

Shri Biswanath Das (Orissa: General): Sir, the proposed amendment follows very closely the Government of India Act of 1935. If at all there is any difference, it is on the side of stringency. In the Act of 1935, as adapted, this section--I mean section 293--was omitted. We have naturally a right to expect an explanation why this omission was made and why a departure has now been felt necessary in this regard.

Sir, my honourable Friend, Pandit Thakur Das Bhargava, has clearly stated his objections. Most of those are our objections. My honourable Friend, Shri Alladi Krishnaswami Ayyar, representing the Drafting Committee, treated us to some homilies. He stated that the power of the Legislature has not been taken away by this amendment. I want to ask him whether it is necessary that an eminent lawyer like him to explain these elementary principles to us, as it the Members of the Assembly do not know that under a system of responsible Government the 'President' means the Cabinet or the Prime Minister himself. Then again he stated that it is in consonance with the spirit of section 293 that the Orders in Council were being issued by the British Cabinet. When you were trusting the British Government, why cannot you trust your own Government? If at all there is any element of distrust, I say that the boot is on the other leg. So, it is unfair and unfortunate to state that we want a change in the section merely because we do not trust the Ministry. It is not a question of our trusting the Ministry. What has been proposed in this article is that the Honourable Dr. Ambedkar, the Chairman of the Drafting Committee, will transfer all the powers of the Legislature to the Honourable Dr. Ambedkar, the Law Minister of India. Here again we would not probably have so much bother, if his Cabinet handled the whole question themselves. Sir, it is a well known fact that Cabinet Ministers are busy-bodies. It is not possible for them to go closely through all the Acts that have to be adapted in this regard.

While discussing this question we have to keep two or three things in view. The first thing is that you have in the Constitution the Fundamental Rights which, were never contemplated; nor were they conceived in the Act of 1935 and much less thought of by the British Government or the British Cabinet. Secondly you have barred the Jurisdiction of the courts by a specific provision in the Constitution. A point has been made out by our Friend, Shri Alladi Krishnaswami Ayyar, that it is the judicial pronouncement of the highest court. I must tell him again--as I have already said--that my confidence in the pronouncements of the British judiciary under a system of imperial administration is not as it would be under the pronouncement of a free judiciary in a free India. Until that is done I must plead with him and with the honourable Members of this House that my confidence in the judiciary will be within its limitations.

Sir, a period of limitation of two years has been laid down--I do not know, for what reason. The enormous powers that are vested in the Executive are not at all desirable. When my honourable Friend Shri Alladi Krishnaswami Ayyar was thrusting his homilies on us to trust the executive, it took my breath away. I hardly expected that an eminent jurist and lawyer as he would teach me about our confidence in our Executive. I would plead with him to carry his logic further. By all means have all confidence. Why then have any law? Leave everything to the administration. Have no laws at all. Have no constitution; no Fundamental Rights are called for because we have a responsible Government and a popular Ministry. This is hardly expected of a very wise and sound jurist of his eminence.

Sir, I must complain in this connection that the Government have not placed all their cards before us. I do realise the fact that the Government is not represented here and the Members of Government are here in their capacity as Members of the House. But it is no doubt a fact that Dr. Ambedkar is also the Law Minister of India, and it is his responsibility and duty to explain to us what steps he has taken up till now in this regard. This is, a very big order that he wants to be given to him. There are thousands of laws, Central and Provincial in operation, including the Regulations

passed by the British Government. All these have to continue in operation. Is it possible for ordinary Members, I ask, to undertake the private legislation to modify all these? What has been done by the Ministry of Law? I plead again with the Drafting Committee that the position they have taken so far, as also the action taken by the Law Ministry so far in this regard has not been helpful. My Honourable Friends have made various suggestions.

Shri Biswanath Das: I am coming to it. In fact I will be failing in my duty if I do not state it and I will iterate. The British Government, before any adaptations were undertaken asked the Government of India and the Law Department of the Government of India to examine all the necessary Statutes. The Government of India were suggesting adaptations and the adaptations suggested by the Law Ministry, then, the Law Department of the Government of India, were being approved and published as the adaptations of the British Government in an Order-in-Council. My complaint in this regard is that neither the Law Department nor the office of the Constituent Assembly have moved an inch in this regard. I expect that they should have kept ready the adaptations and examined the laws in operation.

Shri Biswanath Das: I will be glad if I am misinformed and I will be glad if all this has been done. In which case, my Honourable Friend ought to have placed the whole thing at least by this time--as I said and I repeat--all the cards on the table, and said "I have got them ready, give me the order and I will publish." I do not agree with those who think that consultations with Chief Justice will improve the matter nor do I agree with those honourable friends who feel that reactions are to be placed before Parliament. The adaptations under the Indian Independence Act were placed before Parliament. But to what effect? Where has the legislature time for private Members to undertake this stupendous task? Under these circumstances, placing of adaptations for the reactions of Parliament will not help.

Another proposal has been placed before honourable Members and that is an Expert Committee. That would be certainly useful and helpful. But I would suggest that we are giving a big order and placing very responsible power and authority with the Executive. Therefore, I think it will be fair to the Legislature also if some of the eminent jurists, who happen to be Members of the Legislature, are constituted into a Committee to place recommendations before the Law Ministry so that the Ministry gives them merely legal shape. It should be the responsibility of the Law Ministry to put them into legal form. I am not inclined to place all other powers, importance and responsibility as they are, in the hands of the Executive. In this view of the question, for myself I will be fully satisfied if the Honourable the Law Minister or the Drafting Committee say that they are willing and anxious to have an Expert Committee of the Constituent Assembly and the Legislature examines all the laws, and if necessary, asks the Provincial Governments to undertake examination of all the laws and all the adaptations to be put together. It would be unthinkable after responsible Government in a free India to have laws irresponsible in themselves and most of which are out of date and at antediluvian and which do not suit the present-day needs of the people to co-exist and operate. In these circumstances, I plead with the Drafting Committee and also with the honourable Members of the Constituent Assembly to consider this important question.