

THE UNTOUCHABILITY (OFFENCES) BILL, 1955—continued.

श्री जे० पी० अग्वाल (उत्तर प्रदेश): मोहतरिम सदर, यह मसविदा और इसका नखय्युल मेरे लिए कोई नया नहीं है। जब से मैं कांग्रेस में शामिल हुआ तब से यह चीज उसके प्रांगम में शामिल हो गई थी। सन् १९३० में जो आन्दोलन देश में चला था महात्मा गांधी जी ने कांग्रेस के प्रांगम में ये तीन चीजें रख दी थीं। एक तो छुआछूत को मिटाना दूसरा खादी को बढ़ाना और तीसरा हिन्दू मुस्लिम इत्तिहाद बढ़ाना। यह जो मसविदा आज हमारे सामने लाया गया है वह एक पुराने कांग्रेसी के लिए एक पुरानी चीज है। अगर मैं यह कहूँ कि मैं इसकी तार्जिद करने के लिए आया हूँ तो कदरतन समझ लेना चाहिये कि उसकी तार्जिद करने के लिए आया हूँ।

आज हम जिस मसविदा के जरिये यह बुराई दूर करना चाहते हैं क्या वह कानून के जरिये ही दूर होगी या नहीं होगी? मेरे कहने का मतलब यह है कि जब तक हम समाज का तरीका नहीं बदलेंगे तब तक यह चीज दूर नहीं हो सकेगी। जब हम समाज का तरीका बदलेंगे तब ही यह चीज जा सकती है। इसके लिए हमें कोशिश करनी चाहिये। मेरा दिल तो इन सब चीजों से बहुत भरा हुआ है। थोड़ी बहुत शायरी भी करता हूँ। शायर के दिल की बातें उसके जज्बात से पता चल सकती हैं। मुझे इस मौके पर एक नज्म याद आ गई जो जनाब वाला, आपके सामने पेश कर देता हूँ।

“मेरे लिए तो मौत भी परहेजगार है।

हसन से मुझ को सांप भी नागवार है ॥”

समाज का तो यह तरीका रहा है कि जब आप उसमें कुछ चीज बदलने के लिए कोशिश करते हैं तो आसानी के साथ कामयाबी नहीं होती। मैं कानून के बारे में पढ़ा हुआ नहीं हूँ और न दफाओं की बात कर सकता हूँ लेकिन मैं जो कुछ कहना चाहता हूँ वह अपने तजुबों से कहना चाहता हूँ। अब यह मसविदा एकदम बनना

तो उसके खिलाफवर्जी करने वाले के खिलाफ क्या कार्यवाही होगी और कैसी होगी? मुसीबत तो यह है कि आज हम जो कानून बनाते हैं समाज को दुरस्त करने के लिए, उसके तोड़ने वाले भी पैदा हो जाते हैं और इन तोड़ने वालों की हिफाजत के लिए वकील साहबान हाजिर हो जाते हैं। अगर इस मसविदा में एक दफा यह होती कि जब कभी भी इस कानून को तोड़ने वाले मुलाजमीन की पेशी अदालत में होगी तो उसकी पैंरवी, उसका डिफेंस कोई भी वकील नहीं कर सकेगा। अगर ऐसा कर दिया जायेगा तो यह कानून चल सकता है नहीं तो मैं समझता हूँ कि जो यह एक्ट बनाया जा रहा है उसकी तमाम दफायें वकालत पेशा के लिए एक जरिये माश बना ली जायेंगी।

श्री जसपत राय कपूर : अगर मुलाजिम खुद वकील हो तो क्या होगा ?

श्री जे० पी० अग्वाल : इसका अर्थ यह होगा कि इसकी कामयाबी या नाकामयाबी दूसरे तरीके से होगी, इस कानून के जरिये से नहीं।

अब मुझे याद आया कि एक हरिजन साहब थे। हरिजनों में अच्छा भी होते हैं। एक हरिजन साहब मेरे यहां थानदार होकर आये थे। जब वे कोई तफतीश करने गये तो एक हरिजन यानी चमार को मारा और पीटा। वह मेरे 1 P.M. पास जब आये तो मैंने पूछा कि आपने क्या कर दिया, आपके खिलाफ शिकायत आई है तो उन्होंने कहा कि हां साहब मारा था। तो मैंने उनसे कहा था कि आप हरिजन हो कर भी हरिजन के ऊपर अपना हाथ उठाते हैं। हरिजन को नहीं, बल्कि किसी ब्राह्मण या ठाकुर को मारा होता तो मेरी भी तबियत खुश होती। तो जो हरिजन भाई हैं, जिनको ओहदा मिलते हैं, जो लीजस्लेचर में पहुँचते हैं उनकी भी कुछ ज़िम्मेदारी है। जब तक जगहें महफूज हैं, स्थान सुरक्षित हैं, उधर वक्त तक उनका अपने को शोइयूल्ड कास के लिये मिटा देना चाहिये। ओहदा पा कर, अख्तियार पा कर अपने को मिटायें तभी कहें वह समाज सुधरे

