

LOK SABHA

THE JOINT COMMITTEE ON THE
UNTOUCHABILITY (OFFENCES) BILL, 1954.

EVIDENCE

(2nd November, 1954)

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LOK SABHA SECRETARIAT
NEW DELHI

December, 1954.

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THE JOINT COMMITTEE ON THE UNTOUCHABILITY (OFFENCES)
BILL, 1954.

Minutes of Evidence taken before the Joint Committee on the
Untouchability (Offences) Bill, 1954.

Tuesday, the 2nd November, 1954 at 2-30 P.M.

PRESENT

Shri Upendranath Barman—*Chairman.*

MEMBERS
LOK SABHA

Shri Narayan Sadoba Kajrolkar
Shri T. Sanganna
Shri Pannalall Barupal
Shri Naval Prabhakar
Shri Ajit Singh
Shri Ganeshi Lal Chaudhary
Shri Bahadurbhai Kunthabhai Patel
Shrimati Minimata
Shri Motilal Malviya
Shri Dodda Thimmaiah
Shri Rameshwar Sahu
Shri Ram Dass
Shri Nemi Saran Jain

Pandit Algu Rai Shastri
Shri Balwant Nagesh Datar
Shri Shree Narayan Das
Shri Mangalagiri Nanadas
Shri A. Jayaraman
Shri V. G. Deshpande
Shri B. S. Murthy
Shri Vijneshwar Missir
Shri R. Velayudhan
Shri N. M. Lingam
Shri Mohanlal Saksena
Shri N. C. Chatterjee

RAJYA SABHA

Shrimati Lilavati Munshi
Shrimati Bedavati Buragohain
Dr. N. S. Hardiker
Shri Kishori Ram
Shri Ram Prasad Tamta

Shri Trimbak Damodar Pustake
Shri Jagannath Das
Kakasaheb Kalelkar
Shri Surendranath Dwivedi
Shri N. C. Sekhar.

REPRESENTATIVES OF MINISTRIES AND OTHER OFFICERS

Shri S. K. Hiranandani, *Additional Draftsman, Ministry of Law.*
Shri Gajinder Singh, *Under Secretary, Ministry of Home Affairs.*

SECRETARIAT

Shri M. Sundar Raj—*Deputy Secretary.*
Shri P. K. Patnaik—*Under Secretary.*

WITNESSES EXAMINED

I. Bharatiya Depressed Classes League, New Delhi.

Spokesmen:

Shri B. Parmeshwaram
Shri Prithvi Singh Azad
Shri Chandrika Ram.

II. Harijan Sevak Sangh, Delhi.

Spokesmen:

- Shri Viyogi Hari
- Shri K. S. Shivam.

Name of Association.—The Bharatiya Depressed Classes League, New Delhi.

Spokesmen:—

- (1) Shri B. Parmeshwaram
- (2) Shri Prithvi Singh Azad
- (3) Shri Chandrika Ram

(Witnesses were called in and they took their seats)

Chairman: One thing I should tell the witnesses is that according to rules framed by the Parliament, your evidence would be treated as public. I will read the rules:

“When witnesses appear before a Select Committee to give evidence the Chairman shall make it clear to the witnesses that their evidence would be treated as public and is liable to be published, unless they specifically desire that all or any part of the evidence tendered by them is to be treated as confidential. It will, however, be explained to the witnesses that even though they might desire their evidence to be treated as confidential such evidence is liable to be made available to the members of Parliament.”

The point is, whatever evidence you tender here, is to be treated as public unless you desire that certain portions of it should be treated as private and confidential; but even then, it cannot be kept confidential from the members of Parliament. You are to give your evidence keeping in view the position which I have just now stated. You must remember that your evidence is going to be made public.

Shri Chandrika Ram: We have no objection if our evidence is published.

Shri Velayudhan: At this stage, I think, it will not be published in the press?

Chairman: Until the report is presented to Parliament it will be treated as confidential and will not be published in the press. Afterwards it will be published unless the witnesses

desire certain specific things to be made confidential.

Shri Velayudhan: Is the Memorandum which they have submitted confidential?

Chairman: Yes; it is confidential and that is clearly written on the top of the letter itself. The proceedings of the Select Committee are kept confidential until the report is presented to the Parliament. Even the members concerned cannot leak out what happened in the Select Committee.

Now, so far as I understand from the memorandum, the first point is that the punishments that are provided in the Bill are not sufficient.

Shri Datar: ‘Sufficient’ in the sense that they are not severe enough.

Shri Velayudhan: Apart from the punishments, is there not a lacuna in the Bill which will weaken the whole object of the legislation? That point, I think, should be taken up first because even in the first paragraph of the memorandum mention is made about this.

Shri Chatterjee: Are you thinking of the possibility of evasion?

Shri Velayudhan: Yes, it is stated in the first para itself. What I mean to say is that in the memorandum you have said that there should be deterrent punishment. You have also stated that chances of evasion should be reduced to the minimum. Should we not discuss the second one first and then take up the question of punishment?

Chairman: Is it your opinion that unless the penalty provision is made more stringent the Act will not serve its purpose?

Shri Chandrika Ram: That is our opinion: we have given it in paragraph 2 of our memorandum.

Chairman: In your list of proposals you have suggested certain changes in the penalty clause. Do you think whether that will serve the purpose, whether punishment for two years, instead of six months as in the Bill, will have the desired effect.

Shri Chandrika Ram: In paragraph 2 of our memorandum we have stated:

"Sound legislative principles require that law should reduce the chances of its evasion to the absolute minimum. Secondly, penal measures should contain punishment commensurate to the transgression and be severe enough to deter evil-doers from committing breaches of law. Practice of untouchability leads to the denial of fundamental rights guaranteed by our Constitution to a large number of citizens of India. Naturally therefore, no penalty is severe enough which is inflicted on those who trample upon these fundamental rights. Viewed in this light, we are afraid that this Bill will fail to fulfil its object unless the provisions are amended in the manner we propose to suggest."

Chairman: I may further explain why I asked this question. You have not asked for any minimum penalty or punishment in your amendments suggested.

Shri N. C. Chatterjee: If you turn to page 2 of the memorandum you will find that they have suggested that the sentence of imprisonment should be increased to two years and the fine to Rs. 1,000.

Chairman: My point is this. After all, whatever may be the punishment you may provide for in the Bill it lies with the courts to decide the penalty in each case, considering the gravity

of the offence, or the nature of the offence. Now, if you suggest that the maximum punishment will have a deterrent effect on evil-doers that I can understand.

Shri Chandrika Ram: We do admit that the courts are the final judges in the matter.

Chairman: Then it is your case that for grave offences an imprisonment of six months and a fine of Rs. 500 may not be sufficient: so the courts should be given powers of inflicting higher punishment. So far as the minimum is concerned, that lies with the courts, according to the nature and the gravity of the offence.

According to your view-point the phraseology of clause 3 leaves loopholes for a sectional temple being debarred to untouchables.

Shri Prithvi Singh Azad: Sir, I may say that if the clause in the original Bill is kept as it is and a proviso as suggested by the League in the annexure is added, it will serve the purpose.

Shri Chandrika Ram: The draft as suggested by us is as follows:

"Provided that every untouchable who is a Hindu shall have access and also shall have the right of performing any religious service or of offering prayers therein in the same manner and to the same extent as the other Hindus; and every untouchable shall be entitled to bathe in or use the waters of any sacred tank, well, spring or water course in the same manner and to the same extent as other Hindus are allowed.

Explanation: Hindus include Jains, Sikhs and Buddhists."

An Hon. Member: Don't you think there should be a definition of the word "Hindu"?

Shri Chandrika Ram: Those who call themselves Hindus are Hindus.

Shrimati Lilavati Munshi: Instead of using the word "untouchable" don't you think it would be better to use the word "A Hindu suffering from this kind of disability."

Shri B. S. Murthy: Are you against the use of the word 'untouchable' or the word 'untouchability'?

Shri Chandrika Ram: We are not against the use of either word. Mrs. Munshi wanted to qualify the word 'Hindu'.

Shrimati Lilavati Munshi: You can say 'every Hindu who is suffering from this disability or practice of untouchability'.

Shri N. C. Chatterjee: After having abolished untouchability by the Constitution, will it be right to use the word 'untouchable' in the Act? Is it not better to say 'any person suffering from social disability' as in the other statute?

Shri Chandrika Ram: But it is a fact in the society. By merely writing it on paper you will not abolish it. When every disability is removed, remove the word also.

Shrimati Lilavati Munshi: Instead of perpetuating the word, say "any one who is suffering from the disability".

Chairman: That is not the point. They are raising the point that a sectional temple of the Hindu religious community may be barred against the untouchables or the scheduled castes (whatever you might call them) under the present construction of clause 3. So they want that the clause should be amended in such a way that the likelihood of such a bar may be removed. And they have stated that some High Court has held that a sectional religious temple can be closed against any untouchable.

Shrimati Lilavati Munshi: If there is a Jain temple where other Hindus are allowed, how can they be prevented?

Shri Thimmaiah: They are being prevented.

Shrimati Lilavati Munshi: We should remove the bar then.

Chairman: That is their objective also; it is not that they press that their amendment should be accepted.

Shrimati Lilavati Munshi: How to do it?

Chairman: We shall consider that.

Shri Prithvi Singh Azad: As my colleague has explained, this request has been made keeping certain facts in view. Take for instance the Viswanath Mandir at Banaras, which Harijans wanted to enter and worship, but have been stopped by the court.

Chairman: The question you have raised in the memorandum is about sectional temples. Viswanath temple is not a sectional temple; that is a bigger issue; certainly we can legislate against that. Here it is a question of a sectional temple.

Shrimati Lilavati Munshi: In regard to this everybody is agreed that this kind of disability should go.

Shri Prithvi Singh Azad: If it is agreed then I have nothing to press.

Chairman: We are all agreed.

Shri N. C. Chatterjee: This word 'sectional' should not be used for preventing their entry. We are all agreed about that. But is there any concrete example?

Shri Prithvi Singh Azad: There is Viswanath Mandir—which of course as you said is general.

Shri B. S. Murthy: In Delhi you have got an example.

Shri Nanadas: Mr. Chairman, we are not able to follow the proceedings.

Chairman: The procedure laid down in the rules is that the Chairman will ask a few questions and then each Member will get an opportunity to ask questions. We will proceed in that way hereafter. But in the meanwhile a relevant question has been asked by Shri Chatterjee.

Shri N. C. Chatterjee: You are giving some facts in respect of your plea for the modification of this clause. Have you any concrete instances in respect of sectional temples?

Shri Prithvi Singh Azad: In Delhi Harijans wanted to enter the Jain mandir. The trustees of the temple decided that as Harijans are not Jains they have no right to offer their prayers in that temple.

If honourable friends want more facts, there were certain cases in Bombay where a Harijan community was debarred from entering certain temples.

So, keeping these things in view we suggested the amendment, because every temple can be made a sectarian temple as there are among Hindus several sections; there are Vaishnavites, Shaivites; and somebody will say "he does not worship the Goddess Durga, so he is not permitted to enter Durga temple". There are some Harijans who do not worship Hanumanji; and on such a plea they will not be permitted to enter Hanuman's temple.

In the case of Harijans such objections are raised whereas a Hindu, even if he is an Arya Samajist or a Jain or follows any other faith than the one relating to the sectional temple is permitted and in his case no objection is raised; he has simply to say that he is a Brahman, Vaishya or Kshatriya. But when a Harijan comes such type of objection is raised.

Therefore, keeping all these things in view we suggested this and I hope our honourable friends will support our suggestion; because if these things are permitted to continue we cannot

have that equality for which we go to the temples.

Chairman: May I summarise your point of view? You mean to say that if any sectional temple, which is sectional at present, is open to the other public of the same religious denomination, then it should be open to the Harijans also.

Shri S. N. Das: Open for visit or worship?

Shrimati Lilavati Munshi: They say "shall have access and also shall have the right of performing any religious service or of offering prayers therein in the same manner and to the same extent as the other Hindus". I think it is clear.

Chairman: Yes.

Shri N. S. Jain: Would it not be better if we did not discuss any of the amendments here but only elicited the information from the witnesses? Afterwards we can consider what amendments will be suitable.

Chairman: So I ask him this. So far as I can assess, their viewpoint seems to be that if any temple, Jain or anything else which is sectional, whatever it may be, if it is open to others it should be open also to the Harijans. That is your point of view, I think?

