

Diu (Extension  
of the Code of Civil  
Procedure etc.) Bill

13 hrs.

GOA, DAMAN AND DIU (EXTENSION OF THE CODE OF CIVIL PROCEDURE AND THE ARBITRATION ACT) BILL.

The Deputy Minister in the Ministry of Law (Shri Jaganatha Rao): I beg to move:

"That the Bill to provide for the extension of the Code of Civil Procedure, 1908, and the Arbitration Act, 1940, to the Union Territory of Goa, Daman and Diu and for certain other matters as passed by Rajya Sabha, be taken into consideration".

This Bill is a further step in the process of the integration of the legal system of the Union territory with the general pattern of the legal system in the rest of the country. A number of Indian laws, the IPC, the Indian Evidence Act and the Cr. P. C. have already been extended to the Union territory. The Code of Civil Procedure was, however, not extended as it was necessary to reorganise the subordinate civil courts before extending this to the territory. The Government of Goa, Daman and Diu have already undertaken legislation to reorganise the civil courts in the territory in consonance with the pattern obtaining under the Bombay Civil courts and have requested that parliamentary legislation be undertaken to extend the Civil Procedure Code having some of these provisions and having inter-state operation.

In the Portuguese law, civil procedure and arbitration law are interconnected. As such, it is necessary to extend the Arbitration Act along with the Civil Procedure Code.

These Acts will be enforced with effect from the date the reorganised civil courts come into existence in the Union territory. The Bill is on the lines of similar legislation for extension of laws and contains certain consequential amendments to the Goa, Daman and Diu (Judicial Commissioner's Court) Regulation, 1963.

I move.

Mr. Deputy-Speaker: Motion moved;

"That the Bill to provide for the extension of the Code of Civil Procedure, 1908, and the Arbitration Act, 1940, to the Union territory of Goa, Daman and Diu and for certain other matters, as passed by Rajya Sabha, be taken into consideration".

An hon. Member: How much time for this Bill?

Mr. Deputy-Speaker: Not allotted. Let us fix one hour.

Shri Hari Vishnu Kamath (Hoshangabad): One to two hours.

Shri Shinkre (Marmagoa): I support the Bill on the broad principle that every such step as would result in further completing the integration of this territory with the rest of the country should be encouraged. But I cannot help expressing a few doubts and misgivings which I consider completely justified in view of the past experience we have had in Goa regarding the introduction and extension of so many Indian laws to the territory.

To start with, I will mention what happened when the Central Government extended the IPC and the Cr. P. C. to this territory. Before this extension, in Goa we had five criminal courts functioning with full original jurisdiction. As a result of the introduction of the Cr. P. C. all these courts with original jurisdiction were turned into a first class magistrate's courts and only one court of sessions was instituted for the entire territory. Unfortunately, after the notorious Bomb explosions which took place in Goa, this only court of sessions has been busy with the so-called "Goa bomb conspiracy case" for over months now. As a result, all other criminal cases which ought to have been submitted to the court of sessions are either pending or are not being taken

up as the court is busy exclusively with the bomb conspiracy case. As a consequence of this, so many under-trial prisoners and so many convicts are rotting in Goa jails hoping to see the day when the court of sessions will have time and chance to take up their cases or appeals.

The same thing is happening relating to cases in the court of judicial Commissioner instituted in Goa since Dec. 1963. When Government gave the existing Goa court the status of a High Court and called it the Judicial Commissioner's court, they did not think it proper to make the other arrangements necessary to enable the court to function properly. When I approached Shri Hathj more than 8 months ago with a request to appoint another Judicial Commissioner for that court which was having only two judges, as a result of which in so many cases when the Judicial Commissioners disagreed, no decision could be given, he told me that he would take necessary steps to appoint a third Judge. But what has happened in fact is that not only has a third judge not been appointed but one of the two Judges has gone on leave for the last four months and now the Judicial Commissioner's court is not functioning at all. The result is that there are so many convicts whose appeals are pending before the court and they are waiting for the day when the Government will think fit to appoint a Judge or two judges to enable that court to function properly.