सकेंगा। ऊंची जाति वाले जो कहे जाते हैं और जो कांग्रेस में आये हैं और कांग्रेस के उसूलों को मानते हैं जिनमें बराबरी और हमवारी का दावा है वह तो इस काम को करते ही हैं। उनके हाथ में यह कोई नया अस्त्रियार नहीं आया है लेकिन जिन लोगों के हाथ में शेंड्यूल्ड कास्ट के लिये जगहें सुरक्षित होने से नया अस्त्रियार आया है उनको इन १० या १५ वर्षों में अपने को मिटा देना है ताकि कहीं ऐसा न हो कि इनके खयाल में यह आये कि यही अच्छा है कि शेंड्यूल्ड कास्ट के लिये जगहें सुरक्षित रहें, उनके लिये हमेशा संफगार्ड बना रहे। अगर यह खयाल आया तो कभी भी हरिजन समाज उठ नहीं सकेंगा लिहाजा इनके लिये तम्बीह की बात यह होनी चाहिये कि ये अपने को इन १०, १५ वर्ष के अन्दर उन के लिये मिटाने की कोशिश करें। छुआछूत की असल बुनियाद तो जातिपात है इसलिये वे इस जातिपात को मिटाने की भी कोशिश करें। मैं देख रहा हूँ कि शेंड्यूल्ड कास्ट में जातिपात की भावना दिन ब दिन और ज्यादा बढ़ती जा रही है और इसलिये जो भी कोशिश की जाती है वह नाकामयाब होती है। मंदिरों की अजमत को बहुत ज्यादा बढ़ाना और यह कोशिश करना कि मंदिरों में हमें घुसने की इजाजत मिल जाय, एक तरह से लोहे को लोहे से काटने की कोशिश है या जह्म को जह्म से मारने की कोशिश है। जितना ज्यादा हम मजहब की अजमत को बढ़ाते चले जायेंगे, जितना ज्यादा मंदिरों को और मस्जिदों को फँलाते चले जायेंगे उतना ही ज्यादा जातिपात के चक्कर में पड़ते जायेंगे। लिहाजा मंदिरों के ऊपर और इन तमाम चीजों के ऊपर इतना जोर देना बिल्कुल बेकार है। मंदिरों में हरिजन जाने पायें या न जाने पायें, यह और बात है लेकिन मैंने अपनी आँखों से देखा है कि जब हरिजन भाई मंदिर बनवाते हैं तो वे खुद ब्राह्मणों को, शास्त्र के ज्ञानियों को बुलावाते हैं, जो कहते हैं कि हमारा शास्त्र कहता है कि छुआछूत कायम रहनी चाहिये उनको बुलावाते हैं और उन्हीं को बुला कर

मंदिर की पूजा करवाते हैं, मंदिर का इफ्तताह करवाते हैं। इसलिये यह जिम्मेदारी हमारे हरिजन भाइयों के ऊपर है कि वे अब आगे बढ़ें और अस्त्रियार को ले कर आगे कदम बढ़ायें। समाज तो तरक्की कर ही रहा है क्योंकि अंगूजी तालीम का भी यह असर है कि बराबरी होनी चाहिये और इसके अलावा कांग्रेस की राजनीति का भी असर है। सब से बड़ी चीज तो यह है कि हम इस चीज को अपने दस्तर में सब से पहले पास ही कर चुके हैं जो कि २६ जनवरी सन् १९५० ई० को लागू कर दिया गया था और अब तो तमाम छोटी छोटी चीजों को कानून और कायद के अन्दर लाने के लिये हमारे मुअज्जि वजीर साहब यह बिल लाये हैं। मेरा तो यह कहना है कि अगर कानून के जरिये से बहुत ज्यादा सस्ती हुई तो फिर उससे समाज में एक नफरत की भावना पैदा हो जायेगी और जिस चीज को हम दुरस्त करना चाहते हैं वह दुरस्त होने के बजाय और बिगड़गी। गांधी जी ने यह कभी नहीं कहा था कि सस्ती के जोर से हरिजनोंद्वारा किया जाय। गांधी जी ने कहा था कि दिल को भरिये और दिल तभी भरेंगा जब कि कुछ हम झुकेंगे और कुछ वे झुकेंगे। थोड़ा हाथ नीचे ला कर कुछ हम झुकेंगे और कुछ थोड़ा हाथ को बढ़ाने की वे कोशिश करें, तभी कुछ हो पायेगा। अगर कानून की ही तलवार सिर पर लटकती रही तो फिर समाज सुधार होना नामुमकिन हो जायेगा। बस इन्हीं अल्फाज के साथ मैं इस मसौदा की तार्किक करता हूँ।

SHRI B. N. DATAR: Mr. Deputy Chairman, I am deeply grateful to this House for the unanimity of the support given to the measure that we have placed before the House today. This is a very unique occasion in the history of this Parliament when Member after Member from both sides of the House, has come forward and welcomed this measure, though, of course, certain other suggestions not quite connected with this measure have also been made. I would like to make a very brief reference to all

[Shri B. N. Datar.]
those other matters, because I would not like to allow them to remain unanswered, though in my opinion, all those suggestions are beside the point.

In the first place, my hon. friend Shri Mazumdar took us from the purview of this Bill to the general question of the economic and other conditions so far as the Scheduled Castes are concerned. Then some other hon. friend rightly pointed out how Mr. Mazumdar made a grievance that Government were not taking proper steps. But the hon. Member did not point out what all we could do so far as this relevant measure is concerned. Some other hon. friends on this side also contended that Government were not taking proper steps and that the passing of this measure alone will not have the effect of eradicating untouchability. I would, however, point out to this House that Government are fully aware of the economic backwardness of the Scheduled Castes, amongst others, and Government have been taking steps so far as the eradication of untouchability with all its evils is concerned. This, Sir, is not the place, nor the time, for me to deal with all the various measures that the Government, either at the Centre or in the States, have taken in this respect. I would not like to repeat the same arguments that have been once stated. It must, however, be noticed that whenever suggestions are made that a Ministry for the Welfare of the Scheduled Castes should be formed, or other similar suggestions are made,—and I point this out in all humility—that this task of working for the welfare of the Scheduled Castes, is a task which rightly pertains to the State Governments, and the Central Government comes in the picture only for two purposes. One is for finding out what the condition of the Scheduled Castes and the Scheduled Tribes, amongst others, is, through their Commissioner. Secondly the Centre has to make grants wherever such grants are required, by the various State Governments, for carrying out functions which, as I

just now stated, pertain to their jurisdiction. Therefore, it would not be necessary, so far as the Government of India is concerned, to take up this work which is of an executive character and which has naturally to be carried out by the State Governments. But I would like to point out here that so far as the State Governments are concerned, they are fully alive to the need of improving the lot, economic and other, of the Scheduled Castes and these State Governments are doing their best in this respect. It would not be proper to say that in spite of the Five Year Plans that we are having, nothing has been done. That is not correct at all.