Shri Prithvi Singh Azad: Yes.

Chairman: How it can be done, we shall discuss at our meeting.

Shri Mohanlal Saksena: With regard to Jain temples may I point out that even Hindus are not allowed to go into a Jain temple? So this is a wrong assumption.

Chairman: Their impression may be wrong, the fact may be wrong. But their whole point is where others are allowed they should be allowed also.

Shri T. D. Pustake: You seem to think that Jain temples, Buddhist temples etc. should be open to all untouchables, as they are open to the Hindus.

Shri Chandrika Ram: Yes.

Shri T. D. Pustake: So, you think this sort of provision should be added in this Bill.

Shri Chandrika Ram: Yes.

Shri T. D. Pustake: In what form would you like it to be included?

Shri Chandrika Ram: That is for the draftsman.

Shri N. C. Chatterjee: Just hear me and say whether I have got you correctly. So far as I have been following, your point of view is that the untouchables or the Harijans should have complete right of access to every Hindu temple that is open to the caste Hindus.

Shri Chandrika Ram: That is not the position.

Shri N. C. Chatterjee: You say that you should not be discriminated on the ground of sectional or denominational considerations, on the ground that this is a Shaivite or Vaishnavite temple, and so on.

What is the difficulty that you are feeling in regard to the draft as it stands in clause 5? Clause 5 deals with prohibition against refusal to admit untouchables to hospitals, etc.

In the amendment you have suggested, you want to shift the onus or the burden of proof to the defence; you say that the man should be presumed to be guilty, unless and until he proves that he is not guilty. Do you think that that would be fair?

Shri Prithvi Singh Azad: We have suggested this, because there have been a number of cases where seats have been denied to the Harijans, simply because they are Harijans. If we make a complaint, the reply comes that it was not refused merely on the ground that he was a Harijan. But

the main idea behind that refusal is nothing but the fact that he is a Harijan or an untouchable. In these circumstances, it becomes very difficult for the poor Harijan or untouchable to have any redress. Sometimes, he is told, you pay so much fee, otherwise you cannot have admission. But the main idea behind all this is simply the fact that he is a Harijan or an untouchable.

Shri N. C. Chatterjee: Have you got any concrete cases in view where such things have actually happened? Or have you found that you cannot possibly prove this kind of infraction or discrimination?

Shri Chandrika Ram: This kind of discrimination was not unlawful in the past. Therefore, no such case could be proved. But since we are social workers, we have received a number of complaints to this effect. That is why we have suggested this amendment.

Shri N. C. Chatterjee: You know in the special legislations in Bombay, West Bengal and other States, there is a similar provision prohibiting any discrimination against untouchables, in the case of admission to hospitals, dispensaries, etc. Have you found in actual working whether there has been any case of infraction or the kind of difficulty that you have mentioned?

Shri B. S. Murthy: So far as Madras is concerned, I can give you several instances. Suppose a Harijan goes to the hospital, the doctor will say: please wait, and he will attend to the others. After waiting for two hours or three hours, after waiting for the whole forenoon and afternoon, finally, he will be asked to come the next day. He will not be told that he will not be admitted, but he will be asked to come again and again, so much so that he will get vexed, and he will not go there again. This kind of thing is repeated for two or three days at a stretch. Thus, the untouchable is in effect refused admission. One ground is that he is poor, but the main ground is that he is also an untouchable.

Shri N. C. Chatterjee: What I am pointing out is that this is not actually met by the following proviso that you have suggested, *viz.*:

"Provided that any discriminatory treatment to the prejudice of the untouchable shall amount to refusal to admit."

First of all, it has to be established that there was discriminatory treatment.

If you look at the Schedule to this Bill, you will find there a number of State Legislations, where you have a comparable provision. I want to know whether you have experienced any difficulty in securing conviction or penalty under those Acts, for this kind of discriminatory treatment.

Shri Chandrika Ram: As has been explained just now, we have got difficulties in these matters. Suppose there is a case of T.B., and the Harijan goes to the hospital, no doubt, the doctor can say, I cannot treat you, because you are an untouchable. But what actually happens is that the doctor asks the man to come again and again for two or three days, with the result that the Harijan is put to a lot of vexation. He is not told straightaway that he cannot be given any admission, because he is a Harijan. But the fact is that he is denied the facilities merely on the ground that he is a Harijan or an untouchable. We wanted to save this kind of difficulty by means of the provision we have suggested.

Chairman: Shri Chatterjee's question is direct. Have you got in your possession any specific case that you have come across? You are saying these things, in the light of the complaints received from the members of the association. But have got any facts within your personal experience?

Shri Chandrika Ram: I have known at least several cases personally. I can give you some instances now; as for the others, I shall send them on

to you later. Many a time in the hospitals and other public buildings, our people who seek admission are not admitted; they are not told that they are not admitted because they are Harijans, but it is a fact that they are denied admission because they are Harijans. We wanted to save this kind of trouble by means of the proviso we have suggested. We want that the persons belonging to the Scheduled Castes or the untouchable classes should be treated on a par with the other citizens of the country.

Shri N. C. Chatterjee: In page 3 of your memorandum, you say:

"Untouchability is practised in various shapes and forms, and it is not possible to exhaust the list. For the same reason it becomes all the more necessary to insert a clause in this Bill which makes an offence of observing untouchability punishable which is not elsewhere provided in the Bill."

Could you give us any idea as to what kind of things you want to rope in and want to make penal or punishable? It is difficult for Parliament just to say 'offence of any other kind' without specifying the offence.

You have got to give some concrete instances. A penal law must be made specific. We shall be very much obliged, if you could give us some concrete cases.

Shri Prithvi Singh Azad: These relate to clause 6.

Shri N. C. Chatterjee: Clause 6 relates to prohibition against refusal to sell goods or render service to untouchables. That is the main penal clause. But you are saying that apart from that, there should be a general clause saying that any other kind of observance of untouchability must be made punishable.

Shri Chandrika Ram: We have given all this in our new amendment to clause 6.

Shri N. C. Chatterjee: Untouchability starts in this form. I would, therefore, like to have some assistance from you so that we can draft a proper piece of legislation. 'For the same reason', you say, 'it becomes all the more necessary to insert a clause in this Bill which makes an offence of observing untouchability punishable which is not elsewhere provided in the Bill.' Possibly, courts would not enforce a vague and indefinite legislation. I do not want you to be exhaustive. Mention one or two kinds of undesirable practices which you want to be roped in in this Bill so as to make it penal. It may be a lesser offence. It may not be punishable with imprisonment for six months.

Shri Chandrika Ram: We have suggested the maximum in the new amendment.

Chairman: Shri Chatterjee, we may draw our own conclusions. Nobody can provide in the Bill for such things.

Shri V. G. Deshpande: In the amended annexure, in the proviso to clause 3, you have given an explanation that Hindus include Jains, Sikhs and Buddhists. Is this an exhaustive definition or do you want to include others also? My own feeling is that Arya Samajists are not included, the Lingayats are not included as also the Brahmos.

Shri Chandrika Ram: Arya Samajists say that they are Hindus.

Shri Prithvi Singh Azad: So far as Arya Samajists are concerned, they do not observe untouchability in any form. Therefore their inclusion is not necessary.

Shri V. G. Deshpande: My own suggestion is this. You want to define Hindus. You should have a more scientific definition, as we have got. We say that all those who profess a religion of Indian origin are Hindus. For example, there are the tribals who believe in Gods who are neither Shai-vite or Vaishnavite or anything like

that. In India there are so many deities and shrines. India is such a vast country and you can have all types of men who may not come under these categories, who may not call themselves Hindus, but who, we still know, are Hindus. The Arya Samajist does not call himself a Hindu but yet he is a Hindu. I think the Bombay Act has included the Brahmos and the Arya Samajists.

Shri Prithvi Singh Azad: This has nothing to do with clause 3.

Shri B. S. Murthy: Supposing a man celebrates his son's or daughter's marriage and gives a feeding. If Harijans also go and he refuses to feed them, would you also like that to be included in this?

Shri Chandrika Ram: We have another clause suggesting punishment for social boycott.

Shri B. S. Murthy: I am putting this specific question. Supposing a gentleman in a village celebrates his son's or daughter's marriage. He also gives free feeding for which no invitation is necessary. All poor people go—all communities go. Untouchables may also go there. Supposing he objects to feed them on the ground they are untouchables, is it the desire of the Depressed Classes League that it should be also catalogued as an offence?

Shri Prithvi Singh Azad: This sort of untouchability is covered by our amendment in para. 5.

Shri N. S. Jain: As regards your amendment to clause 3, may I know whether you want to insist on the right to worship or on the right to access?

Shri Prithvi Singh Azad: Both

Shri N. S. Jain: Do you know that right of worship and right of access are different things?

Shri Chandrika Ram: May be.

Shri N. S. Jain: Would you expect a man to be given the right of worship when he does not know how to worship?

Shri Chandrika Ram: It is difficult to say.

Shri N. S. Jain: I will explain myself. You may be knowing that there have been very big litigations on the point of right to worship, and who is to worship. Take, for instance, a Jain temple. You will find that the special way in which worship is being performed therein is not known even to many Jains. And, unless they know that method of worship, they are not allowed to touch the deity and handle the deity by way of worship but they are allowed to go to a certain extent in the temple and have darshan with folded hands and then come back. I can understand the right of access but when you insist on the right of worship can you do so, because it can only be claimed by a person who belongs to the same denomination or to the same sect or ideology to which the temple belongs. If a Shaivite were to go to a Vaishnavite or Jain temple he won't be allowed to worship there, because he may not know how to do it. Perhaps, he may do it in a way which is offensive. What I say is that the right of worship is a thing which can be given only to a person who belongs to that very sect to which the temple belongs and who is well versed in the art of worship. If only right of access is guaranteed, it will only be right of access from outside. I will give an instance. In a Vaishnavite temple if a Shaivite goes, he can only go up to a certain extent, have a look at the deity and then go back.

Chairman: I would request members not to enter into arguments; they may only ask questions on points of clarification. I would like to invite your attention to the amendment they have tabled. It says:

"in the same manner and to the same extent as other Hindus or public are generally allowed." and not beyond that.

Shri N. S. Jain: The second thing I would like to know is: would you like to keep this word 'untouchability' in the Act?

Chairman: They have not given any expression of views on that in their memoranda; we may reserve it to ourselves.

Shri Mohanlal Saksena: Have you read the statement of objects and reasons attached to the Bill?

Shri Chandrika Ram: Yes.

Shri Mohanlal Saksena: If so, have you noticed that this Bill is not confined to Hindus alone?

Shri Chandrika Ram: Yes.

Shri Mohanlal Saksena: In making your suggestions have you kept that thing in view?

Shri Chandrika Ram: Our difficulty, generally, is with Hindus only.

Shri Prithvi Singh Azad: May I make it more clear? The objection raised by you has been met by the amendment suggested by us.

Shri Mohanlal Saksena: I only asked the question: "have you kept that in view while making your suggestions?"

Shri Chandrika Ram: Yes, we have.

Shri S. N. Dwivedi: On page 3, of your memorandum you say:

"it is also equally necessary for the Legislature to lay down a minimum quantum of punishment statutorily."

Shri Chandrika Ram: We have given a concrete shape to the idea that we have. We have given our idea as to what should be the punishment for an offence under this law.

Shri S. N. Dwivedi: You have said that there should be a statutory provision for minimum punishment. What will be the quantum of punishment

which you require should be provided in the Bill?

Shri Chandrika Ram: The minimum is for the court to decide. It will depend on the nature of offence and the court can give lesser punishment.

Shri S. N. Dwivedi: About the other point which Shri Chatterjee also raised, may I know whether it will satisfy your point of view if in the Bill it is included that practice of untouchability even amongst the untouchables should be punishable?

Shri Chandrika Ram: Yes.

Shri Sanganna: In page 1, you have said: "stronger methods than the one provided in the Bill are needed... .." I want to know whether you would consider it desirable to set up an Advisory Board so that Government may be advised from time to time in this connection.

Shri Chandrika Ram: In our amendment we have suggested the constitution of an Advisory Board in the Centre as well as the States to advise the State Government and Central Government so that the provisions of this Act may be implemented in a useful manner.