You will be surprised to learn that in Goa we have come to a stage wherein one of the more important courts is not or was not functioning at least for about two months or so because the court clerk had reported sick and Government had made no arrangement to appoint a substitute. The Minister will say that this is a matter for the Goa administration to look into. But what I want to impress on Government is this: please make a proper study and research of the matter before introducing new  
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legislation there. Do not hurry up with with insufficiently considered legislation. If I may be permitted to say so, they never do such research and study of the background to the requisite extent and then hurry up with legislation extending laws to that territory. It is almost four years since the territory was liberated. It is only now that such basic and fundamental laws are sought to be extended there and that too in a haphazard way. That being so, I am sure the same situation will continue there after these fundamental laws of the land are extended there because I can foresee very well that this Bill, when turned into law and enforced to Goa, will reduce the quantum of work done in the courts, and there will again be so much backlog of judicial work pending before the courts. Government will say it is up to the Goa administration to do the needful. But we know in practice that the Goa administration means the centre here and everything has to be done by the Centre to see that things function properly there. I would request the Minister to look into this aspect of the matter and then only make haste to extend these laws. Otherwise, the same situation will prevail there.

श्री हुकम चन्द कल्लवाय (देवास) :  
उपाध्यक्ष महोदय, हाऊस में गणपूर्ति नहीं है।

Mr. Deputy-Speaker: The bell is being rung . . . now there is quorum. Shri Shinkre.

Shri Shinkre: When the Bill in respect of the Judicial Commissioner's Court came before this House, it was piloted by the Deputy Minister of External Affairs, Shrimati Lakshmi Menon, and the explanation at that time was that, as this Union Territory was still under the jurisdiction of the Ministry of External Affairs, it was proper that the Bill should be piloted by a representative of that Ministry. Some time after that the Union Territory was transferred to the jurisdiction of the Home Ministry, and in the circumstances I think that this Bill should have been piloted by

[Shri Shinkre]

a representative of that Ministry instead of by a representative of the Ministry of law. I do not know if the Government have learnt better since then, and there is also not much point in pressing this argument because I feel that uniformity of criteria or consistency has never been the virtue of this Government.

Taking advantage of this Bill, I would request the Government to go into the larger question of research and study of so many basic laws as they existed in Goa, Daman and Diu, because there we still have one common, universal civil law, not Hindu Law, Mohammedan Law etc., community-wise as in the rest of the country. That being so, even a professional working lawyer like myself is at a loss to know whether a particular right as existed under the Civil Code is still applicable to Goa. The whole question of the fundamental laws of Goa, Diu and Daman has to be gone into and studied properly and only after that new enactments or extension of laws of this nature should be made; otherwise, it is bound to create so many problems to which the Government will never be ready with proper answers.

**Dr. M. S. Aney (Nagpur):** Why don't you demand a committee to enquire into this?

**Shri Shinkre:** They will only say that Goa is a drop in the ocean, and they will overlook it. Of course, I would strongly welcome such a committee, because, especially after the income-tax laws and many other laws were extended to Goa, there have been so many problems as the hon. Deputy Minister must be knowing.

For instance, according to the civil laws we have there, if the marital or pre-nuptial contract does not say otherwise, all the properties are supposed to be vesting really in the husband and wife.

श्री हुकम चन्द कच्छबाब : उपाध्यक्ष  
महोदय, सदन में गणपूर्ति नहीं है।

**Mr. Deputy-Speaker:** The bell is being rung... Now there is quorum.

**Shri Shinkre:** When the income-tax law was extended to Goa, so many provisions collided with the civil law there, for instance those relating to Hindu joint family etc., as there is only a universal civil law there. The income-tax authorities do not take into consideration all the provisions of the Civil Code, there, and they are also not known to them, and that has given rise to so much confusion.

Now turning to this Bill, I do not quite understand this fashion of drafting a Clause like this:

"So much of any law in force in Goa, Daman and Diu as corresponds to the Code of Civil Procedure, 1908, or the Arbitration Act, 1940, or any part of the said Code or Act, as the case may be, shall stand repealed."

This Clause has been drafted like this to save trouble, because the concerned people in the Ministry do not want to make any research or investigation to find out what clauses of the law there must necessarily be considered repealed by the new law; that is why it has been drafted in a general manner. But I want to submit that such clauses are bound to create confusion and give rise to different interpretations, because we can never be sure that all the Judges and judicial officers will interpret them in the same way.

Again, part of the existing law may be included in the new law and part of it may not be included. That also will give rise to different interpretations by different judicial officers. So, I would request the hon. Minister to look into this and provide a clause which is very specific, clear-cut and leaves no room for more than one interpretation, because otherwise time and again people will be seeking new interpretations or be victims of such interpretations.