As regards the observation about the lapse of certain grants, that also was a very wide statement, in respect of the amount set apart for the propaganda for the removal of untouchability. So far as this particular point is concerned, namely, the question of the eradication of untouchability, apart from the economic welfare of those people, what the Government of India have done in the course of the First Five Year Plan was to set apart Rs. 1 crore for the purpose of carrying on propaganda either through the State Governments or through All-India associations, especially in the rural areas for the purpose of the eradication of untouchability.

Grants were made and even out of these, certain grants have been allowed in exceptional cases for actual welfare measures. That matter is being attended to.

DR. SHRIMATI SEETA PARMANAND: How much of this amount has been spent really?

SHRI B. N. DATAR: I am not in a position now to say what amount has been spent. In fact, either in this

House or in the other House, I mentioned various figures regarding the grants made by us and also the amounts spent by the State Governments. It was only in one year that some amount remained unspent, and we are taking up this question with the State Governments. Before any amount is allowed to lapse at all, we take up the matter with the State Governments and they send us schemes. So, schemes are being worked out. The Harijan Sevak Sangh, for example, is carrying on very commendable work so far as this particular aspect of the question is concerned. They have published a number of books, a number of charts and maps and all these are being spread on a very wide scale so far as the rural areas are concerned. As some hon. Members pointed out, these are the active measures that Government can undertake and has undertaken through these associations for the purpose of creating a strong public opinion against untouchability. I would not like to deal at length with all the other points for the simple reason that they are not relevant to the purpose that we have in view so far as this measure is concerned.

I am glad that for the first time my hon. friend Shri Mathur completely agrees with me in respect of the objective; also, he has done my work in answering the points raised by another hon. Member, Shri Mazumdar. This is the first occasion on which I am going to congratulate myself for having converted my hon. friend whom I had despaired of converting.

SHRI H. C. MATHUR: We were with you on the Constitution Amendment Bill.

SHRI B. N. DATAR: So far as the relevant questions that were raised in the course of the discussion are concerned, they are only few and I would briefly refer to them. It was stated by some hon. Members that this Bill, instead of being styled as the Untouchability (Offences) Bill, ought

to be called the Social Equality Bill. I sympathise with this suggestion but it is entirely out of the scope so far as this Bill is concerned. This Bill, as I have repeatedly stated, is not for the purpose of conferring certain rights on the Harijans or on the Scheduled Caste people because such rights have already been given by the Constitution. Still, if some further or special rights have to be given positively to the Harijans, then we are prepared to bring in another measure. What we propose to do under this Bill is to punish those wrong-doers who are violating the fundamental rights of the Scheduled Caste people. Therefore, this is a penal measure; it has to be understood as a penal measure with all the limitations of a measure which prescribes offences and prescribes punishment therefor. Therefore, Sir, I would point out that we cannot call this a Social Equality Bill.

Some other hon. friends contended that so far as the provisions of this Bill are concerned, the definition was rather wide. For example, Dr. Barlingay stated that the word "place" is defined in clause 2 as including a house, a building, tent or a vessel and he stated that there might be an honest orthodox man who would like to practise untouchability in his own house. Now, it is very difficult to sympathise with such kind of orthodox people. So far as these people are concerned, it may be their private life but they are bound by the Constitution by which every person is bound and in my humble opinion, it would not be open to us, even in our private life, to practise untouchability because untouchability, as stated in the Constitution, has been abolished, banished. Therefore, it cannot be "within the four corners of my house, I would practise untouchability against these poor people". I am not going to enter into this question but I would like to point out to my hon. friend that the "place" might be including a house, a building, a tent or a vessel. As I casually look through the Bill, I find that it is only at one or two places that we have got the

[Shri B. N. Datar.] , word "place" specifically mentioned apart from the case of the place of public worship and a place of public worship has been defined in this very Bill itself. In clause 4, sub-clause (v), you will find "any place used for a charitable or a public purpose" and the word used here is "place" and this is an inclusive phrase. It is quite likely that a religious image might be set up in a vessel or in a tent or in any other such place and, in order to meet such a case of very subtle ingenuity, we have put in an inclusive definition.

MR. DEPUTY CHAIRMAN: But that must be open to the public, is it not?

SHRI B. N. DATAR: If it is not open to the public, then nothing can be done. Technically, I would also agree with you. Within the four corners of one's own house, it may be open to a man to practise untouchability.

MR. DEPUTY CHAIRMAN: He may lock himself up in a room and practise it.

SHRI B. N. DATAR: Whatever he may do, we are not concerned with it but, so far as this Bill is concerned, the purpose of this Bill is to make this an offence whenever it has been committed in a public place. That has been made very clear and my friend need have no misgivings with regard to this.

So far as the cognizable character of the offence is concerned, some hon. friend here has very well described as to why that ought to be cognizable. If we do not make this a cognizable offence, then certain results would follow which would make the provisions of this Bill entirely nugatory. For example, if an offence has been committed against a Harijan, that Harijan would be in a very helpless position and it would be very difficult for him to commit the daring act of himself filing a complaint. It is to meet such cases that such acts or offences are purposely made

cognizable. So far as this particular expression "cognizable" is concerned, it means in fact that that particular offence is not only against the man but against society and therefore it is that the police machinery has been brought in for the purpose of making enquiries, investigations and in certain cases, even for arresting that is to follow as a matter of course. In case there has been an abuse of power by the police or by the investigating officer, Government have their own departmental machinery. In the Criminal Procedure Code, we have got a section, section 250, under which, if a false report has been made and the accused has been acquitted, then the man who gave the false report, the particular informant, will be punished; and if a police officer acts on information which is false and frivolous then the officer himself will be liable, so far as Government is concerned. Therefore, there need be no fear at all.