Shri Sanganna: You have mentioned in your amendment the formation of an Advisory Board. Will it give instructions only to the Central Government or to the State Governments also?

Shri Chandrika Ram: After all the Central Government is passing the law. They can give any advice or instructions to the State Governments.

Shri Parmeshwaram: You want to know whether the State Advisory Board as suggested will be in a position to advise Government in regard to matters which may come up? Our idea is, when in spite of all these rules and regulations which exist, we are not able to implement the provisions, a kind of quasi-judiciary body or statutory body may be envisaged. The committee may consider it and if that

is not possible then I would suggest that special officers for this purpose with magisterial powers may be appointed so that they may hear cases and dispose them of; otherwise it takes a lot of time to go to court, establish the case, allow for adjournments and so on.

Shri Chandrika Ram: We have suggested a summary trial.

Shri Sanganna: What will be the remedy in case Government does not accept the recommendations of the Advisory Committee in full?

Shri Chandrika Ram: As a matter of fact an Advisory Committee is to give advice only. It is for the Government to accept or reject them. An Advisory Committee cannot act as an executive committee.

Shri Velayudhan: In clause 3 you have mentioned:

"every untouchable shall be entitled to bathe in or use the waters of any sacred tank, well, spring or water-course in the same manner and to the same extent as other Hindus or public generally are allowed."

Now, there are untouchables who have become Christians and some have become Muslims. You have stated that every untouchable who is a Hindu shall have access and shall have right of performing religious service in the same manner and to the same extent as other Hindus. I have no objection about that. Then you say that every untouchable shall be entitled to bathe or make use of waters etc. in the same manner and to the same extent as other Hindus. Are you against converted Scheduled Castes? Are they to have the same disability and should be excluded from all these things?

Shri Chandrika Ram: As far as I know, if a Scheduled Caste has converted himself, he becomes a Christian or Muslim and there is no untouchability in those religions. Therefore, we are not going to include those people here

Shri Velayudhan: Do you know that there is still untouchability prevailing with regard to converts from Scheduled Castes in South India?

Shri Chandrika Ram: In which religion?

Shri Velayudhan: Christianity.

Shri Chandrika Ram: It is for the sect to which they have been converted to protect their rights, because it was only due to these things that they converted themselves and if these things are prevalent there, we cannot help it.

Shri Velayudhan: Do you think the State has no right to give them the fundamental rights?

Shri Chandrika Ram: They have got all fundamental rights. Not only the converts, everyone in India has got them.

Shri Velayudhan: For example, a barber in his shop charges a person annas eight for a hair cut. But when an untouchable visits his shop he is charged Re. 1. Don't you think he should be protected against such discriminatory treatment?

Chairman: They have suggested it in their amendment.

Shri Velayudhan: How do you like the title of the Bill?

Chairman: Why should you put that question on a matter which has not been raised in the memorandum? Those things we shall consider ourselves.

Shri Velayudhan: What I am interested in knowing is whether the Bharatiya Depressed Classes League likes the use of the word "Untouchable".

Chairman: But that does not arise out of the memorandum.

Shri Velayudhan: The memorandum itself is based on the Bill. That is why I want to know whether it should not be something like removal of civil disability, or something like that.

Chairman: I shall again read out direction 23 of the Speaker:

".....the nature of questions that will be put to the witnesses will be for clarification of any points included in their memoranda or any other fresh points arising out of the discussion."

That does not mean that you can discuss the whole Bill with the witness. I do not allow that question.

Shri Velayudhan: Do you think that if all the amendments suggested by you are accepted untouchability will be removed?

Chairman: That is a matter of opinion.

Shrimati Lilavati Munshi: In the explanation to the proviso for clause 3 suggested by you, you have defined Hindus. You have not said anything about other communities, though the Bill includes them. There is no untouchability in religions other than Hinduism. The Bill gives the sharing of the special privileges by the untouchables of the other communities also. Supposing there is a grant of Rs. 5 lakhs for untouchables. Will you share that grant with the other communities also?

Shri Chandrika Ram: The grant is given for a special purpose meant for a special group. Supposing there is a grant for Scheduled Castes, it will be spent for Scheduled Castes. If it is for Scheduled Tribes, it will be spent on Scheduled Tribes.

Shri Parmeshwaram: That will depend upon the nature of the recommendations of the Backward Classes Commission.

Shrimati Lilavati Munshi: There is no untouchability among them: I think that is one of the inducements for conversion. Would you like to share your privileges with them?

(No answer was given)

Kakasaheb Kalelkar: In your amended annexure, towards the end of paragraph 4, you have recommended imprisonment for six months and fine of

Rs. 500 as the punishment. May I take it from this that you do not press for a harsher punishment? You have in the beginning of your memorandum said that deterrent and harsh punishment should be imposed. But from this paragraph it seems you are satisfied with imprisonment for six months and fine of Rs. 500 as the punishment. Do I take it that on better thoughts you do not press for a harsher punishment?

Shri Chandrika Ram: When you make a law you give something there in the shape of punishment or fine. So we have suggested this much: we are satisfied with this.

Shri Nanadas: Mr. Chairman, Sir, in paragraph 1 of the memorandum it is stated:

“We regret that the gravity and urgency of this burning problem, that is, untouchability, is not reflected in this Bill.”

May I have some clarification from the witnesses as to what is in their mind regarding this Bill?

Shri Chandrika Ram: What is in our mind is given in the suggested amendments. We have presented the lacuna or the difficulty we feel, and we have suggested the clauses that we want to improve. It means as regards the rest of them we are satisfied.

Shri Nanadas: Towards the end of the first paragraph of their memorandum the representatives say that “half hearted measures, instead of alleviating the sufferings may intensify them”. Do the representatives think that the measure under discussion is a half-hearted measure and is not going to alleviate the sufferings of the untouchables?

Shri Chandrika Ram: You see in the Schedule a number of Acts passed by the State Legislatures are given. In our opinion those Bills were passed, given assent to, but in the actual performance they were not properly

administered. Therefore we said like this. I hope this Bill, which is going to be passed by the sovereign Parliament, will be properly administered so that this evil may be removed as early as possible.

Shri Nanadas: May I take it that the representatives are fearing that the provisions of this Bill may not be implemented at all and they will merely remain on the statute book; is that the idea of the representatives?

Shri Chandrika Ram: We do not mean that; we hope that this Bill will be fully and completely implemented.

Shri Nanadas: Have the witnesses got any idea that instead of having this kind of coercive legislation we should have a positive legislation by means of which a concrete programme which will help in the eradication of untouchability can be taken in hand?

Shri Chandrika Ram: I think this is a very positive programme that is being put.

Chairman: I think the witnesses are not competent to reply to this question which is very general. Let us confine ourselves to the provisions of the Bill.

Shri Nanadas: Another point on which I want elucidation is the statement in page 3 of the memorandum that “implementation of the law is as much important, if not more important than the making of it”. Since the three representatives here are also in the Ministries or have been in the Ministries for a long time, may I know what has been their experience in implementing the provisions of similar State laws and what improvements they would suggest for the proper implementation of this law?

Shri Chandrika Ram: We have suggested a number of amendments to this Bill which will go to show our idea as to how to implement this Bill in the best and proper way.

Shri Nanadas: What I mean to say is that similar enactments in the States are being implemented by the local police. And there is a very strong

[Shri Nanadas]

feeling among the so called untouchables that the people who are entrusted with the enforcement of the law themselves being apostles of untouchability are not evincing any interest in the proper implementation of the law, and therefore the untouchables are not getting any justice. That, I think, is the genuine feeling among them. Under such circumstances if this law is also entrusted to the same set of persons, how can they implement it? Have you got any hope in the same arrangement, or do you suggest any other arrangement?

Shri Chandrika Ram: We hope that this will be implemented in a proper manner. Suppose it is not, we shall see the next way how to get out of this trouble.

Shri Nanadas: In Madras State, these laws, as far as I know, have not been implemented. The hon. Minister Shri Parmeshwaram is here. He has been a Minister there in charge of Harijan Welfare for a long time, and the genuine feeling of the people there is that these laws are merely on paper and are not being implemented. Under such circumstances do you still hope and believe that in the same set of arrangement as we now have, justice can be done to this provision?

Shri Datar: How does this question arise?

Chairman: How will their opinion on this help us?

Shri Nanadas: In their memorandum they have used this particular sentence.

Chairman: They are again and again impressing upon us the amendments that they have suggested. So we may confine ourselves to them.

Shri Nanadas: They have stated that "the implementation of the law is as much important, if not more important than, the making of it".

Chairman: We shall consider that amongst ourselves.

Shri Parmeshwaram: We have made one suggestion here, that all the government servants should take an oath in this regard. That may help to a certain extent. But, after all, the success of an Act does not depend so much upon the wording of it as upon the actual working. For that purpose we have tried to make two suggestions and if they are accepted by this Committee that will go a long way.

Shri Nanadas: Another point is on page 3 of their memorandum; in para 3, they have stated that "untouchability is practised in various shapes and forms and it is not possible to exhaust the list. For the same reason it becomes all the more necessary to insert a clause in this Bill which makes an offence of observing untouchability punishable which is not elsewhere provided in the Bill".

I am not able to understand it fully. May I have some elucidation?

Chairman: The same question was asked by Shri Chatterjee. Shri Chatterjee's question was pointed, namely, whether they could give instances? They did not give. So what is the use of repeating it?

Shri Nanadas: Does it mean that the offences must be catalogued, number one, number two?

Chairman: It is not possible, they say.

Shri Chandrika Ram: It is not possible. As far as possible we have suggested some things. It is not possible to give an exhaustive list.

Shri Nanadas: And then they say: "We most earnestly appeal to the Select Committee to devise a formula so that members of scheduled castes can summon courage to assert their rights without the prospect of losing their living".

Shri Chandrika Ram: The idea behind this is this. that there are some scheduled caste members who are members of government service or local bodies or private concerns. There are double duties for them, as we

envisage. Here is a member of the scheduled caste in the Parliament and he has to do the ordinary work of a member. We envisage in the Bill more than that. You have to do certain things. And for doing that we should not be punished, or the society should not take it ill, so that you may not lose your job or your livelihood. I will give one instance. There was one sub-inspector of police. He belonged to the backward classes, he was not a Harijan. He was taking keen interest in the matter of uplift of scheduled castes. Under the Police Manual he has to do certain work. But he went beyond his jurisdiction to do a certain thing to help a Harijan family. For that the Superintendent of Police who was above him asked him "why should you go beyond your jurisdiction? I shall punish you or suspend you or report against you to the higher authority. You should not do things beyond your jurisdiction". We want that our people, anyone who wants to do certain work in regard to the uplift of Harijans or other backward classes should be saved from the society or Government or any authority if he does such things. It is for our organisation to do that. It is not for Government. You cannot encourage the people to do that, merely by passing a Bill and enacting a law. It is for the private organisations like our Depressed Classes League or the Harijan Sevak Sangh and other organisations that are working for their uplift, to give encouragement and give benefits and so on, and to enable them to have their rights and privileges, so that they are enabled to eke out their livelihood.

Chairman: But what happened after that?

Shri Chandrika Ram: So, this is what we are suggesting.

Shri Nanadas: Regarding temple entry, you know that there are certain temples owned by private individuals

like the ex-zamindars and Maharajas; some landlords also have got their own private temples. Of course, the Hindus of that locality may be allowed access to them, if the owners of those temples permit them.....

Chairman: I would suggest that these points we can discuss amongst ourselves later. So far as the witnesses are concerned, let us put them questions and elicit answers from them.

Shri Nanadas: There was some discussion in regard to these private temples. I want to know whether these representatives want that these private temples belonging to the rajas and landlords also should be thrown open to the Scheduled Castes.

Shri Prithvi Singh Azad: If these temples are thrown open to the other Hindus, then they should be thrown open to the Scheduled Castes and Harijans also.

Shri Nanadas: As far as I know, in South India—I do not know the conditions in the North—even the Scheduled Caste converts to Christianity are being discriminated in the churches. There is separate seating arrangement for these converts, and while offering *prasadam*s or prayers also, these people cannot directly offer them to God.

Shri Chandrika Ram: What is your question?

Shri Nanadas: In such circumstances, do you also wish that these unfortunate Scheduled Caste Christians should be treated as Hindus, i.e. Hindu untouchables?

Shri Thimmaiah: That is for the Backward Classes Commission to decide.