The existing Code of Civil Procedure in Goa, Daman and Diu is very much based on so many provisions of the Civil Code, and there is repeated reference to the Civil Code in various provisions of the Civil Procedure Code. That being so, it will be very difficult to understand this repealing clause, because there may be some situations considered in both the Codes, but the relief or remedy may not be the same in both cases, and so there will be ample scope for more than one interpretation. This will only create trouble for the poor public.

After the extension of these two basic laws, I hope the hon. Deputy Minister will see to it that in Goa a situation is not allowed to be created where there is law, but no courts to enforced it, and to see that no time is wasted in appointing the necessary Judges or judicial officers, so that the people get ready justice. Certainly he knows that justice delayed is justice denied. If a man, for no fault of his but only because the court is not functioning, is forced to remain in prison even for one day, that is a very bad reflection on the whole administration of the place.

I know he will plead that it is more in the hands of the Goa Administration than in the hands of the Law Ministry or Home Ministry, but the practical fact remains that it is the Central Government which has to make provision for all these things, because we cannot create any Judicial Commissioners in Goa itself. It is mostly the members of the judiciary in the rest of the country who have to be selected and sent to Goa. But they are still neglecting and ignoring the needs of the people of Goa, Diu and Daman. I think they should not all the time be content saying that wherever there is a cry raised in Goa, that they will try to look into it. Everytime, attributing motives to the people is no solution and it is no good.

I hope that with these words I have persuaded the Deputy Minister to be more careful regarding the needs of the people whom I represent.

श्री सरजू पाण्डेय (रसड़ा) उपाध्यक्ष महोदय, गोवा, दमन और दीव के बारे में जो यह बिल धारा है यह एक मामूली सा बिल है। इसमें यह प्रावोजन है कि सी० धार० पी० सी० और दूसरे कानून जो हिन्दुस्तान पर लागू होते हैं वे इस क्षेत्र पर भी लागू हों। जैसा कि श्री गोवा के माननीय सदस्य ने कहा, उनके यहां जो मिक्सिड लाज हैं वे हमारे यहां के लाज से ज्यादा प्रोप्रेसिव हैं।

एक बात मेरी समझ में नहीं आती कि गोवा, दमन और दीव को क्यों धरम रखा जा रहा है और बार बार कानून का एक्सटेंशन उनके लिए किया जा रहा है जबकि वहां की जनता चाहती है कि इनका मरजर कर दिया जाए।

Mr. Deputy-Speaker: Do not raise controversial issues: Do not speak on those matters which are not relevant.

श्री सरजू पाण्डेय : सरकार को चाहिए कि इस बिल के समाप्त करे और गोवा, दमन और दीव को हिन्दुस्तान के किसी दूसरे प्रान्त में मिला दे, जिससे कि जो कानून वहां लागू होते हैं वे इस क्षेत्र पर भी लागू होने लगेंगे। जैसा कि माननीय सदस्य ने कहा वे सी० धार० पी० सी० और आई० पी० सी० प्रजेजों के बनाए हुए हैं, जो उन्होंने हिन्दुस्तानी जनता को दबाने के लिए बनाए थे और इसी के लिए उनको इस्तमाल किया गया। अगर इन कानूनों को ठीक इसी तरह से दूसरे क्षेत्रों में लागू किया जायगा जहां कि पहले से प्रोप्रेसिव कानून चालू हैं, तो यह वहां की जनता के माथ न्याय नहीं होगा। जैसा कि माननीय सदस्य ने कहा है, मेरी भी यही राय है कि एक कमेटी बनाई जाए जो इस पर विचार करे। मेरी राय है कि सी० धार० पी० सी० और आई० पी० सी० को

[श्री सरजू पाण्डेय]

बुनियादी तौर से बदल देना चाहिए और इनकी जगह जांच करके नए कानून बनाए जाने चाहिए और तभी उनको गोवा, दमन और दीव पर लागू करना चाहिए।

श्री यशपाल सिंह (कराणा) : उपाध्यक्ष महोदय, पहली बात तो मुझे यह कहनी है कि चार साल हमें इस क्षेत्र को पोर्चुगीज के पंजे से मुक्त किए हो गए और आज तक वहां हम अपने कानून लागू नहीं कर सके। वह तो हमारी तरफ से नेगलीजेंस है। यह प्रस्ताव तो बहुत पहले ही घाना चाहिए था।