Another hon. friend has very rightly pointed out that we should make such offences compoundable with permission. As my hon. friend Mr. Mathur has pointed out, if there is such a provision for making offences compoundable with the permission of the court, then the permission of the court is a safeguard and the relations between the parties which are naturally strained become perfectly cordial. In fact, in a proper case, under the supervision of the court, it is quite likely that the two parties, the untouchables—the Harijan community on the one hand and the non-Harijan community on the other, might come together because, after all, our desire is that the Harijans are a part of the Indian community or part of the Hindu community and all of us have to live together. It is only that certain obstacles, certain barriers have come in the way and they have to be provided against.

Some people stated that we should not raise this presumption at all because in clause 12 provision has been made for presumption.

Another hon. Member pointed out the difficulties of getting a conviction. Now such difficulties are already there. It is not necessary for me to go into the various questions that only last week we dealt with in considering the amendments of the Code of Criminal Procedure and that also disposes of the objection that my hon. friend Shri Mazumdar raised regarding the small number of convictions. He said that only a few cases were actually enquired into in Bombay and that the number of convictions.....

SHRI S. N. MAZUMDAR: I pointed out the small number of cases decided as compared with the number of cases sent up for prosecution.

SHRI B. N. DATAR: Now there are a number of other factors why the decision may not have come too early. I thought, Sir, my hon. friend pointed out the question of convictions. Anyway a prosecution here is almost on the same footing as any other prosecution. In this case what we propose to do is, as some hon. Members have suggested, we shall see that inasmuch as the offence is cognizable it will be open to the police to take cognizance, start investigation and have a prosecution in all proper cases.

My hon. friend Shri Govinda Reddy has pointed out how we have to be careful against lack of zeal on the one hand and against over-zeal on the other hand. Now we are taking steps to see that both the Government machinery is put in motion in a proper way and that no attempts are made to make the law or keep the law a dead letter.

Therefore, Sir, without going further I would like to finish this matter and with your permission, Sir, I would point out to this House that we should finish this Bill as early as possible.

MR. DEPUTY CHAIRMAN: Are you accepting any of the amendments?

SHRI B. N. DATAR: I have gone through all the amendments, but so far as they are concerned they are mostly of a formal nature; they do not touch the point of substance at all. Now if for example I were to accept any of them or suggest others which I myself once thought of suggesting only for the purpose of preparing the draft absolutely correct according to etymology or grammar, then my difficulty is this. I am anxious, like most of the Scheduled Caste Members in particular, and other Members of Parliament in general, that this becomes law as early as possible. Now in case we accept any amendment, the matter has to go to the other House and the other House is overpressed for time. Therefore I would earnestly request all the hon. Members not to press any amendments.

SHRI H. C. DASAPPA: May I say one thing? I can understand any amendment which goes to the substance of the Bill, but verbal amendments which just correct the language, I think, need not go before the other House.

MR. DEPUTY CHAIRMAN: Every amendment has to go.

SHRI H. C. DASAPPA: Even if we make the slightest amendment? I will refer to one thing. In the Preamble, for instance, you "prescribe punishment for the practice of 'untouchability'". That is correct. Then "for the enforcement of any disability arising therefrom". That is also correct. Then you say to prescribe punishment "for matters connected therewith." You don't prescribe punishment "for matters connected therewith". Now.....

MR. DEPUTY CHAIRMAN: The Preamble is not part of the Act.

SHRI H. C. DASAPPA: Therefore it can be corrected.

SHRI B. N. DATAR: No, Sir.

MR. DEPUTY CHAIRMAN: The question is:

"That the Bill to prescribe punishment for the practice of "Untouchability", for the enforcement of any disability arising therefrom and for matters connected therewith, 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.

Clause 2 was added to the Bill.

MR. DEPUTY CHAIRMAN: Clause 3. There is an amendment. Are you moving it, Mr. Kapoor?

SHRI JASPAT ROY KAPOOR: I don't mind being ignored here, Sir.

MR. DEPUTY CHAIRMAN: The question is:

"That clause 3 stand part of the Bill."

The motion was adopted.

Clause 3 was added to the Bill.

MR. DEPUTY CHAIRMAN: Clause 4. Are you moving your amendments, Mr. Kapoor? The Minister is not accepting any amendment.

SHRI JASPAT ROY KAPOOR: Still I would move my amendment No. 5 only, Sir. I move:

5. "That at page 3, after line 32, the following be inserted, namely:—

"(xii) the riding on any conveyance or animal;".

MR. DEPUTY CHAIRMAN: The amendment and the clause are open for discussion. Any speech?

SHRI JASPAT ROY KAPOOR: Just a few necessary remarks, Sir, because this is a matter on which not only I but many other Members and particularly my Scheduled Caste friends

feel very strongly. Sir, in many places, particularly in the rural areas of U.P. and other States also, Harijan brethren, when they ride on even their own palanquin or horse or camel, are very often assaulted. So far as the question of driving in a palanquin is concerned, it has assumed a very important and serious aspect in the district of Garhwal and I therefore submit, Sir, that it is necessary that my amendment should be accepted and the sub-clause (xii) be inserted. When we are detailing so many things numbering eleven, I would like that this should also be inserted. I am not unmindful of the fact that clause 7 of the Bill is a general clause which covers within its ambit many a thing. But if that argument were to be pushed to its logical conclusion, then the whole of clause 4 becomes redundant. In clause 4 we have specified the more important forms of the disability which is imposed and since my amendment also relates to an important form of disability under which our Harijan brethren are suffering, I would desire it to be included. It is certainly of a non-controversial nature and therefore by accepting it, if it is necessary to send the Bill back to the other House, it will hardly take any time there and the other House would simply say, "Yes," to it. I therefore commend my amendment for acceptance by the House.