Shri Nanadas: Do you wish that these unfortunate Scheduled Caste Christians also must be given the same facilities under this Bill?

Shri Chandrika Ram: Your question is very vague. Do you mean that they should be given admission to the churches or to the temples?

Shri Nanadas: I mean, to the churches or the Christian temples.

Shri Chandrika Ram: It is for the Christians to see that they are properly treated and given an equal place in the churches.

Shri Nanadas: In this Bill, the Scheduled Caste converts to Christianity are also treated as untouchables. Do you wish that they should also be treated as untouchables?

Shri Chandrika Ram: They should be given all facilities, as far as possible, which are given to other Indian citizens or to other Scheduled Caste people. I have no objection to that.

Shri Ram Dass: We should remember that they are not Hindus. The question is whether they are Hindus.

Shri Chandrika Ram: A Christian is a Christian, and never a Hindu.

Shri Nanadas: A point was raised by Shrimati Lilavati Munshi in regard to the sharing of concessions. Suppose these Scheduled Caste converts to Christianity are also included in the list of Scheduled Castes or untouchables, would you like to share the privileges, or other financial concessions given by Government along with them? Have you got any objection if for such concessions, you include these Scheduled Caste Christians also amongst the untouchables, as defined in this Bill? And if those concessions are increased.....

Chairman: I am afraid that this point does not arise out of this Bill. We are only concerned with the removal of untouchability, the rights and privileges, etc.

Shri Nanadas: Once this point has already been raised, I am only asking their opinion on this point, whether they have got any objection, if the funds are increased.....

Chairman: How can their opinion help us? They can only give their personal opinions, which cannot bind the association or this Committee. Nor is it proper for us to go into all

those matters here. If you have got any specific questions in regard to the removal of untouchability, you may put them.

Shri Nanadas: The Scheduled Castes, throughout India, have to carry on certain customary unskilled labour like removing dead animals, scavenging, sweeping etc. and certain governments treat these jobs as 'essential services' and the scheduled castes are not even allowed to raise their demands. Do you suggest anything to remedy this?

Shri Chandrika Ram: We have given our proposals to the Planning Commission and to the Government of India and to the State Governments. We do not want the restrictions on essential services to be applied only against the scheduled castes people.

Shri Ganeshi Lal Chaudhary: I would like to ask only one question. The provisions of the Bill, as they stand, are wide and are applicable to any case of offence of untouchability, among persons of all denominations, Hindus, Christians, Jains, Sikhs etc. Your memorandum deals mainly with the Hindu untouchables. Why do you want to circumscribe the scope of the Bill so that it is restricted only to the practice of untouchability against Hindu untouchables?

Shri Chandrika Ram: We want it to apply in all cases.

Shri Ganeshi Lal Choudhary: Untouchables are among the Hindus, Christians and many others.

Shri Thimmaiah: It is called the Untouchability Offences Bill.

Shri S. N. Das: I would like to know what is your idea in limiting the fine. The Magistrate or the Judge should see whether any person who is convicted is financially in a position to pay the minimum prescribed fine. You have stated in paragraph 4 that such imprisonment shall be for not less than one month and fine not less than one

hundred rupees. It is for the Magistrate or the Judge to find out whether the man is in a position to pay or not.

Shri Chandrika Ram : It is not necessary for the Judge to accept what is given in the Act. Supposing it is a poor man who commits this offence, it is for the magistrate to decide whether he is in a position to pay or not. If he finds that he cannot pay then he may fine a lesser amount.

Shri S. N. Das : If your suggestion is accepted in this enactment, there would be this provision for minimum fine. What is your idea underlying this? In inflicting the punishment the trying magistrate is the sole judge to say whether the person convicted of the offence and asked to pay the fine is in a position to pay it or not. You cannot insist on minimum fine.

Shri Chandrika Ram : I think the hon. Member is confused; he is confusing the maximum with the minimum.

Chairman : In the amended annexure that you have given, in paragraph 4, sub-paragraph (3), you say:

“Provided that in the absence of special and adequate reasons to the contrary to be recorded in the judgment, such imprisonment shall not be less than one month and fine not less than one hundred rupees.”

On this, the hon. Member has put his question.

It now appears, from your subsequent statement, that you are not pressing that point.

Shri Chandrika Ram : We have given our idea; it is for the Committee to modify it or keep it as it is. We have seen in many cases the fine is only one rupee; we wanted that those who observe untouchability should be punished with fine also.

Chairman : You now say plainly that you have no objection to leave it

to the discretion of the court and you do not press the minimum fine.

Shri S. N. Das : With regard to temple entry, you have suggested that every untouchable who is a Hindu shall have access etc. Access is one thing and access for worship and for some other religious observance is a different thing. What is your idea in allowing these untouchables access to the temple?

Shri Chandrika Ram : The question was raised by Shri N. S. Jain. We have answered that if any Hindu is allowed access for worship they should be allowed access for worship.

Shri S. N. Das : Don't you know that even caste Hindus are not all of them allowed access to worship but only allowed access?

Shri Chandrika Ram : It should be finished as early as possible.

Chairman : The very same question was asked by Shri Jain and I pointed out that their amendment does not say so. Their point of view is that these untouchables or scheduled castes should be given the same rights as the other Hindus are generally given in these temples—to the same extent and in the same manner.

Shri S. N. Das : Mr. Chairman, my point is this; generally all the caste Hindus are not allowed the same kind of facility.

Chairman : In that case, these people will also be allowed.

Shri S. N. Das : I only wanted to know whether the representatives of the Depressed Classes League would be satisfied with a separate provision for access to temples and not for entry for worship in the temple.

Shri Prithvi Singh Azad : We do not want a separate provision.

Shri S. N. Das : The League has suggested an amendment for the constitution of a Board. I would like to

[Shri S. N. Das]

draw the attention of the representative to the fact that there is a provision in the Constitution for the appointment of a Special Officer to see whether the safeguards provided in the Constitution are being observed or not and to submit his report from time to time. Why not this function also be given to him?

Shri Chandrika Ram : That is under the Constitution; this is under this Act.

Shri S. N. Das : My point is, when there is this Special Officer under the Constitution, will there not be overlapping of functions.

Shri Chandrika Ram : The Special Officer for the Scheduled Castes and Scheduled Tribes is working under the Constitution and we think that it is not enough. Therefore, we request that a Board be constituted in the States and in the Centre to see that the provisions of this Act are actually and absolutely implemented. Therefore there will be no overlapping.

Shri S. N. Das : I think there is no necessity to add this provision in the Bill about punishment because it is the function of the Court—when certain persons are brought before it for certain offences and are convicted—to see whether the persons committing these offences have been punished properly or not.

Chairman : The suggestion is there. We shall consider it amongst ourselves.

Shri Ram Dass : You have fixed a minimum punishment, I want to know whether, if the offence is repeated, you want that the punishment should be enhanced?

Shri Chandrika Ram : I have replied to that question.

Shri Ram Dass : Your view is that repetition of the offence should be punished with enhanced punishment?

Shri Chandrika Ram : In the new

amendment we have suggested that the maximum that can be given is imprisonment for six months and fine of Rs. 500.

Shri Ram Dass: Do you mean to say that if the offence is repeated for the 10th time the punishment should be the same?

Shri Chandrika Ram : He may be given punishment for ten times.

Shri Ram Dass : If he commits the offence for ten times then he becomes a habitual criminal.

Shri Chandrika Ram : It is only in criminal code that a criminal who repeats the crime is given enhanced punishment. This is a social matter. Once a man is punished, I do not think he will again do the same thing.

Shri Ram Dass : I do not think there is anything to prevent him from repeating the offence. Are you for enhanced punishment or not?

Shri Prithvi Singh Azad: It is for the court to decide whether the repetition of offence needs enhanced punishment or not. We do not want to suggest enhancement in our amendment.

Shri Chandrika Ram: As a matter of fact a man who observes untouchability is not a criminal like an ordinary criminal. A criminal is a criminal. Once he is fined or punished and he goes to the court a second time after committing the same offence, he is given enhanced punishment. In our view if he observes untouchability he is not a criminal even if he tries to repeat it.

Shri Kajrolkar : The magistrate will not have power to punish beyond imprisonment for six months and fine of Rs. 500; that is the trouble.

Shri Ram Dass: That is exactly what I say. You have fixed the maximum whereby you will never be able to enhance the punishment.

Shri Chandrika Ram : If you yourself think that more punishment

should be there, please provide it; we have no objection. Our idea is to give this much.

Shri Thimmaiah : You have provided for punishment. Now, let us assume that a whole village except the Scheduled Castes boycotts the Scheduled Caste people. How do you inflict this punishment which you have suggested, on the whole village?

Shri Chandrika Ram : In the first instance this is a thing that will happen only very rarely in society. If it is at all done it is for the Parliament and the Government to study the position. After all laws are not passed to be disobeyed. Laws are passed to be administered and it is for the Government to see that they are obeyed.

Shri Thimmaiah: Social boycott will become an offence under this Act, and what is the provision in the Act to inflict punishment? As it is, the punishment suggested is imprisonment for six months and fine of Rs. 500. How can you inflict that on the villagers? Do you mean to say that there should be some collective fine? Suppose there is a communal riot, the whole village is collectively fined; do you mean to suggest something like that?

Shri Chandrika Ram : I know the nature of collective fines. They were there during the British days. Even today in some places there are collective fines. We do not envisage that in this Act.

Shri Thimmaiah : How can the punishment be inflicted then?

Shri Chandrika Ram : It is for the society, government and the people to see that the provisions of the Act are implemented. When special circumstances arise, the Government will see that something is done.

Shri Thimmaiah : It is not provided in the Act.

Shri Chandrika Ram : The Act does not provide for collective fine; we do not want that.

Shri Prithvi Singh Azad : We are not in favour of collective fines.

Shri Thimmaiah : You want this statutory Board in the Centre as well as in every State for the supervision and implementation of the provisions of this Act. You know there are certain special officers in every State to look after the Scheduled Caste people. There are such officers in each district and even in tehsils, who are entirely in charge of Scheduled Caste amelioration work. Suppose this task is entrusted to them, will it not be sufficient?

Shri Prithvi Singh Azad : If you go through the amendments suggested you will find that this Board will consist of members $\frac{3}{4}$ th of whom will be from Scheduled Castes, and those officers who are doing that kind of work can also become members of the Board. This will help those officers in carrying out the implementation of this Act. Therefore, we have suggested that this is most important.

Shri Thimmaiah: Instead of forming a Board specially for this, why not we have a Social Welfare Board?

Shri Prithvi Singh Azad : We are suggesting the formation of this Board specially under this Act.

Shri Chandrika Ram : This is only for the removal of untouchability.

Shri Thimmaiah: Will it not be better to call it a Scheduled Caste Social Welfare Board, whose function will be to look after the proper implementation of this Act in addition to attending to other work on welfare of Scheduled Castes?

Shri Prithvi Singh Azad : We are not in favour of that. There should be one board which should do this work connected with the removal of untouchability.

Shri Lingam : You will agree that this is essentially a social measure. Knowing that social changes have to take place gradually, that is, according to the needs of the time, do you think

[Shri Lingam]

that the deterrent punishment that you propose, which is bound to produce bitterness and reaction, is going to help the cause which all of us have at heart, of removing untouchability expeditiously?

Shri Chandrika Ram : No doubt it is going to help us in the cause for which we are feeling so much.

Shri Lingam: What is the basis for your statement that deterrent punishment will hasten the reform that we have in view?

Shri Chandrika Ram : Everybody in the society has something to fear about. You know that certain individuals, or sections as a whole will not obey unless there is something to fear. Without something to fear they will not observe the law and that is why we have provided this.

Shri Lingam: After all, an individual who misbehaves, or does practice untouchability will do so only if the climate for such action is suitable. In other words, if the group of which he is a member does not respond adequately to the needs of the time, of removing untouchability, then only he will do so. Therefore, how does a deterrent punishment on an individual who does practice untouchability help our cause?

Shri Chandrika Ram : Punishment is generally meant for an individual and not for a group or society. Suppose there are certain persons of whom one is a criminal, only the criminal is punished. He is punished so that others may learn that they also should not behave like that.

Shri Lingam : I made a distinction at the outset that this is not like a criminal offence. This is a social reform and I take it that according to your view deterrent punishment will help us in that.