दूसरी बात यह है कि सबकी यह मांग है कि इस क्षेत्र का विलय महाराष्ट्र में किया जाए। ऐसा होने पर वहां के कानून इस क्षेत्र पर लागू हो जाएंगे और हमको राउंड एबाउट बे में यह काम नहीं करना होगा। वहां विषय के बारे में कोई विवाद नहीं है, दोनों विधान सभाएं इसको चाहती हैं, तो फिर इस क्षेत्र को क्यों छलग रखा जाता है और उसके लिए बिल लाकर पार्लियामेंट का समय लिया जाता है। बजाय इसके कि हम इस क्षेत्र पर इस प्रकार अपने कानून लागू करें क्यों इसको महाराष्ट्र में विलय न कर दिया जाए और जो महाराष्ट्र के कानून हैं वह इस पर भी लागू होने दिए जायें।

श्री तुलशीदास जाधव (नांदेड़) : उपाध्यक्ष महोदय, मुझे दो मिनट के लिए बोलने का समय दिया जाए।

Mr. Deputy-Speaker: Do not raise the question of merger. If you want to say any thing about the Bill, you can say it. If I allow you to speak, I will have to allow others also. Only on this Bill, if you speak, I will allow you.

Shri Hari Vishnu Kamath: One hour has been allotted to this Bill. Let him speak.

श्री तुलशीदास जाधव : मेरा कहना है कि इस तरह से छलग छलग बिल लाने के बजाय इन छोटे छोटे क्षेत्रों को यदि नजदीक की स्टेट में मिला दिया जाए तो सेंटर का कुछ मिट जाएगा। इस चीज को वहां के लोगों ने माना है और सेंट्रल गवर्नमेंट ने माना है। केवल इसमें दस वर्ष की बात कही जाती है। मेरा मुझाब यह है कि इन क्षेत्रों को जल्दी पास की स्टेट में विलय कर दिया जाए। यही मुझे कहना है।

Shri Jaganatha Rao: Sir, this is a very simple Bill which seeks to extend the Civil Procedure Code and the Arbitration Act to the Union territory of Goa, Daman and Diu. It has been complained that the Central Government is rather slow in extending the Central laws to these territories. About 33 Central laws have already been extended to these territories. There was a request from the Union territory of Goa, Daman and Diu that the Acts in question should be extended to them. But there was some difficulty in extending these Acts, because the system of administration in Goa was entirely different.

श्री हुकम चन्द कछवाय : उपाध्यक्ष महोदय, मेरा व्यवस्था का प्रश्न है कुछ सदस्य सदन में सो रहे हैं। क्या सदन में सोना जायज है ?

Shri C. K. Bhattacharyya (Rai-ganj): Shri Kachhavaia is becoming a bogey.

Shri Narendra Singh Mahida (Anand): He may be keeping his eyes closed.

Mr. Deputy-Speaker: Then that may not be "sleeping".

Shri Hari Vishnu Kamath: Only snoring is unparliamentary. He may be meditating; not sleeping.

**Shri Jaganatha Rao:** As I said, at the request of the Goa, Daman and Diu administration, these two Acts are being extended to them. As I said 83 Central laws have already been extended. The difficulty is that the system of administration of the Union territory of Goa, Daman and Diu is entirely different from the system that prevailed in the rest of India. On the criminal side, the administration of criminal justice has been based on the continental system in Goa, whereas in our system of administration in the rest of India, the administration of criminal justice is based on the Anglo-Saxon system. So, there has been some delay.

**Shri Shinkre:** It is not the change-over that has made the difference. (Interruption).

**Shri Jaganatha Rao:** The change-over has been done. The Criminal Procedure Code, the Indian Penal Code and the Evidence Act have been extended. On the civil side, the Civil Procedure Code and the Arbitration Act are now being extended at the request of the Government of Goa. These are Indian laws, the Central laws, and there is no question of extending any State laws. The Civil Procedure Code and the Arbitration Act apply only to the States of Maharashtra and Mysore. The Central Government cannot extend the State laws to the Union territory. So, the question of merger should not be thought of at this stage. After all, Goa is part of the Indian territory. The claims of the respective States will be there, and the extension of these laws will not invalidate the claims of any of the adjoining States.

**Mr. Deputy-Speaker:** The question is:

"That the Bill to provide for the extension of the Code of Civil Procedure, 1908 and the Arbitration Act, 1940, to the Union territory of Goa, Daman

and Diu and for certain other matters, as passed by Rajya Sabha, be taken into consideration."

