done, another thing I will try to put before the House is that it was not a question of any misunderstanding by any means. What was the first action which this so-called Legislative Assembly took in this very first Session that it had. It is there as second in the list as placed on the Table of the Lok Sabha by the Minister and it is called the Himachal

Pradesh (Merged State) Application of Laws Act, 1954. This was the second piece of legislation which this Assembly of 36 people passed in this so-called Second Session of the Legislature and what was the heading? It was the Himachal Pradesh (Merged State) Application of Laws Act, 1954. What does it define? In the first section, in sub-section 2, it says that it extends to the merged State of Bilaspur. Therefore it was not something which had come out of nothing. I submit that it was not just a kind of error or an error in good faith on the part of the Home Ministry there. It was something which was misunderstood from the very beginning in the highest quarters. Therefore the whole crop of illegalities came up. Now the position is that this Legislative Assembly has been declared to be, if I might respectfully point out, a mere body of men without any constitutional propriety or sanction by the Supreme Court, the highest Court in the country and of course that judgment invalidates whatever laws have been passed during that particular period by that so-called Legislative Assembly and also it invalidates other things, most probably the salaries which these persons drew as Members of this body, the Resolutions that they passed etc. Now there is no doubt that the Government as such has come to difficulties and has therefore brought this validation Bill. Now a lot of discussion took place about it in the Lok Sabha. I too have tried to read the parts of the Constitution which deal with it. To my mind the question is, the first question about constitutional propriety is; Is the Parliament as such competent to pass this law?

THE VICE-CHAIRMAN (SHRI P. N. SAPRU): Why not?

SHRI ANAND CHAND: I will come to that. To my mind, as far as I understand it—my knowledge of law is very limited—the power to enact retrospective legislation as we are

[Shri Anand Chand.]

doing now presupposes to my mind two things. One is that we can make a similar provision today. If we are passing something we can make a similar provision today and secondly that our powers are so plenary that we can make it not only for today but for any past time.

THE VICE-CHAIRMAN (SHRI P. N. SAPRU): You will have to stop here for the day, because we have got another motion. On Monday you can continue.

3 P.M.

**MOTION REGARDING THE FIFTH EVALUATION REPORT ON THE WORKING OF COMMUNITY DEVELOPMENT AND N.E.S. BLOCKS**

THE VICE-CHAIRMAN (SHRI P. N. SAPRU): Now we take up the motion relating to the Fifth Evaluation Report on the Community Development and N.E.S. Blocks. Mr. Prasad Rao will move the motion.

SHRI V. PRASAD RAO (Andhra Pradesh): Sir, I move:

"That the Fifth Evaluation Report on the working of Community Development and N.E.S. Blocks, laid on the Table of the Rajya Sabha on the 27th November, 1958, be taken into consideration."

Sir, it is more than six years since this programme of Community Development and National Extension Services was inaugurated. Sir, this programme was inaugurated with very high hopes and very pious wishes. It started with the battle-cry of "Destination Man" and was to fulfil the "Operation Silent Revolution" covering all phases of the life of our rural people, economic, political, social and spiritual. Six years is sufficient time for us to evaluate the successes and failures of this move. Perhaps no other aspect of the Government's programme in the Five Year Plan has

been given such high-pressure publicity as this aspect of the programme. Every visiting dignitary has been taken to some of the near-by community blocks and paeans of praise were sung upon the silent revolution that was supposed to be going on in the country. Of course, after six years of this revolution, this Report comes. I have to say that after all their ballyhoo it comes rather as an anti-climax. It is only recently that the Mysore Government has appointed the Gorwala Commission to go into the administration. Of course, this Commission was not primarily asked to go into the Community Development programme as such, but it has gone through this programme also and it is not a very flattering report or flattering picture that he has to give of it. I do not mean that all that Mr. Gorwala says should be taken at its face value. But he is one of the administrators on whom their praises were showered from the benches opposite, as one of the ablest of administrators and he has said like this:

"Opinion in Mysore is almost unanimous about the failure of the Community Development and National Extension projects. Except in those professionally obliged to defend them, it is difficult to find a single person who has anything particularly favourable to say about them. That the scheme has failed is clear from a consideration of results."

Sir, this is nothing very flattering or praise-worthy about this scheme. And further on he says:

"The most productive side of the movement is the paper side. Masses of papers move from the Gram Sewaks onwards, up and down. There are plenty of meetings, seminars, and camps. New quarters and offices spring up outside taluka towns generally, and many of the latter are decorated with beautiful pictograms and charts, all depicting the achievements which exist very largely in the imagination of their creator."