Now, we have envisaged a position where the Scheduled Caste members will exercise all the rights which any

other member of the Hindu society is entitled to. We also know that every member of the Scheduled Caste is not in a position to exercise his rights. What safeguards, therefore, do you suggest for members of Scheduled Caste, who are not yet conscious of their rights, being made tools in the hands of interested political parties in the matter of exercise of their rights and thereby leading to civil commotion?

Shri Chandrika Ram: As members of the Scheduled Castes we have our own organisation. We shall not depend upon the Government or any political body. We have our own organisation and shall try to see that they understand the rights and privileges given by the Constitution and under this Act.

Shri Lingam: Are you quite sure that your organisation is so strong and widespread that it controls the aspirations and activities of the Scheduled Caste Members throughout the length and breadth of the country?

Shri Chandrika Ram: Indeed we think like that.

Shri Lingam: With regard to your suggestion that there should be statutory bodies attached to each Ministry for implementation, are you aware that there are at present Harijan welfare committees in each district under the Collector and there are also advisory committees attached to the Minister for Harijan Welfare in each State? What position do you envisage for the new statutory committees? How will they be able to enforce the provisions of the Act better than the existing advisory bodies?

Shri Chandrika Ram: "Welfare" is a very wide term. It includes everything in the world. This committee we are suggesting only for the removal of untouchability.

Shri Datar: I shall pursue the first question that Shri Lingam put just now, namely, that to have a severer form of punishment would defeat itself. Do you agree?

Shri Chandrika Ram: No.

Shri Datar: Would you agree that social progress can be achieved more by persuasion than by enforcement of a penal provision like the one that we have?

Shri Chandrika Ram: We have seen that this persuasion has been a failure. Under the programme and inspiration of Gandhiji himself it could not go as we wanted. Therefore, besides this persuasion we want to make these regulations and enactments so that society may progress.

Shri Datar: Would you give more importance to persuasion than to legislation?

Shri Chandrika Ram: Indeed, we shall, but it does not mean that we shall not pass any Act to punish a person who observes this type of thing in society.

Shri Datar: Are you aware that any punishment that can be given to an individual has also a social or public aspect? For example, if the public feel that for a particular offence a higher punishment is prescribed by law, or sentence by the court, would it not create a feeling of revulsion on the public generally, apart from the offender?

Shri Chandrika Ram: It might. I cannot say.

Shri Datar: Will you agree that so far as Scheduled Castes or Harijans, especially in the rural areas are concerned, economically they are dependent upon the other sections of Hindu society?

Shri Chandrika Ram: They are.

Shri Datar: Then, will it not be better to get this reform effected by as much goodwill as possible?

Shri Chandrika Ram: We want that. But besides goodwill we want this as well.

Shri Datar: It is the very question I want to put to you: whether it will not have the effect which you do

not have in contemplation, whether a feeling of revulsion will not be created merely on account of the severity of the punishment and not on account of the fact of the punishment?

Shri Chandrika Ram: I do not think it will be created. That is not our opinion.

Shri Datar: You desire that there should be trial in a summary manner?

Shri Chandrika Ram: Yes, we have mentioned that in our memorandum.

Shri Datar: What is your reason for it?

Shri Chandrika Ram: On account of the prolonged nature of the proceedings in an ordinary court, and the constant adjournments, the Scheduled caste people who are mostly daily labourers will not be able to spend on lawyer fees, etc., and as such we would prefer summary trials.

Shri Datar: That is on account of the present procrastination. If, for example, trials are expedited, then you can have no objection to a case going to a magistrate's court to be tried in the ordinary way.

Shri Chandrika Ram: For purposes of this Bill we would prefer a summary trial. The ordinary courts cannot perform it in a shorter period.

Shri Datar: This is the only reason?

Shri Chandrika Ram: Also, there will be less harassment to the Scheduled Castes.

Shri Datar: Then you have stated that there must be some rules under this Act. What are the matters left untouched by the Bill, and what are the matters which you wish to be covered by the rules? This is a penal measure complete in itself. Would you like some rules to be made by the executive and then also have the provision of the law? If so, what are the particular points in respect of which rules are to be made?

Shri Chandrika Ram: The rules should be made in respect of how persons who observe this untouchability or persons who come to the courts for filing petitions or complaints against the Ministry or any authority....

Shri Datar: May I point out to my friend that the moment it is found that he has committed an offence, further procedure is according to the Code of Criminal Procedure. Why then do you want rules to be made having the force of law? May I take it there are very few matters in which you can have rules.

Shri Chandrika Ram: Whatever is left, should come under the rules.

Shri Datar: So, you will agree that if anything is left at all it should be covered by the rules. Would you also agree that all the forms of untouchability, or at least most of the forms of untouchability, have been touched by this Bill?

Shri Chandrika Ram: Not all the forms, but most of them. It is not an exhaustive list.

Shri Datar: Can you then point out any forms of untouchability not covered by this Bill?

Shri Chandrika Ram: Suppose there is a marriage in a Harijan family and he invites people. He wants to give free meals to others. People do not come. They won't say they regard him as an untouchable.

Shri Datar: That is covered by the word "service". Very wide and all-embracing words are used in this Bill.

Shri Chandrika Ram: But the word "service" is not defined here: it is probably defined in the General Clauses Act, I do not know.

Shri Datar: So, you cannot indicate any particular form which has not been touched by the Bill. So, it is your desire, by way of abundant caution, that no forms of untouchability should be left unpunished.

What are the other forms? I would not like it to be left vague. Are you aware of any other forms actually in practice but not provided for in the Bill?

Shri Chandrika Ram: We know of certain things.

Shri Datar: What are they?

Shri Chandrika Ram: Suppose there is a puja or there is a general gathering in the village—it is not given here—the Harijans indeed contribute something to the puja, but they are not given any proper place, they are kept somewhere. Or suppose the President or the Prime Minister or a Minister or some distinguished person comes to the village and a function is arranged for their reception. The Harijans are contributing their mite—sometimes they contribute more, because they are poor people and they are asked to do it—but in the function proper they do not get a place. This disability is not mentioned in the Bill.

Shri Datar: Would you agree it is a penal measure and not a welfare measure?

Shri Chandrika Ram: I know; but the intention of a penal measure is welfare.

Shri Datar: And therefore you desire to have, what you might call, a residuary provision for touching all sorts of untouchability not touched by it; is that what you want?

Shri Chandrika Ram: Yes.

Shri Datar: In your new Annexure you have introduced clause 13B. Are you aware that under the Constitution untouchability has been prohibited in article 17? The Constitution is sacred to all the persons, including the officers of the Government, is it not? Do we take any oath from any citizen for doing anything so far as the Constitution is concerned? In other words, what are the special reasons according to you which impel you to impose a pledge or a punishment on an officer?

Shri Chandrika Ram: I will give an example. In the lower grades of service there are Chaprassis and Chowkidars. The officers want to appoint persons belonging to certain communities who can touch water etc. so that they can be used for their domestic purposes, for bringing water and so on. So even if the Government gives the preference for Scheduled Castes it is not adhered to in practice. In certain States Government have fixed the percentage of posts that should be filled in from among people belonging to the Scheduled Castes. But the members of the Scheduled Castes are not appointed to the posts by the officers because of the fact that they observe untouchability and in their own interests they do not appoint them. I suppose if at the time of their appointment they take a pledge that they will not observe untouchability in any shape or form they can be punished if they violate it. Today they cannot be punished.

Shri Datar: After the passing of this Act what you have complained of will amount to an offence.

Shri Chandrika Ram: Here if he takes a pledge, automatically the officer above him will take note that here is a subordinate officer who has taken a pledge at the time of appointment but he is not observing the pledge.

Shri Datar: If any officer is found to be committing any act which is repugnant to the Constitution it might amount to an unsuitable conduct so that proceedings can be had against him.

Shri Chandrika Ram: If there are complaints then we can go to the courts. It is difficult to define what is good conduct and what is bad conduct, and the poor people will be involved in all this.

Shri Datar: So, if action can be taken under the Government Servants' Conduct Rules....

Shri Chandrika Ram: Action is not taken.

Shri Datar: If action can be taken, then you have no objection?

Shri Chandrika Ram: No; no action will be taken.

Shri Datar: If under the Government Servants' Conduct Rules this action can be taken for violating the Constitution you have no objection?

Shri Chandrika Ram: If in the Government Servants' Conduct Rules this thing is included, then we do not want it in the Bill. Why should we?

Shri Datar: Have you come across any large number of instances in which officers have been acting against the Constitution?

Shri Chandrika Ram: Yes.

Shri Datar: From which classes?

Shri Chandrika Ram: From all classes.

Shri Datar: From the higher to the lower? Please do not make generalisation.

Shri Chandrika Ram: All classes—I certainly exclude the class for which we are speaking.

Shri Datar: Which are the classes of officers who are guilty of this?

Shri Chandrika Ram: Almost all classes of officers.

Shri Datar: Can you cite to me the number of such cases within your personal experience?

Shri Chandrika Ram: Yes.

Shri Datar: How many, within your personal experience?

Shri Nanadas: Thousands.

Shri Datar: Please do not make it so wild!

Shri Chandrika Ram: I will refer to a recent circular issued by the Government of Bihar on the 5th July, 1954 that in grade IV service

[Shri Chandrika Ram]

scheduled caste persons should be appointed. Recently, one and a half months back in the Education Department—the Secretary knows it, the Under Secretary knows it, the Superintendent knows it and the D.P.I. knows it—still, knowing all full well, they appointed two Chaprassis belonging to the Kahar class when Scheduled Caste persons were available; because they wanted to use those persons as their domestic servants. When I wrote to the Chief Secretary regarding this matter, those people were discharged and Scheduled Caste people were appointed.

Shri Datar: Can you not hold the Minister liable for this?

Shri Chandrika Ram: I hold the officer liable, not the Minister.

Shri Parmeshwaram: This is a preventive measure and most of the things have to be worked by government officials. I do not think there is any harm in their setting an example.

Shri Datar: There may be no harm, but you are discriminating a class of persons, that is officers, from general citizens. If there are justifying circumstances I do not come in the way.

Shri Parmeshwaram: The work is not confined only to officers or to the general public. All have to cooperate in this work; officials will have to help the general public and the general public will have to help officials.

Shri Datar: So you expect co-operation from the officials by making them liable to criminal proceedings?

Shri Parmeshwaram: Why not?

Shri Datar: Well, that might be one view.

Shri Parmeshwaram: It is only as a check upon the officers. We are not going to punish every officer. There will be the conscience that he has taken the oath—just as we took on Independence. If in spite of it

he continues to violate it he does not deserve to be an officer at all.

Shri Datar: So by this you will make him more amenable to the Constitution?

Shri Parmeshwaram: Yes.

Shri Datar: Thank you, that is all.

(Witnesses then withdrew)

II

The Joint Committee then proceeded to examine the following witnesses:

Name of the Association:—

The Harijan Sevak Sangh

Spokesmen:—

(1) Shri Viyogi Hari.

(2) Shri K. S. Shivam.

(Witnesses were called in and they took their seats).

Chairman: At the outset, I would like to read out to the witnesses the rules in regard to the examination of witnesses. It is provided in the rules that:

“When witnesses appear before a Select Committee to give evidence the Chairman shall make it clear to the witnesses that their evidence would be treated as public and is liable to be published, unless they specifically desire that all or any part of the evidence tendered by them is to be treated as confidential. It will, however, be explained to the witnesses that even though they might desire their evidence to be treated as confidential such evidence is liable to be made available to the Members of Parliament.”

Shri Datar: Have you sent a memorandum?

Shri Shivam: Yes.

Chairman: Yes, it was circulated last night.

Shrimati Lilavati Munshi: I would suggest that we might ask the witnesses to state their case in the beginning, and afterwards, we may put questions to them.

Chairman: I think the papers that have been circulated explain the whole position. If they have got anything to say in addition, they can say that.

Shrimati Lilavati Munshi: I think it would be better if they clarify the points that they have to make. That will enable us to put questions to them.

Chairman: I think they can explain their amendments one by one, and give the reasons for suggesting those amendments. Could you kindly explain the main points of your amendments?

Shri Shivam: If you wish that we should explain it, we shall do so.

Chairman: So far as I am concerned, I feel that we may go through the amendments one by one. However, you may briefly explain the position.