*The motion was adopted.*

**Mr. Deputy-Speaker:** We shall now take up clause-by-clause consideration. There are no amendments to clauses 2 to 4. The question is:

"That clauses 2 to 4 stand part of the Bill".

*The motion was adopted.*

*Clauses 2 to 4 were added to the Bill.*

**Clause 5.—(Rules of construction).**

**Shri Hari Vishnu Kamath:** I beg to move:

Page 3, lines 17 and 18, omit ..

"and also as including a reference to the Lieutenant-Governor".  
(1)

The amendment which stands in my name is in respect of the sub-proviso to sub-clause (1) of clause 5. The sub-clause, as it is, reads as follows:

"(b) any reference to the State Government shall be construed as a reference to the Central Government and also as including a reference to the Lieutenant-Governor."

My amendment is for the deletion or the omission of the latter part of this sub-proviso, that is to say, to delete the words "and also as including a reference to the Lieutenant-Governor". The basis of my amendment is a profound observation—of it is not actually profound it may be deemed to be profound—made by one of the Minister's colleagues, Shri Jaisukhlal Hathi.

**Shri Jaganatha Rao:** "State" includes Union territory.

**Shri Hari Vishnu Kamath:** He has a good memory. On the 10th of this month, Friday, when the Representation of the People (Union Territories) Bill, seeking direct election to the House of the People, was on the anvil in the House, I raised a point—the hon. Speaker seemed to support my point—as to why there was no reference to the Union territory in the parent Act.

On that occasion the Minister, Shri Jaisukhlal Hathi, said—at first he was floundering a bit, he could not answer; but suddenly I think he got light from somewhere, probably from somewhere slightly outside the House, he must have got some information which was passed on to him—and suddenly he broke in and interrupting the discussion said, without any recollection of his previous observation, thus. He had previously said—may I read it out, because the sequence is interesting. When I raised the point as to why this Union Territory has not been specifically mentioned in the parent Act and that there was a lacuna in the Bill, I said—this is how it started—

“I would invite your attention and the attention of the House and of the Minister to sub-clause (b) of this clause. It pertains to sub-section (1) of section 13B of the parent Act, the Representation of the People Act, 1950.

Clause 1 of that section reads as follows:

“The electoral roll for each parliamentary constituency in the Union Territory of Delhi’ etc.

Under clause 4(b), for the words ‘each parliamentary constituency in the Union Territory of Delhi’ the following words are substituted, namely,

‘a parliamentary constituency in each of the Union Territories of Delhi, the Andaman and Nicobar Islands, the Laccadive

and Minicoy and Amindivi Islands and Dadra and Nagar Haveli.’”

This is what is on the record. I am now coming to the point. Then Shri Hathi said as follows:

“In other States, it refers to Assembly constituencies and also parliamentary constituencies. So far as Delhi is concerned, there is no local Assembly; so, only parliamentary seats are there. So far as ‘Government of the State’ is concerned, it will be the Delhi Administration; that is the Government.”

Then the Speaker asked:

“Do we call that State Government?”

—because, the parent Act referred to State Governments, and there was no reference to Union Territory therein, and that was why they wanted to insert this. The Speaker came to the rescue of the House—I won’t say to my rescue, but he came to the rescue of the House—and asked:

“Do we call that State Government?”

To that Shri Jaisukhlal Hathi replied:

“We are not amending that portion today. That section is already existing and I am not bringing any amendment to that.”

Thereupon the Speaker said:

“So, he says, if it is a lacuna, it is there in the original Act which we are not amending at present.”

And Shri Hathi says again:

“Yes, Sir. I am only adding certain words to the section in the original Act. If there is any lacuna in the original Act, Mr. Kamath may bring forward an amendment to the original Act.”

Then, suddenly, light broke through, there was a breakthrough from somewhere, and suddenly light came to him. I observed that that particular section was being amended and that this lacuna could have been cured.

The Speaker said:

"He says that part which mentions about the Government of the State is not being touched at all. If the Delhi Administration cannot be called a State Government, that is an amendment that is required in the parent Act and not this Bill."

That was the Speaker's observation, whereupon I said:

"Are they not amending this particular section by adding these words?"

—because, adding is also an amendment, and so I said that they could have cured that lacuna.

Then lo and behold, there was light, and Shri Hathi said:

"Under the General Clauses Act, 'State' includes Union Territories also."