MR. DEPUTY CHAIRMAN: Any remarks, Mr. Datar?

SHRI B. N. DATAR: I am sorry, for the reasons I have already pointed out, I cannot accept this amendment at all, and in fact he himself has answered the objection which he raised, namely, that clause 7 is an omnibus clause which covers all these points.

MR. DEPUTY CHAIRMAN: Do you press it, Mr. Kapoor?

SHRI JASPAT ROY KAPOOR: Yes, Sir, I do.

MR. DEPUTY CHAIRMAN: The question is:

5. "That at page 3, after line 32, the following be inserted, namely:—

'(xii) the riding on any conveyance or animal;'

The motion was negatived.

MR. DEPUTY CHAIRMAN: The question is:

"That clause 4 stand part of the Bill."

The motion was adopted.

Clause 4 was added to the Bill.

MR. DEPUTY CHAIRMAN: Clause 5. There are no amendments.

Clause 5 was added to the Bill.

MR. DEPUTY CHAIRMAN: Clause 6. There is an amendment by Mr. Agnibhoj. Are you moving it?

SHRI R. U. AGNIBHOJ: No, Sir.

MR. DEPUTY CHAIRMAN: The question is:

"That clause 6 stand part of the Bill."

The motion was adopted.

Clause 6 was added to the Bill.

MR. DEPUTY CHAIRMAN: There are no amendments to clause 7.

Clause 7 was added to the Bill.

MR. DEPUTY CHAIRMAN: Clause 8. There is one amendment by Mr. Kapoor. Are you serious in moving it?

SHRI JASPAT ROY KAPOOR: Well, I would move it with all seriousness. If it is not accepted, I might withdraw it later.

I move:

7. "That at page 5, line 14, after the word 'licence' the words 'unless such conviction or order is

reversed, modified or quashed in any appeal or revision be inserted"

MR. DEPUTY CHAIRMAN: The amendment and the clause are open for discussion.

Any comments?

SHRI JASPAT ROY KAPOOR: Sir, I would like to have the opportunity of hearing what the hon. the Deputy Minister has to say on this subject. My amendment suggests the addition of the words "unless such conviction or order is reversed, modified or quashed in any appeal or revision" after the word "licence" in clause 8. I only want that we should be consistent in the phraseology of the various clauses. In clause 8 we have not used these words whereas in clause 9 we have used these words. The absence of these words in one clause and their presence in another clause would obviously lead to the conclusion that their retention in one clause is purposeful and their omission from the other is also purposeful. We must be consistent unless we are shy of the adage that consistency is the virtue of a particular kind of animal whose name perhaps I should not mention because it is an untouchable animal.

SHRI B. N. DATAR: I would point out the distinction between clause 8 and clause 9. In clause 8 you will find that the authority which convicts the offender is the court. It is the court that convicts the offender and it is also the court which cancels or suspends the licence. When the court is there, naturally whatever orders are passed by the court either in respect of conviction or in respect of cancellation or suspension are subject to appeal under the Code of Criminal Procedure and therefore it can be presumed that in all such cases it is only the final order that is meant. Taking clause 9 you will find that in this case the conviction is by a court and the suspending or the resuming authority ultimately is the Government and when the matter goes to the Government which is different from the court, action is taken in

[Shri B. N. Datar.]
 spite of conviction by the court, action in respect of cancellation or in proper cases in respect of resumption is taken by the Government and that is the final order. Similarly, in clause 8 the order of the court will be the final order because it is a matter within the jurisdiction of the court.

SHRI JASPAT ROY KAPOOR: Sir, I beg leave to withdraw my amendment (No. 7).

*The amendment was, by leave, withdrawn.

MR. DEPUTY CHAIRMAN: The question is:

"That clause 8 stand part of the Bill."

The motion was adopted.

Clause 8 was added to the Bill.

Clauses 9 and 10 were added to the Bill.

MR. DEPUTY CHAIRMAN: There is an amendment suggesting a new clause, clause 10A.

SHRI R. P. TAMTA: Sir, I move:

8. "That at page 5, after the existing clause 10, the following new clause be inserted, namely:—

'10A. Whoever, being a public servant makes a distinction or discrimination in the discharge of his official duty or function against any person by reason of his belonging to any particular caste, creed or community, shall be liable on conviction to a fine which may extend to five hundred rupees and shall be declared disqualified to continue as a government servant.' "

MR. DEPUTY CHAIRMAN: The proposed new clause 10A is open for discussion.

SHRI R. P. TAMTA: Sir, my object in moving this amendment is this. I

do realise that there is something like a private sector and a public sector in this matter of untouchability. As far as the private life of the person is concerned, he can do whatever he likes but when he discharges a public function, a public duty, I think the Government should see that he makes no discrimination against any person on the ground of caste, creed or community. This will help very much in the proper implementation of the Act and therefore I think it is very necessary to have this provision.

SHRI R. U. AGNIBHOJ: Sir, I have got full sympathy with this amendment moved by my friend Mr. Tamta. I myself was proposing to send an amendment of this type but in view of the fact that the Government is very anxious to pass this Bill into law and enforce it as early as possible, I restrained myself from moving any amendments so that this Bill may not have to go to the other House and so that no further delay should occur. After the Act is enforced if we find that difficulties arise and if we find it necessary, we can bring forward an amendment subsequently. Therefore I would request, on behalf of those who are affected by this measure, Mr. Tamta to withdraw his amendment and would also further request him not to move other amendments also as that would delay the Bill and would defeat the very purpose with which we are passing this measure.

SHRI S. N. MAZUMDAR: Sir, the hon. Minister has already said that he was not going to accept any amendment and the reason which he has given also places me in a difficult position in asking him to accept this amendment because I also want that this Bill should be passed into law as soon as possible. I am in full sympathy with the amendment which has been moved by my friend Mr. Tamta but I think this much the Government can do. Some provisions to this effect may be incorporated in the Government Servants' Conduct Rules which will go a long way in the implementation of the spirit of the amendment.