Shri Shivam: First, we have suggested the omission of lines 3 to 14 on page 2 of the Bill, which define the word 'untouchable', and include Sikhs, Christians and others. As far as this is concerned, we have already given our reasons for suggesting so. The term 'untouchable' has been defined in the Constitution already, and I do not think that it should be defined again in this Bill.

Secondly, in regard to the question of including Christians within the scope of this Bill, we have discussed this before also, in our memorandum submitted last year. These Scheduled Castes are only among the Hindus. In Christianity and other religions, they do not observe any caste system. In the Government of India Act, 1935, also, it is specifically provided that no Indian Christian shall be treated as a Scheduled Caste. Therefore, I do not

think that we should include any converts to Christianity within the scope of this Bill. If we do that, we will only be encouraging conversion to Christianity. Even if unfortunately the Joint Committee or Parliament accepts the position that Christians also should be included, then I feel that there must be some rules prescribed to say what section of the Christians should be included, because there are persons who have been Christians for four or five generations, and they have advanced educationally, culturally and economically. In Madras, for instance, I think, they give certain privileges to the converts of the first generation. But as far as this is concerned, I feel that this is an evil and a bad custom. Even when a Christian Government was in power here, they specifically provided in the 1935 Act, that Indian Christians should not be included among Scheduled Castes. While they themselves have done so, why should we now try to include them? Particularly, when others are not included, as for instance, Muslims, why should we give preference to Christians only? Therefore, we do not want any others to be included. If we are not to include other faiths, why should we include only Christians?

As far as a place of public worship is concerned, we have said in the amendment we have sent now, that it must be open to all people; *i.e.* if a person is a Hindu, and it is a Hindu temple, it must be open to him. It should not be said that he cannot be allowed access to it, because of his sect, denomination, and so on. There is some difficulty in this connection, because there are certain sects among the Hindus, and they may not want that the Jains and the Sikhs etc. should be allowed access to it. Therefore, we feel that it must be made open to all Hindus.

Shri T. D. Pustake: Should we not define the word 'Hindu'?

Shri Shivam: 'Hindus' means all those who follow the Hindu Dharma;

[Shri Shivam]

for instance, it may be the Jains or the Sikhs, and in their case, we cannot say that they are separate from the Hindus, because they follow the same dharma.

Shri T. D. Pustake: What about Sikhs?

Shri Shivam: Unfortunately, the order of the President has already included a number of classes under this appellation. I do not think that we should include any more cases, than the four cases that have already been included.

Shri T. D. Pustake: My question is whether there should be a comprehensive definition of the term 'Hindu' or not?

Shri Shivam: Yes, there should be.

Chairman: I have asked the witnesses to state what is in their mind, very briefly, and that should be done in as short a time as possible. If we are going to take a long time over this, I do not think we shall have enough time left for discussing the amendments suggested. Have you got any other important points to urge?

Shri Shivam: Now, I come to the caste customs and usages. At present, in the Kasi Viswanatha Temple, there is a custom according to which the Harijans have to go by a certain path. Now, a munsif of the lower court has said that there is no harm or damage done, if they are temporarily stopped from going there, and he has issued an injunction stopping them from going there, and in the meanwhile, the law points are being gone through. We have to see whether this legislation permits them to go by a different route. According to the custom, they should go by a certain route, and they will have to stand by the side and worship. And that custom is there, according to this Bill also, under the definition clause and the Explanation thereunder. We have deleted that. The Harijan Sevak Sangh does not want to keep that custom again.

Further, in certain parts of the country like the Kumaon Division, there is a custom that the bridegroom or the bride goes in a *dola-palki* (palanquin) during the marriage procession. Suppose the Harijans go in a *dola-palki*, immediately the *savarna* Hindus will beat them down; and ask them to walk. Similarly, in Rajasthan also, if a Harijan bridegroom rides on a horse, he is beaten down, and made to walk.

Shri B. S. Murthy: In Andhra, even a ride on the car was not allowed.

Shri Shivam: My point is that if the caste Hindus enjoy a certain custom, the same privileges must be given to the Scheduled Castes also. Whatever the *savarnas* or the caste Hindus enjoy by way of custom, the same privileges should be given to the Harijans.

Then in Rajasthan and Madhya Bharat there is a custom that the Harijans cannot make sweets from sugar and ghee. Probably this is because of the fear that it will increase the price of ghee and sugar.

In Madhya Bharat there is a custom that Harijans are not permitted to use gold ornaments and a certain mode of dress. Therefore, we have included dress and the wearing of ornaments.

Chairman: I think if we are to go on like this it will take a long time. They have, I think, generally stated their case.

Shri Chatterjee: So far as the memorandum is concerned, it is there. Let us have some explanation justifying the amendments. The amendments are, more or less, in a legal form.

Shri Shivam: We have sent in certain amendments and in support of those I am speaking all these things. Even today these things are prevalent. We find in the previous Bill and in the present Bill no mention has been made of these things. At the same time, the Disabilities Acts in the various States are being repealed. If

they are repealed and there is no provision in this Bill, then these people stand to suffer.

About penalties, there is no provision in the Bill about the minimum. The maximum, of course, is there. There have been cases in the South where the offender has been punished with a warning or till the rising of the court or with a fine of one rupee. The offender may be a confirmed culprit in so many cases. After paying the fine of one rupee, he will say, 'I am going to do the same thing'. We must prescribe some minimum punishment.

Shri T. D. Pustake: Do you want to restrict the punishment to fine or imprisonment?

Shri Shivam: Most of the *savarna* Hindus are well to do people and they do not care paying the fine. If an upper class Hindu in the village goes to prison even for a day or two, that affects his name and prestige. Therefore, imprisonment is necessary.

Shri T. D. Pustake: In that case, do you want to say that minimum imprisonment should be so much? You simply say that imprisonment should be compulsory.

Shri Shivam: It must be compulsory. We have fixed a minimum of 30 days or six months. If it is till the rising of the court, then it is no imprisonment at all.

Shri T. D. Pustake: You said that if it is for a day or two it will be sufficient.

Shri Shivam: It is left to the law-makers to reduce it. We want that imprisonment should be there in addition to fine because it will be more effective to have imprisonment than to have fine alone.

Then about social boycott. In many cases, in the villages, we find that these men are forced to do certain work in the name of the Zamindars and they are not paid. If the man disobeys, the Zamindar will tell the village headman not to sell any goods

to him and so on and so forth. If anybody wants to support him, he will also be boycotted by the other castes and communities. Particularly, in the South we find this. If the villages are composed of Brahmins, Kshatriyas, Vaishyas and also the Harijans, the economic boycott is not so severe because there is a counter-balancing of the other castes. But there are certain villages in the South—in Tamilnad—where there is one predominant community called the 'Kallars'—something like the Jats in the north. They are a martial race and a very rude type of people and they are backward classes on the whole. Where they predominate in a village the other communities like the Brahmins have no voice. Therefore the Harijans fare badly. They have the panchayat courts and there they are tried and punished. Because they are 'Kallars' predominantly they can pass a *Chavadi* court enactment which is not recognised.

Chairman: Will you please explain what is a *Chavadi* court?

Shri Shivam: Where a certain community like the 'Kallars' predominate, they have their own panchayats and they do not recognise anybody else. They fine the Harijans and collect the fine also. These people are also socially boycotted. Other communities, being few in number, cannot resist them. Therefore, for social boycott there should be some punishment. They not only boycott the Harijans but they boycott others also who try to help these Harijans.

We have included in the amendments the selling of goods at the same place and time. Supposing there is a social boycott going on and the Harijans want to purchase some thing. The shopkeeper says, 'Come after some time', because he knows that he will be boycotted if he sells. Or, he says, 'Come behind'. These goods must be sold as the shopkeeper sells them to other people openly and in the same place, and at the same time. He wants to be sneaky because he fears social boycott.

[Shri Shivam]

Then the word 'untouchable' is given in the Constitution and in other enactments. I find it repeated so often. After all, it looks rather an offence to say of a brother that he is untouchable. I do not know why he should be called so. Why not say 'Scheduled caste' or 'Harijan'? Or, we should simply say, 'any person'.

Shrimati Lilavati Munshi: Formerly there was a clause in which it was said, 'Nothing in this shall be deemed to affect the right of any person freely to profess and propagate any religion.....'. It is a right that has already been given by the Constitution. Why should there be an assurance on this?

Shri Shivam: It was in the draft but it has now been omitted.

Chairman: I only want to ask one question about this minimum and maximum punishment. Of course it is true that unless some minimum punishment is provided a confirmed offender is rather encouraged to commit the same offence. On the other hand there is another view that a man may commit a mistake out of ignorance or out of obedience to society and its social behaviour and when he is committed to trial he may understand his mistake. He may apologise or even submit a written apology in the court. Thereafter he may pledge himself not to commit such a kind of offence. If the provision in the Act is that he must be convicted with some minimum punishment, then that opportunity for the man is not there. Therefore, do you think that, when for the first time we are enacting this Bill, we should provide that the offender for the first time should be convicted and given a minimum punishment, or he should be given a chance to correct himself?

Shri Shivam: So far as this is concerned, I agree with what you say. When the Madras Disabilities Removal Act was passed by the first Congress Ministry in 1938—that is still in force—and the position has not

improved in these 18 years, we should have these provisions in this Bill.

Chairman: I am speaking particularly about the punishments to be inflicted.

Shri Shivam: In Madras they have not been able to remedy this evil, even by inflicting the punishment.

Chairman: So also in most of the States. It has not proved effective. But, while the Centre is legislating for the whole of India—and if you agree with me, there are two classes of offenders, the first offender and a confirmed offender—we should leave some chance for the first offender to correct himself.

Shri Shivam: I think there must be some punishment.

Kakasaheb Kalelkar: Among the Roman Catholics, not only practically but even officially, untouchability and caste distinctions are contemplated and allowed. Will you not allow such cases of practice of untouchability to be covered by this Act? The Roman Catholics in the extreme south openly and officially say that their business is to propagate the teachings of Christ and they do not want to disturb caste distinctions and even the practice of untouchability. Will you not allow such cases to be covered by this Act, or do you want that untouchability among Hindus only should be covered and that others should be allowed to practice untouchability?

Shri Shivam: As far as this question is concerned, I know there are certain restrictions and caste distinctions among the Catholics in the South as far as the converted Harijans are concerned. But, this legislation is concerned only with the Hindus and not others.

Kakasaheb Kalelkar: No, no.

Shri Shivam: Caste system is only among the Hindus and not among Christians or Muslims. Christianity does not recognise any caste system.

Kakasaheb Kalelkar: I think we should allow the Christians to speak for themselves. They say they do not encourage caste distinctions, but they have no objection if it is practised.

Shri Datar: You please read explanation (2) to clause 2. It says:

"A member of the Scheduled Caste who has been converted from the Hindu religion to any other religion shall, notwithstanding such conversion be deemed to be an untouchable for the purpose of this Act."

Shrimati Lilavati Munshi: If you write a letter to any Bishop on this point will he write back saying that they recognise untouchability in Christianity? So far as this Act is concerned, that practice is really among Hindus and not others. If such a practice exists, then their attention should be drawn and if they do not correct themselves, then there should be some separate amendment. It should not be mixed up with this.

Shri Lingam: Are these people who suffer disability among Roman Catholics, converts or Roman Catholics themselves?

Kakasaheb Kalelkar: They were Harijans originally, but converted as Christians and even then for generations to come they are always treated as untouchables not only while they are alive but after death also. They have got separate cemeteries and in the official sacrament given at the time of marriage Harijans are treated separately. If you say that Christianity does not officially recognise untouchability, the same argument could be used about our Harijans, because as per our Constitution Hinduism cannot recognise any untouchability and therefore the Act need not be passed. But, since not only in practice, but in official recognition also untouchability is there amongst the Catholics of South India, this Act should cover them also.

Shri Datar: Recognised in the sense of practice.

Shri Chatterjee: No member of the Christian community can stand up and say that he supports untouchability because the cardinal principle of Christianity is against that.

Kakasaheb Kalelkar: My second question is, they say that every time the offence is repeated, the punishment should be doubled. So, if the offence is committed a hundred times, are you going to multiply punishment a hundred times?

Shri Shivam: If a man has been punished once and he repeats the offence, then we treat him as a confirmed offender and in that case he must be dealt with severely.