That is why I referred to it as a profound observation which could have saved all that discussion, and saved time as well.

Sir here is an amendment, here is a Bill before us where the sub-proviso says that "any reference to the State Government shall be construed as a reference to the Central Government and also as including a reference to the Lieutenant-Governor". Now, the General Clauses Act also makes it clear that 'State Government' includes the government of the Union Territories also, which is—say the Central Government, because the Union Territory is administered by the Centre. Therefore, that is redundant. That is the first thing.

And in case the Minister wishes to insist on its being retained for abundant caution, as they say—I do not recollect immediately the Latin expression .

Shri Jagannatha Rao: *Ex abundantia cautela.*

Shri Hari Vishnu Kamath: For the sake of *ex abundantia cautela*, if they want to include it, I do not want a dual authority here, two authorities. If it includes the Central Government and also the Lieutenant-Governor, there will be a lot of buck-passing, from there to here, from here to there, and so on. Let there be only the Central Government in the picture, not the Lieutenant-Governor or the Government of Goa, Daman and Diu. Just as too many cooks spoil the broth, I am afraid that too many authorities will only result in avoidable delay. And I am sure that where Government wants to expedite matters, these so many authorities—the Central Government, the State Government, the Government of Goa—all to be consulted and brought into the picture will lead to harassing delays which in the public and national interest should be avoided.

I therefore move that the second part of the sub-proviso should be deleted. If the State Government does include the Central Government under the General Clauses Act, then that first part also is redundant. "State Government" may remain; it will include the Union Territory, as defined by my hon. friend's colleague on the previous occasion.

Shri Shankre: I share the anxiety expressed by my hon. friend Shri Kamath, but I feel that for practical purposes the sub-clause should be kept as it is in the Bill, because what happens sometimes is this. We have the experience in Goa and have had the occasion of saying:

दिन्नीं ना बहुत दूर है ।

So, if it is left only to the Central Government, there will be more

[Shri Shinkre]

delay, and inordinate delay. And in case of simultaneous reference both to the Central Government as well as to the Lieutenant-Governor every time, we can rely on or take it for granted that he is a reliable person....

**Shri Hari Vishnu Kamath:** If it is "or" I would have agreed, I would not agree to "and".

**Shri Shinkre:** Since we can assume safely that the person of the Lieutenant-Governor of a Union Territory will be somewhat capable, we can expect that at least in case of minor things we will be getting solutions and relief comparatively easily. If everything is to be referred to Delhi, that will only cause greater delay. In case it is left only to the Lieutenant-Governor, he might want to play very safe and refer everything to Delhi, whether it is important or otherwise, and that will cause delay. So it is better that the sub-clause remains as it is, because I think some little authority with the Lieutenant-Governor will be helpful.

**Shri Jaganatha Rao:** My friend Shri Shinkre has replied to Shri Kamath, but I shall also say something. The clause relates to the rules of construction. The light that he said....

**Shri Hari Vishnu Kamath:** Came from you, and not from outside the House?

**Shri Jaganatha Rao:** This clause provides that any reference occurring in the Code or in the Arbitration Act, to the State Government shall be construed as a reference to the Central Government and also as including a reference to the Lieutenant-Governor. Ordinarily, under clause (60) of section 3 of the General Clauses Act, 1897, "State Government" in relation to a Union territory means the "Central Government", which as defined in section 3(8) of that Act means in relation to a Union territory, the Administrator (the Lieutenant-

Governor in this case) acting within the scope of authority given by article 239 of the Constitution. Therefore, even if the proposed amendment is accepted and the reference to the Lieutenant-Governor is omitted, it will not preclude the Central Government from delegating under article 239 necessary authority to the Lieutenant-Governor. Instead of doing this by a notification the same object is achieved by a provision in the Bill itself. Shri Kamath will please be attentive—that is my first answer to his objection.

Secondly, the Civil Procedure Code and the Arbitration Act are laws falling under entry 13 of the Concurrent Legislative List and the executive power in relation to Concurrent List matters is vested in the State Government by virtue of the proviso to article 73(1) except where it is otherwise provided by the Constitution itself or by a law made by Parliament. Having regard to the fact that a State Government is functioning under the Government of Union Territories Act in Goa, Daman and Diu, it is considered desirable to vest the powers of the State Government under the laws proposed to be extended, in the Lieutenant-Governor of Goa, Daman and Diu, who will be acting on the advice of the Council of Ministers there. A similar provision has been made in the case of laws extended to Goa, Daman and Diu previously by Regulations promulgated by the President. It may be noted that according to the rule of construction specified in the Bill, the Central Government can also exercise the powers of the State Government.