*For text of amendment, *vide* cols. 6615-16 *supra*.

Because as has been mentioned earlier such cases of discrimination do continue. It is not a question of "if this difficulty arises". This much we should expect of the Government that they will see that such instructions are incorporated in the Rules of Conduct of Government servants.

SHRI H. C. MATHUR: Mr. Deputy Chairman, however laudable the object behind this amendment may be, I feel that it is absolutely out of place here. This can have nothing to do with the provisions of this measure. At the most you can have them in the Government Servants' Conduct Rules but I think it is absolutely out of place here.

SHRI B. N. DATAR: I should like to point out to the hon. Members who are interested in such an amendment that in all cases so far as public servants are concerned, they are bound by the Constitution in the first instance and by this measure when it becomes law. If, for example, they are guilty of any discrimination in the discharge of their official duties, then the Government will take very strong action either by way of departmental proceedings or if it is found that the act of discrimination amounts to an offence, then the Government would also have recourse to prosecution. It is Government's desire that our public servants should be above all these things and they should carry on their work in an absolutely objective manner with a view to promote the purpose that the law has in view. Therefore I am not prepared to accept this amendment even on merits.

SHRI R. P. TAMTA: In that case, I would like to withdraw my amendment (No. 8).

*The amendment was, by leave, withdrawn.

Clause 11 was added to the Bill.

SHRI R. P. TAMTA: Sir, I beg to move:

*For text of amendments, vide col. 6617 *supra*.

9. "That at page 5, after the existing clause 11, the following new clause be inserted, namely:—

'11A. Whoever being convicted of an offence under this Act, and if such conviction is not set aside or quashed in appeal or revision, shall be ineligible for election to, or to continue as a member of, any local body, *gram panchayat*, State Legislature or Parliament for a period of three years from the date of his conviction'."

MR. DEPUTY CHAIRMAN: How is it relevant here? This must go in those separate Acts governing election to those local bodies, State Legislatures, etc.

SHRI R. P. TAMTA: We are passing this measure under article 17 of the Constitution and every provision of any act which is inconsistent with the provisions of this measure will become nullity.....

MR. DEPUTY CHAIRMAN: The electoral law is quite different. I am afraid your amendment is not relevant here.

SHRI R. P. TAMTA: In that case it is all right, Sir.

MR. DEPUTY CHAIRMAN: The question is:

"That clause 12 stand part of the Bill."

The motion was adopted.

Clause 12 was added to the Bill.

MR. DEPUTY CHAIRMAN: Clause 13. There is one amendment. Do you move your amendment, Mr. Tamta?

SHRI R. P. TAMTA: Yes, Sir. Sir, I move:

10. "That at page 5, line 37, the word 'civil' be deleted."

MR. DEPUTY CHAIRMAN: The clause and the amendment are open for discussion.

SHRI R. P. TAMTA: It is only a minor amendment. Clause 13 says:—

“(1) No civil court shall entertain or continue any suit or proceeding or shall pass any decree or order or execute wholly or partially any decree or order if the claim involved in such suit or proceeding or if the passing of such decree or order or if such execution would in any way be contrary to the provisions of this Act.”

I suggest that the word “civil” be omitted and my object in moving this amendment is that, if the amendment is accepted, it will read like this: “No court shall entertain.....” In our country we have got civil courts; criminal courts and revenue courts and there are Acts which are against the provisions of this Bill where untouchability had been recognized. For example, I will quote one Act, the U.P. Municipalities Act, 1916, section 85 of which says:

“A sweeper employed by a board who,

(a) except in accordance with the terms of a written contract of service, or with the permission of the board, resigns or abandons his employment, or,

(b) without a reasonable cause of which notice has, when possible, been given to the board, absents himself from his duties.

shall be liable upon conviction to imprisonment which may extend to two months.”

Sir, it is the case of a sweeper who is an untouchable; he is forced to work; and if he resigns or refuses to work, he can be punished and sent to jail for two months. The case of this man would come before a criminal court, not a civil court. If the criminal court recognizes that there is the law, but if the word is not “criminal court” but only “civil court” then only the “civil court” will deal with this matter, if there is a law like this. There

is also the Madras Regulation of 1816 where also there is some provision which discriminates in the matter of punishment to be awarded to different sections of the people. In the matter of rent rates there is a difference between persons of different castes in some States. There is discrimination. Those cases will not be covered. Therefore, I want that the word “civil” be deleted. So that all Courts, Civil, Criminal and Revenue, might entertain no proceedings and pass orders, etc., inconsistent with the provisions of this Bill.

SHRI B. N. DATAR: Sir, it is not possible to accept this amendment for two reasons. The first is that what has been considered in clause 13 is the passing of a decree or order which violates the provisions of this Act, and I presume that courts other than civil courts will not have to deal with such matters. Secondly, assuming that certain other courts, which are ordinarily revenue courts, do sometimes deal with certain quasi-civil matters, then I presume that under the General Clauses Act that court also will be considered as a “civil court” for the purpose of the decree or order passed under this Act.

MR. DEPUTY CHAIRMAN: So, do you withdraw your amendment (No. 10), Mr. Tamta?

SHRI R. P. TAMTA: Yes, Sir.

*The amendment was, by leave, withdrawn.

MR. DEPUTY CHAIRMAN: The question is:

“That clause 13 stand part of the Bill.”

The motion was adopted.

Clause 13 was added to the Bill.

Clause 14 was added to the Bill.

MR. DEPUTY CHAIRMAN: Clause 15. There are four amendments.

*For text of amendment, *vide* col. 6620 *supra*.

SHRI JASPAT ROY KAPOOR: Sir, I move:

11. "That at page 6, line 29 be deleted."

13. "That at page 6, for lines 30 and 31, the following be substituted, namely:—

'(b) every offence under this Act may, with the permission of the court, be compounded'."