Kakasaheb Kalelkar: I can understand your enhancing the punishment if the offence is repeated; but to double the punishment every time is something which I do not understand. If a man is offending for the hundredth time, are you going to double the punishment a hundred times?

Shri Ram Dass: He should be punished a thousand times, when he persists in evil.

Kakasaheb Kalelkar: We are not here to express our righteous indignation. We are here to legislate. Can any Government punish a man with hundred years imprisonment?

Shri Ram Dass: So long as he lives he should be punished. If he persists in evil in spite of our having punished him several times, he must be punished for life.

Kakasaheb Kalelkar: I appreciate your righteous indignation.

Shri Datar: Then he will be bound over for good conduct.

Kakasaheb Kalelkar: Binding over for good conduct should be there. What I object to is duplicating the punishment a hundred times?

Shri Shivam: Not hundred times. If the law-makers feel that it is very heavy, it is open to them to make it one-third or half of it. It is left to them.

Kakasaheb Kalelkar: I concede your point. My next point is you want to impose a minimum punishment and bind the trying magistrate hand and foot. Do you know that the world over when a minimum punishment is enjoined the magistrate feels like acquitting the criminal rather than imposing the punishment which he does not like. Oftentimes if minimum punishment is prescribed and the trying magistrate feels that that punishment would be harsh, the only course left to him is to acquit the criminal. That has been the practice the world over. The wisest course would be not to fetter the discretion of the trying magistrate.

Shri Shivam: I agree there. But the trying magistrate in his discretion may think of leaving out the man with a warning. Therefore we want to prescribe a minimum. It is for the law-makers to decide. There have been instances where the magistrate has taken the thing in his own hand and let off people with a warning. Such letting off has increased the number of offences.

Kakasaheb Kalelkar: Further I do not understand why you should be enamoured of this "summary trial". Summary trial is not fully judicial trial. If you want to remove social injustice, you should be wholly on the side of justice and never do injustice even to the greatest offender. I do not understand why a social service organisation working for social justice should be enamoured of summary trials. Summary trials are rough and ready trials.

Shri Shivam: Our reason for asking for this is that a Harijan is a poor man. He cannot go to a court of law spending months and months. He would get tired. He cannot afford to spend the money. The result is he gives it up, and does not proceed. He is a daily-paid labourer. He cannot

leave his work and go to the court. So unless the trial is a summary one his case is likely to go by default. By summary trial we mean only a speedy trial.

Shri Datar: But it has a technical connotation.

Kakasaheb Kalelkar: We appreciate your difficulty and we would insist on having speedy trials, but not summary trials.

Shri Shivam: There is one point I wish to make. About this Explanation 2, in page 2, clause 2 it is said:

"A member of a Scheduled Caste who has been converted from Hindu religion to any other religion shall not be deemed to be an untouchable for the purpose of this Act."

Unfortunately, we have got this odium of untouchability in the Hindu religion. Therefore, in an enactment like this let us not bring this in other religions also.

Shri Chatterjee: Would you kindly look at clause 3. Just read it. There is something missing.

"Every place of public worship shall be open to worship."

For whom?

Shri Shivam: To any person.

Shri Chatterjee: You mean belonging to the same religion. That is, you mean to say that no Scheduled Caste or Harijan should be excluded from a Hindu temple. You have tried to delete the word "untouchable." If you leave it like that, it will not make any sense.

Supposing there is a Vaishnavite temple or a Shaivite temple. Every Hindu should have access to it. I take it there should be no difficulty about it. Now you also want performance of religious services?

Shri Shivam: If he worships the same deity.

Shri Chatterjee: For instance I am not a Jain. I am only allowed to go to a Jain temple for offering prayers. But I am not entitled to perform any religious services there.

Shri Shivam: If he wants to perform, he should not be stopped.

Shri Chatterjee: Ordinarily in a denominational temple religious service is performed by a member belonging to that denomination. Is it right that we should demand that others as a matter of right should be allowed to perform religious rites there?

Shri Shivam: Yes, if he wishes to.

Shri Chatterjee: Take, for instance, a Jain temple. A non-Jain is not allowed to perform religious rites there.

Shri Shivam: That is the difficulty we have in regard to Bombay temples.

Shri Chatterjee: There you are excluded. Your objection to exclusion I can understand. Where other caste Hindus, Kayasths or Kshatriyas, are not allowed to perform any religious service, will it be fair to make it a penal offence?

Shri Shivam: To the same extent as others.

Shri Chatterjee: That is not the way you have put it.

Shri Shivam: I will request you to put it properly.

Chairman: The phraseology we can decide. They give their feeling as to what they want. So far as the construction is concerned we shall decide.

Shri Chatterjee: I did not like to put to them the other draft which has been suggested. Their amendment was slightly better. I only wanted to know whether they are of the same mind.

In clause 4 the provision is that no untouchable shall on the ground only that he is an untouchable be ineligible

etc. You say that no person shall on any ground of social disability be ineligible etc. I take it your objection is to the word 'untouchable'?

Shri Shivam: Yes.

Shri Chatterjee: I take it there is a deep-seated sentiment against it.

Shri Shivam: You may put in the term. 'A member of the scheduled caste' instead.

Shri Chatterjee: In other statutes we have the words "persons suffering from social disability should not be ineligible for office etc." You have no objection to that? Anyhow you do object to the word 'untouchable' being retained in the statute book?

Shri Velayudhan: There may be untouchables outside the Scheduled Castes. So it should be 'no person should be ineligible on the ground of social disability.'

Shri Chatterjee: What I am pointing out is this. There may be untouchables or there may be untouchability practised among groups or sections, not covered by the Presidential Order or article 340. You said something about Madhya Bharat. I am sorry I did not catch it—I do not know Madhya Bharat so well. You said that ladies are not allowed to put on ornaments.

Shri Viyogi Hari: In some parts.

Shri Chatterjee: Will you see clause 5 and your suggestions thereto on page 2 of your memorandum? This is about prohibition against refusal to admit untouchables to hospitals, etc. You have made another draft. But may I know whether it is a drafting improvement or you want something more? You say at the top of page 3: No person shall (b) discriminate against any person who is admitted to any of the institutions aforesaid in any manner whatsoever on the ground that he belongs to a particular community. Am I to understand that you are thinking of this, that although there may be no refusal of admission,

afterwards there may be discriminatory treatment?

Shri Shivam: After admission the treatment may be discriminatory. If he is an orthodox man he discriminates.

Shri Chatterjee: Apart from that there is nothing?

Shri Shivam: There is nothing.

Shri Chatterjee: With regard to clause 6 what is the improvement you suggest? I do not quite follow. The clause now runs "No person shall refuse to sell any goods or refuse to render any service in the ordinary course of business to any untouchable on the ground only that he is an untouchable." I take it your objection is to the word 'untouchable'? Your language is "any person on the same condition, same place and time on the ground only that he belongs to the Scheduled Caste". Is there anything more than drafting improvement? Is it the aversion to the word? I share your view that untouchability should be abolished, but apart from that is there anything?

Shri Shivam: Where there is a social boycott of the Harijans, the dealers for fear of being boycotted by the major community would not like to sell their ware to the Harijans at same place or time. The dealers would ask the Harijans to come at another time. That way the man is put to delay and to difficulties. Or they will say "you come behind the shop". Because they want to sell the goods to them, but at the same time they do not want to be boycotted by their own community. They have such fear.

Shri Chatterjee: That is to say, eliminate the possibility of social boycott.

Then, what is clause 8? Apart from minimum punishment and highest punishment, is there anything substantial that you want?

Shri Viyogi Hari: Nothing.

Shri Chatterjee: Do you think it will serve the purpose which we have all got at heart to demand that there must be rigorous punishment in every case?

Shri Shivam: You are right in putting that question. It is left to the Magistrate trying the case, but there should be a rigorous punishment.

Shri Chatterjee: I do not want the magistrate's mind. Judicial mind works in a peculiar way. The more stringent you make the punishment, the greater the aversion to impose that punishment. It would be much easier for a man to get acquittal in a jury trial for murder than under section 307! Therefore any one with judicial experience will tell you that you ought to think twice before you make it compulsory in every case.

Shri Shivam: So far as the crime of untouchability is concerned it has been there for thousands of years, and if magistrates who have been hearing such cases have been more stringent and strong in the punishment I do not think it would have existed up to now.

Shri Chatterjee: Take the case of *dola-palki*.

Shri Shivam: The practice has not been stopped wholly. We have been working in the Kumaon Division as a result of which it has somewhat decreased there. But even now if a Harijan were to come in a *dola-palki* in a village and does not get down at a particular place, the caste Hindus will drive him away and rob him of the horse.

At the same time I can say this much that the Government is taking stringent action wherever it is brought to their notice. But all these things in a village cannot be brought to the notice of the tahsildar or the police.

So, the poor Harijans suffer, if things could not be brought to the notice of the Government.

Shri Chatterjee: It is true that their social conscience should be stimulated more, and possibly, we may do it in a better way. As a matter of

fact, you are doing also the same thing. What I am pointing out is that you want to make it compulsory. Supposing you catch hold of 20 people and send them all to jail, don't you think that there will be greater cleavage, and greater aversion, and greater difficulty?

Shri Shivam : I do not think there will be. Excuse me for saying so, but supposing there had been a communist government or a dictatorship in power, they could have stopped it all at once. We do not want any such rash thing. But we do want that there should be a quicker pace.

Shri Chatterjee : You have said that the imprisonment should be 30 days in every case.

Shri Viyogi Hari : Not in every case.

Shri Chatterjee : But here you say that the minimum should be 30 days.

Shri Viyogi Hari : Not in every case.

Shri Chatterjee : Are you suggesting that in no case should it be compoundable?

Shri Shivam : As far as compoundability is concerned, I think it should not be there, because our experience in this field—we have been in this field for the last 20 or 25 years—has been this. When a *savarna* Hindu knows that there is a case against him, and he is going to be punished, he immediately goes to the Harijan, and says: '*Maph karo, ayinda na hoga*', to which the Harijan agrees, and there is compounding; this happens because the Harijan has to live there, and work with him.

Shri Chatterjee : Supposing he falls at his feet and begs pardon of him, then a good feeling is restored between them. Don't you think that that would be better than sending him to jail for seven days or five days or whatever it be?

Shri Viyogi Hari : We are only saying, in some cases.

Shri Chatterjee : When you say there shall never be any compoundability, I think you are taking an extreme attitude.

Shri Shivam : This has been existing there for such a long period of time. I think it is time that we finish all these evils of untouchability root and branch.

Shri Chatterjee : I believe, in regard to summary trial, you said in reply to a question put by Kaka Saheb, that you do not insist in every case on a summary trial.

Shri Shivam : That depends on how you go. Our opinion is that there should be summary trial.

Shri Chatterjee : You mean speedy trial?

Shri Shivam : But even speedy trial may take six months.

Shri Chatterjee : A summary trial also can take six months. There is a lot of difference between a summary trial and a speedy trial, in the legal language. Probably, you are not aware of it.

You should know that there is always a danger in this kind of summary trials. It may happen that in the village, one section of the caste Hindus can utilise a batch of Scheduled Castes for the purpose of helping them, and wreaking a revenge on the others. These things are actually done in our rural life, as you probably know. Therefore, it is not quite proper that in every case there should be a summary trial, for rough and ready justice may lead to injustice in many cases. Do you still say that you want summary trials? I think what you really want is speedy or expeditious trial. Are you suggesting that there should be a special machinery of police for the purpose of looking after these types of cases, having regard to the fact that it is difficult for the Harijans to get legal assistance?

Shri Shivam: I do not think that is possible.

Shri Chatterjee: So, you have thought over it?

Shri Shivam: Yes.

Shri B. S. Murthy: You must have seen from the statement of Objects and Reasons that the purpose of this Bill is to remove untouchability, wherever it exists. Are you opposed to that?

Shri Shivam: The name of the Bill should not be the 'removal of untouchability' but 'penalties for the observance of untouchability'.

Shri B. S. Murthy: The purpose of this Bill is to remove untouchability, wherever it exists. Are you opposed to that?

Shri Shivam: No, I do not think that that is the object of it.

Shri B. S. Murthy: If there is untouchability in other religions, do you want this Bill to take cognizance of it or not?

Shri Shivam: I do not think for all practical purposes there is any untouchability in other religions. It is only individual, if at all there is anything in other religions.