Therefore, this amendment is not called for and I do not accept it.

**Mr. Deputy-Speaker:** Shall I put the amendment to vote?

**Shri Hari Vishnu Kamath:** Not necessary.

Amendment No. 1 was, by leave,

withdrawn.

**Mr. Deputy-Speaker:** The question is:

"That clause 5 stand part of the Bill."

*The motion was adopted.*

*Clause 5 was added to the Bill.*

**Clause 6.**—(Power to remove difficulties)

**Shri Hari Vishnu Kamath:** This clause says:

"If any difficulty arises in giving effect in Goa, Daman and Diu to the provisions of the Code of Civil Procedure, 1908... the Central Government may, by order in the Official Gazette, make such provisions or give such directions as appear to it to be necessary for the removal of the difficulty.

May I ask whether the Central Government in all these matters will keep in close touch with the Lieutenant-Governor and the Government of Goa, Daman and Diu, because in the clause which we have just passed, we have accepted the position that the Lieutenant-Governor and the Government of Goa, Daman and Diu would also have some *locus standi* in certain matters? In this clause also, whenever difficulties arise, it will be in public interest and in the interest of Goa, Daman and Diu that the Central Government should keep in close touch and have not only consultation, but the concurrence of the government of the Union Territory. You have brought the Lieutenant-Governor into the picture already, separately from the Central Government. You must be consistent. If it is accepted that they are separate entities, here also it should be accepted that the Central Government must keep in touch with and get the consent, concurrence, approval, or agreement of the Lieutenant-Governor and the Goa Government. Otherwise, it will be wholly inconsistent if in one clause they are treated as separate entities

and in this clause there is no reference to Lieutenant-Governor.

**Shri Jaganatha Rao:** The government is taking a consistent stand and is not having any double standards. There is a democratic government functioning in the Union Territory of Goa, Daman and Diu and the Lieutenant-Governor and the Government of Goa, Daman and Diu will be consulted. There is no doubt about it. I do not know why he should entertain any doubt.

**Shri Shinkre:** Why don't you extend the reference to the Lieutenant-Governor which you have made in clause 5 to clause 6 also?

**Shri Jaganatha Rao:** It is already there in clause 5 and it is not necessary in clause 6.

**Mr. Deputy-Speaker:** The question is:

"That clause 6 stand part of the Bill."

*The motion was adopted.*

*Clause 6 was added to the Bill.*

*Cause 7, Clause 1, the Enacting Formula and the Title were added to the Bill.*

**Shri Jaganatha Rao:** I beg to move:

"That the Bill be passed."

**Mr. Deputy-Speaker:** Motion moved:

"That the Bill be passed."

**Shri Shinkre:** The hon. Deputy Minister never said anything about the difficulty I had raised. He has not been kind enough to give an assurance that in future the Central Government will see to it that the courts in Goa would not remain vacant or without functioning for want of judges and steps will be taken to see that all the courts are properly manned, equipped with the requisite personnel and the people's difficulties will be given proper attention.

**Shri Jaganatha Rao:** I am sorry I forgot to reply to that.

श्री हुकम चन्द्र कश्यपबाबू : उपाध्यक्ष महोदय, हाऊम में कोरम दही है।

**Mr. Deputy-Speaker:** Now there is quorum.

**Shri N. Dandekar (Gonda):** Sir, in general course there is need for a Bill like this. But I have two grave doubts: firstly, whether until the government have taken decisions on major questions about the future administration of Goa, this kind of piecemeal legislation will go on. They will have to bring forward further legislation if in one way or the other the status of these territories is changed. It seems to me in the first place that this kind of piecemeal legislation, which has become a habit, ought not to be proceeded with.