SHRI R. P. TAMTA: Sir, I move:

12. "That at page 6, line 29, after the word 'cognizable' the words 'and shall be tried by a stipendiary magistrate of the first class' be inserted."

MR. DEPUTY CHAIRMAN: The clause and the amendments are open for discussion.

SHRI JASPAT ROY KAPOOR: The two amendments that stand in my name run thus:

"That at page 6, line 29 be deleted."

"That at page 6, for lines 30 and 31, the following be substituted, namely:—

'(b) every offence under this Act may, with the permission of the court, be compounded'."

Amendment No. 13 is consequential to amendment No. 11 and I do not intend to say anything about amendment No. 13. All that I seek is that the offences under this Act should not be cognizable. The word "cognizable" has been defined in the Criminal Procedure Code, which with your permission I may read. The definition is this:

"'Cognizable offence' means an offence for which a police officer, within or without the presidency-towns, may, in accordance with the second schedule or under any law

for the time being in force, arrest without warrant:".

This is the only definition of "cognizable" offence. The other implication of an offence being declared "cognizable", of course, is that the police can take cognizance of it and start proceedings. So far as that part of the implication is concerned. I have no objection that the police might start proceedings, might initiate proceedings without there being any formal complaint. Without there being any information laid before the police officer, the police officer may start proceedings on his own initiative on coming to know that a certain offence has been committed. But so far as this specific definition of "cognizable" offence is concerned, I am of the view that it would not be in the interests, firstly, of public law and order. Secondly, it would not be in the interests of Scheduled Castes, of my Harijan brethren even, if persons who are accused of this offence are straightaway arrested without a warrant. My hon. friend, the Deputy Home Minister, said that in suitable cases, the police should have this power. True. But our experience is that in almost every cognizable case, the police arrests the accused without a warrant. Therefore, I would very much like, even if this clause 15 stands as it is, to have a definite assurance that a circular order or directive will go round to the police officers that they should not necessarily arrest a person accused of this offence without a warrant; and that they should exercise this right very, very sparingly. This is very necessary; otherwise, this might be abused, firstly, by the police officers themselves if they are hostile to any particular person. And secondly, as we know, in villages there are party factions and then one party may persuade a sub-inspector of police to arrest a person belonging to the other party on a very nominal charge which will, of course, be an offence under this clause. And, as I have already said during the general discussion, it may

[Shri Jaspal Roy Kapoor.]
sometimes create law and order problem leading to hostility against the cow and Harijans.

SHRI R. P. TAMTA: Sir, the object of ~~my~~ amendment is that the offences under this Act be tried by a stipendiary magistrate of the first class. By bringing this amendment I want the offences to be tried by a magistrate of the first class. I think this will have a more salutary effect, because under the ordinary course the offence under this Act will be tried by a second class magistrate or by an honorary magistrate. And generally the honorary magistrate will be a person belonging to the high caste and the parties may not have full confidence in his impartiality. It is also possible that he might be an orthodox man and may believe in untouchability.

SHRI B. N. DATAR: Sir, I cannot accept any of these amendments. So far as the first amendment is concerned, it is a matter of principle, because in a proper case the police officer or the investigating officer should have the right to arrest a person. So, that is a very valuable right and that right cannot in any way be called in question or watered down by any executive instructions at all to control the powers of the investigating officer. And it is certainly our desire that in a proper case the police officer ~~or~~ the investigating officer should arrest such persons without a warrant. Therefore, it is not possible to accept this amendment at all.

SHRI JASPAT ROY KAPOOR: It is conceded that in serious cases there may be arrest without warrant.

SHRI B. N. DATAR: I would convey this assurance to my hon. friend that all that we shall say by way of executive instructions is that they should act properly in every case. That means that if for example there is an abuse of the power under this Act and if it is found that a person was arrested wrongly, then the police officer will render himself liable to

departmental proceedings and Government will not tolerate such persons.

SHRI JASPAT ROY KAPOOR: In view of the assurance given by the hon. Deputy Home Minister that a direction will be sent out, I beg leave of the House to withdraw my amendments Nos. 11 and 13.

*The amendment was, by leave, withdrawn.

SHRI B. N. DATAR: So far as the amendment of Mr. Tamta is concerned, the hon. Member wants that the case should be tried by a stipendiary magistrate of the first class. Now, the Government have as much faith in honorary magistrates as in stipendiary magistrates. Also, only recently the House has agreed to make proper provision for the appointment of duly qualified magistrates. Therefore, let there be no distinction between an honorary magistrate properly appointed and a stipendiary magistrate. If it is to be confined only to first class magistrates, then the distance between the village where the offence is committed and the place where the first class magistrate ordinarily carries on his work would be very great and, further, more hardship would be caused to the poor complainant.

SHRI R. P. TAMTA: Sir, I beg leave to withdraw my amendment (No. 12).

†The amendment was, by leave, withdrawn.

MR. DEPUTY CHAIRMAN: The question is:

"That clause 15 stand part of the Bill."

The motion was adopted.

Clause 15 was added to the Bill.

Clauses 16 and 17 were added to the Bill.

The Schedule was added to the Bill.

*For text of amendments, *vide* col. 6623 *supra*.

†For text of amendment, *vide* col. 6623 *supra*.

MR. DEPUTY CHAIRMAN: Clause 1.

SHRI R. U. AGNIBHOJ: Sir, I do not wish to move my amendment.

Clause 1 was added to the Bill.

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

SHRI B. N. DATAR: Sir, I move:

"That the Bill be passed."

MR. DEPUTY CHAIRMAN: Motion moved:

"That the Bill be passed."