Chairman: This question has already been discussed. The point is this. You say that there is no untouchability in other religions. But supposing there is, would you like this Bill to take cognizance of it? What is your answer to this question?

Shri Shivam: So far as we are aware, there is no untouchability in other religions.

Shri B. S. Murthy: My question is very plain. If there is any untouchability in other religions, either in custom or usage, should not this Bill take cognizance of it and root it out?

Shri Shivam: No. In fact, there is no untouchability in other religions. I think it is only among Hindus that there is untouchability.

Shri B. S. Murthy: May I and you that in the South, amongst Christians, there are untouchable Christians, who are given special sermons, and whose corpses are to be buried in special cemeteries. If we ask them, they would not admit that there is untouchability in their religion, but in practice, there is. Are we to take cognizance of it, and see that it is removed, or not? Should we not include them also within the scope of this Bill?

Shri Shivam: I do not think they should be included.

Shri B. S. Murthy: There are two things in this. One is removal of untouchability, and the other is rehabilitation of untouchables. We must separate these two. As for rehabilitation of untouchables, you can have your plea, and champion the cause of the untouchables. Now, in this Bill, we are only thinking of removing untouchability; we are not thinking of rehabilitation of Harijans. As a matter of fact, this Bill does not say anything about scholarships, reservations, and so on. Therefore, this Bill is only for the removal of untouchability. If there is any untouchability, either in custom or usage,—though it may not be on record—are you opposed to removing it by means of this Bill.

Shrimati Lilavati Munshi: I think there can be a separate legislation for the removal of untouchability if it is there in other religions. Let this Bill be confined to the removal of untouchability among the Hindus.

Shri B. S. Murthy: In the Andhra, Tamilnad, in Kerala and other places, there are untouchables, who have been converted to Christianity, but they are still treated as untouchables. Do you want to leave them out of the scope of this Bill? An untouchable, though he is converted, is not given any place in the village. He is still living with the Hindu untouchable; he lives with him, he eats with him, and he suffers all the other difficulties that his Hindu counterpart undergoes. Do you want

that the untouchable Christian converts should be treated as untouchables along with the Hindu untouchables or not?

Shri Shivam: As far as the Madras Government are concerned, they have recognised that untouchability exists among the Christians, and therefore, they have given certain facilities. But I do not think that we should recognise it in this legislation.

Shri B. S. Murthy: I am not speaking of the facilities. I am speaking about the sin of untouchability. Wherever it is, this Bill wants to take cognisance of it, whether it is observed by Christians or by anybody else.

Chairman: I think Mrs. Munshi has answered it. If there be untouchability in other religions, let its removal be done by other enactments, and not in this Bill.

Shri Lingam: It is for us to decide later on.

Shrimati Lilavati Munshi: My point is this. We have a Marriage Bill, separately for the Hindus. We are not having a common law for all. So, here also, if there is practice of untouchability in other religions, that can be dealt with in a different way. I think if the attention of the Catholics is drawn to it, probably they themselves will stop it, or we may deal with it by a separate enactment.

We have abolished untouchability by the Constitution. But the practice still exists. For that we have to enact this law. Therefore, we may say that this is a Bill for the removal of practices of untouchability among the Hindus. It is for the Committee to decide.

Shri B. S. Murthy: Social boycott is a thing of common occurrence in many places where the untouchables are. What is the remedy you propose for dealing with this social boycott because the whole village is involved?

Shri Shivam: We have suggested that social boycott should also be included. We have suggested punitive police and collective fines also.

Shri Murthy: About the non-compoundability of the offence. Suppose, in a village there is social boycott and, after a time, there is a compromise. A few offenders are there. As Shri Chatterjee said, supposing they come to an agreement and a certain apology or some sort of reparation is made by the offender. Are you opposed to such a compromise?

Shri Shivam: If the case is before the court, then, I think, the case should not be compounded. If it is a compromise outside, then it is all right.

Shri T. D. Pustake: There are cases which can be compounded with the permission of the court. Are you agreeable to that?

Shri Shivam: We are agreeable to that—cases being compounded with the permission of the court.

Shri B. S. Murthy: Kakasaheb Kalelkar was asking a question whether you are going to punish a man for a hundred years, which was not answered. I now ask another question. What is the remedy for a habitual offender in such cases? A man thinks that his religion enjoins that untouchability should persist. Every time he comes out of jail—after being punished for an offence—he says, 'I continue to commit the offence'. What are you going to do?

Shri Shivam: We have suggested that in subsequent cases the punishment should be double etc. It is for the court to decide.

Shri B. S. Murthy: You seem to have omitted the word 'untouchable' from your suggestions. What is the objection to the use of that word?

Shri Shivam: The word smacks of something derogatory. If a man is suffering from some foul, obnoxious and infectious disease and we should

not touch him, then we can say he is an untouchable.

Shri Sanganna: In your amendment, you have laid great emphasis on the entry into temples. Supposing a man goes there in an unmannerly condition, say in a bad state of intoxication etc. in such a case what is to be done? Is he to be allowed into the temple or is he to be prevented? If he is prevented he may take protection under the Act and proceed against others. What is the remedy in such cases?

Shri Lingam: There are the temples rules for that.

Shri Sanganna: I want that this amendment must be clarified.

Chairman: That can be done.

Shri Sanganna: Are you of the view that untouchability is practised in a more acute form where people are economically backward? If so, in such cases, is it not necessary that Government should be prevailed upon to give more attention to improving the economic lot of the Harijans?

Shri Shivam: Yes.

Shri Velayudhan: May I know whether most of the social boycotts occur because of the compulsory labour which the scheduled castes may have to contribute? Can any remedy be suggested in this Bill for the stoppage of this compulsory labour? You want prohibition against social boycott.

Shri Viyogi Hari: There was such a clause in the draft Bill. I do not know why that has been removed; probably it is because there is a separate legislation for it.

Shri Kajrolkar: You have said that in clause 13, page 5, after the word 'cognizable' in line 15, add, 'and non-compoundable and' shall be tried in a summary way'. Are you insisting on that 'non-compoundable'?

Shri Shivam: We have discussed it; if the Court permits them to come to an agreement and they agree, that can be done.

Shri Kajrolkar: Don't you think that if there is a loophole, there would be pressure that he should compound?

Shri Shivam: I know there will be such possibilities.

Shri Shivam: The magistrate suggests ways of compromise. Naturally, his advice is there. The Harijan is not left alone. So, it is done with the permission of the court.

Shri Nanadas: I am referring to your amendment seeking omission of lines 3 to 14 on page 2 of your memorandum—definition of untouchables. Is it just to exclude the non-Hindu untouchables, or is there any purpose in asking for the omission of these lines?

Shri Shivam: We do not want to apply this to other religions because they do not believe in untouchability.

Shri Nanadas: Do you want the so-called untouchables to be called 'untouchables'?

Shri Shivam: We do not want it so and that is why we have suggested deletion of the word 'untouchables'. You can call them Scheduled Caste people under the Act of 1935 or 'Harijan' as Gandhiji has said.

Shri S. N. Das: With regard to clause 4, the organisation has suggested 'removal of social disabilities of Scheduled Castes'. I want to know whether you are aware that there are certain classes which are treated as untouchables but they have not been included in the list of Scheduled Castes? I agree with the organisation that the word 'untouchables' should be deleted. But, the suggestions made by the Sangh, is not comprehensive because I know there are certain castes which are treated as untouchables but have not been included in the list of Scheduled Castes.

Shri Shivam: We are only concerned with the list given in the President's order. Of course, there are other

Backward Classes and they are preparing another list for them.

Shri S. N. Das: Untouchability which has been banned by the Constitution is not confined only to Scheduled Castes. There are other classes, and persons belonging to those classes are also treated as untouchables in many respects. Therefore in place of 'untouchability' such a term should be coined as will include all classes who are treated as untouchables. I am also searching for such a term, but I would like the Sangh to find out an appropriate term which will include all such persons who suffer from any disability, social, religious or otherwise.

Shri Shivam: As far as the Sangh is concerned, we do not want to put in one more community. We are at present concerned with the 825 Scheduled Castes in the list.

Shri S. N. Das: We are not concerned with the Scheduled Castes; we are concerned with the practice of untouchability which is brought under the purview of this Act. Therefore, the suggestions made by the Sangh should be comprehensive enough.

Shri Shivam: We would request you to suggest an appropriate term.

Shri Ganeshi Lal Chaudhary: You said that you are only concerned with the Hindu untouchables. Do you know that there are marriage relations between Hindu untouchables and Christian untouchables in Travancore-Cochin and Malabar and to that extent, this will not be liked by Hindu untouchables?

Shri Shivam: This is specially for the caste Hindus.

Shri Thimmaiah: You have stated here that there are persons and institutions who preach untouchability. Have you come across any practical instances?

Shri Shivam: There are certain institutions—Ram Rajya Parishad for example—who want that this should be perpetuated.

Shri Thimmaiah: There are observances of untouchability by companies and all that. Is that provision not sufficient?

Shri Shivam: No, no.

Shri Lingam: I am merely following up a point raised by Shri S. N. Das. The scope of this Bill is to discourage or stop practice of untouchability, but at the same time the Bill restricts itself to the Scheduled Castes.

Shri Datar: It is not.

Shri Lingam: I want to know whether it includes the vast number of Scheduled Tribes who, for purposes of temple entry and other concessions, are on the same footing as the millions of Scheduled Castes.

Shri Shivam: As far as Scheduled Tribes are concerned, they are not untouchables. They are of an upper class and there is no restriction in their going to temples and other things.

Shri Lingam: There is restriction in the South.

Shri Shivam: Some of them have their own place of worship. But they have got separate privileges, scholarships and other privileges.

Shri Lingam: They may have their own privileges; for other purposes are they in the same position as the Scheduled Castes?

Shri Shivam: Scheduled Castes, as Gandhiji said, suffer from a certain stigma like the Negroes in America. Here the Harijans suffer from a certain stigma and that we must remove by this Bill.

Shri Lingam: They have a stigma in the sense that they are one shade better than some of the Scheduled Tribes who are not even conscious of the fact that they suffer from the stigma.

Shri Shivam: Scheduled Castes are economically and educationally backward.

Shri Lingam: They do suffer from these disabilities also. You must have come across vast numbers of them in South India; Naicks, Paniyas and others, whose position if anything is definitely worse than that of the Scheduled Castes. I think this Bill must be comprehensive enough to bring them also under its protection. I want the hon. Minister to make a specific provision so that it includes the Scheduled Tribes also.

Shri Datar: Provided they are 'untouchables'.

Shri Shivam: They are not untouchables.

Shrimati Lilavati Munshi: They have suggested 'any person suffering from untouchability' which includes everything.

Shri Datar: I will ask only a few questions. Now, so far as untouchability is concerned, is it to be penalised wherever it exists, whether in Hinduism or elsewhere?

Shri Shivam: If we accept this condition, that means, it exists in Christianity.

Shri Datar: You will find that in article 17 they have stated that untouchability is abolished. They do not say 'untouchability among Hindus'. Therefore, I am putting to you, if there is untouchability—let us assume so—outside Hinduism, is that also to be punished?

Shri Shivam: In the interest of the community.

Shri Datar: Then about social boycott. Do you not think that if social boycott is also penalised by this Act, will it have a very adverse influence on the Harijans themselves?

Shri Shivam: Yes, to a certain extent, because they have to live in the villages.

Shri Datar: They have to depend economically on other members of the society; so you are taking a risk?

Shri Shivam: Yes. In penalising them we have to take a human view.

Shri Datar: I agree. Will it not have an adverse effect?

Shri Shivam: In some places it is likely to have. Even in the South they have been denied employment.

Shri Datar: In that case, instead of an outside social boycott it will be an imperceptible but more rigorous boycott?

Shri Shivam: It may not be rigorous, but it may be imperceptible.

Shri Datar: In order to avoid that will it not be better to leave it to the good sense of the communities? Rather, I shall put the question in a different and general way. The Bill that we want to pass should be acceptable even to the reasonably-minded people among the Hindus and others amongst whom there is this practice. For that purpose we should not make the Act as rigorous or expansive as some would like it to be.

Shri Shivam: But it must be as effective.

Shri Datar: But it should be also acceptable to the reasonable sections.

Shri Viyogi Hari: We agree on that.

(Witnesses then withdrew).

The Committee then adjourned at 6-10 p.m.