SHRI S. N. MAZUMDAR: Mr. Deputy Chairman, I shall be very brief at this late hour. I find that I have failed to convince Mr. Datar in the matter of taking a comprehensive outlook regarding this Bill. Sir, he has brushed aside the arguments which I had advanced, by saying that these were totally outside the scope of the Bill, and he has been supported in this respect by my friend, Mr. Mathur, who said that I had not offered any suggestions as regards this Bill.

Sir, as far as this Bill is concerned, I am in full agreement with all other provisions, and in fact, I welcome them. But I raised my points of difference with regard to that provision of compoundability. But in that matter also, I find that I have failed to convince both Mr. Datar and Mr. Mathur about my point of view. However, Sir, I do not despair, because in my opinion, eradication of untouchability does not depend, in the long run, or whether I succeed in convincing Mr. Datar or not. In the long run, untouchability will be eradicated by the movement of the people for a better social and economic life, particularly of the people, our brethren, who are called untouchables. In the shape of this measure, they have got one very good weapon. They can utilise this measure as one

of their weapons in their struggle for a better and happier life, if they are better organised and properly educated about their rights. And it is our duty to educate them and organise our unfortunate brethren, and then only they will be able to see to it, with the strength of their organised movement, that the provisions of this Bill are properly implemented.

With these few words, Sir, I support this measure.

श्री गोपीकृष्ण बिजयर्गीय: (मध्य भारत): मैं आपको इसके लिये धन्यवाद देना चाहता हूँ कि आपने मुझे समय दिया और मैं इस बिल का पूर्ण हृदय से समर्थन करता हूँ।

सन् ५० में हमने अपना संविधान पास किया और आज पांच साल हो गये हैं तब हम यह बिल पास करने जा रहे हैं। अब दोनों हाउसों से पास हो जाने पर यह हमारा देश का कानून बन जायगा। इसमें जो धाराएं रखी गई हैं, उनके अनुसार जो अस्पृश्यता का आचरण करेंगे उनको सजा मिलेगी। लेकिन केवल कानून से काम नहीं चलेगा। गवर्नमेंट को दूसरी तरीके भी अख्तियार करने पड़ेंगे। इसके अलावा जनता को भी बहुत सा काम करना पड़ेगा। हमारा देश में स्वामी दयानन्द और दूसरे बड़े बड़े समाज सुधारक हुये हैं और उन्होंने अस्पृश्यता निवारण के लिये बड़ा काम किया है और वेदों की इस तरह से व्याख्या की है कि यह हमारा धर्म का अंग नहीं है। इसलिये जो ऊंची जाति के लोग हैं उन पर बहुत जिम्मेदारी आ जाती है। गवर्नमेंट ने अपना कर्तव्य पालन कर दिया है, लेकिन हम सब लोगों को समाज सुधार का काम जारी रखना चाहिये और सोशल रिफार्म के जो प्रयत्न हैं उनको जारी रखना चाहिये। तभी अस्पृश्यता पूर्णरूप से हम अपने देश से हटा सकेंगे।

मैं इस बिल का फिर हार्दिक समर्थन करता हूँ।

SHRI H. C. DASAPPA: Mr. Deputy Chairman, I join wholeheartedly and

[Shri H. C. Dasappa]
warmly with my hon. colleagues in congratulating the Government and the hon. Deputy Minister for piloting this Bill through this House. Sir, I should think it is a red letter day in the annals of our Indian history and our Parliament. Its repercussions are so wide that it is not easy for us, who are living just now, to imagine what transformation it will effect in the entire body politic of this great nation. It attempts to wipe out an evil which has persisted during the centuries and which has defied solution by the great social reformers. And it was a thing on which the heart of our leaders had been set; it was a thing which was dearer, more dear than anything else, to our great Father of the Nation. He used to say that if untouchability lives, Hinduism dies, and if untouchability dies, Hinduism lives. And I am not looking at it from the point of view of Hinduism, but from the point of view of the larger humanity. It would be impossible for Indians to raise their heads among other nations with any pride, if they allow this blot to besmirch our life in India. And today, the Government has come forward to effect this grand reform.

Sir, I agree with my other colleagues in the view that this Bill, by itself, is not going to work miracles. The entire co-operation of the people, the representatives and the governmental agencies—all these must combine in order to bring about a happy solution of this problem.

Sir, I would not like to mention any of the things already mentioned. But here, I wish to quote a significant suggestion of Mahatma Gandhi himself, to which I had also referred at some previous time. Untouchability is so deep-seated and so widespread, and it has got so much woven into our social fabric that unless the entire society sets its face against it and adopts some drastic remedy to do away with this drastic disease, I am afraid, the Bill itself will not be able to achieve much. I would refer to what Mahatma Gandhi has said. This

is what he says in the *Harijan* of 19th May 1946:

"What is more, let those who can afford it, take Harijans in their families as their own children and give them proper training."

Sir, there is a population of 37 crores, which means that we have got about 7½ crores of families. If you deduct Harijans, it may be about 6 or 6½ crores of families. And if each of the families could adopt a young child of these Harijans, that would work out a miracle, which no other thing could successfully do. And I would, therefore, suggest, Sir, that all of us—the entire nation, to a man—should take up this mission and do something practical in order to remedy the disease that has been there for centuries. Sir, I welcome this Bill.

SHRI B. N. DATAR: Sir, I should like to thank this House for the very graceful manner in which it co-operated with us in facilitating the passage of this Bill. As my hon. friend, Shri Dasappa, just now stated, this is a very important measure. We have today the example of the fullest measure of co-operation from all sides of this House.

I am quite confident that in the country also we shall have similar co-operation and that the offences that are prescribed under this Act would become a dead letter by the co-operation and cordiality between the Scheduled Caste people and the other people. Sir, I thank you.

MR. DEPUTY CHAIRMAN: The question is:

"That the Bill be passed."

The motion was adopted.

MR. DEPUTY CHAIRMAN: The House stands adjourned till 11 A.M. tomorrow.

The House then adjourned at five of the clock till eleven of the clock on Tuesday the 3rd May 1955.