Secondly, I have grave objection to clauses of the kind of clause 6. The discussion on that clause became too short; the minister got up to reply and I did not have time to intervene. This is an extraordinary clause. Clauses of this kind are now becoming a fashion almost in all new legislation, giving to the government power for the "removal of difficulties". Obviously, they have drafted legislation which is not complete, which is sketchy and replete with all sorts of difficulties. They know it is replete with all sorts of difficulties and so they have a clause which merely says, in fact, "we have drafted this very badly; we know there are going to be any number of difficulties and therefore, we want virtually legislative power to remove those difficulties". I don't think we ought to be passing legislation of a kind that anticipates the existence of difficulties and then to have a clause conferring virtually legislative powers on the government, under the guise of removing difficulties. What are the difficulties? Why don't they list them and attempt to cover those difficulties legislatively? Why take this

kind of power? They have already rule-making and regulation-making powers and now they are adding virtually legislative powers for the removal of difficulties. I do not think this kind of legislation ought to be contemplated. It should not be approved by this House, because it detracts from the responsibilities of the House for making complete and self-contained legislation, which would have all that is required for implementing that legislation.

It seems to me perfectly plain that this enactment is going to be presented with enormous difficulties in implementation. The list of these difficulties they are concealing from us. To avoid all these difficulties they are taking unto themselves virtually law making powers for enacting what virtually amounts to legislation which will doubtless say "nothing should be done this way or that way, notwithstanding the provisions of the Code of Civil Procedure or various other procedural matters that may be affected". I, therefore, object to this Bill on these two grounds. I object, in the first place, to piecemeal legislation of this kind coming forward without Government having the courage to take a decision about the future of these territories. I object, secondly, to the content of this kind of legislation that envisage difficulties but does not submit them to the House and keeps them up their sleeves so that they can go on making laws as it suits their convenience.

**Shri H. N. Mukerjee (Calcutta Central):** Mr. Deputy-Speaker, I had no intention of participating in this discussion, but after having heard my hon. friend, Shri Dandekar, I do feel that a caveat should be entered on our behalf as far as passing this kind of legislation is concerned. It really is a matter of concern that Government comes forward very glibly with Bills to provide for the extension of legislation to the Union Territory of Goa, Daman and Diu, and I say this because the country is confronted, whether the Government

likes it or not, with the question of the future of these territories and the demand for their incorporation in certain other States is there. A public debate goes on and from time to time, also, people get into the picture in a manner which is not perhaps salutary from the point of view of our democracy. Some decisions have got to be taken as quick as ever it is possible, or if decisions cannot be taken that fact also has to be made known to the country courageously. What the Government does it to get into a kind of groove and bring forward legislation to occupy the time of the House. Most of us—perhaps it is a sort of reflection on ourselves—do not go into the details of these little Bills that come forward, but they do generally hint at something which do not redound to the credit of our democratic processes. Therefore, I feel that Government's behaviour in not making up its mind one way or the other in regard to Goa, Daman and Diu and in the meantime to bring forward this kind of interlocutory legislation should not be supported by Parliament.

My hon. friend, Shri Dandekar, has done a real service in pointing out—I am sure my hon. friend, Shri Kamath has also done it, but I must confess I was not paying any attention to the debate—that it is really fantastic that this House is being asked—I am amazed that the other House has already given its *impri-matur* to this provision—to sanction a provision which says in clause 6:

"If any difficulty arises in giving effect in Goa, Daman and Diu to the provisions of the Code of Civil Procedure, 1908 or the Arbitration Act, 1940, extended by this Act to that Union territory, the Central Government may, by order in the Official Gazette, make such provisions or give such directions as appear to it to be necessary for the removal of the difficulty."

We might as well abdicate ourselves; we might as well tell President Ayub

Khan we are following his example in certain regards. What is the kind of Parliamentary legislation containing a provision that difficulties in the implementation of that legislation would be removed by Government by a fiat about which we have nothing whatever to do? This a matter of principle on which, I am afraid, Parliament should take its stand irrespective of party allegiance. This is a matter which should never have been incorporated in any proposed legislation. I cannot for the life of me understand how this has escaped the attention of the other House. As far as we are concerned, we cannot without very serious protest allow this kind of thing to pass muster.

Mr. L. M. Singhvi (Jodhpur): Mr. Deputy-Speaker, I shall be very brief in what I have to submit in respect of this Bill. It appears that this is a part of the piecemeal approach which the Government often exemplifies in its legislative policy. I do not see why these piecemeal attempts are made to achieve legislative integration. After all, it should be easy for the Government to come forward in this House and say that so far as the entire body of Indian laws are concerned they shall be made applicable to Goa, Daman and Diu or any other territory that form part of the Indian Union. Why should this be done in such a piecemeal, *ad hoc*, day-to-day basis or, if I may be permitted to put it differently, on a hand-to-mouth basis?

I would also like to say that I am glad that this Bill has opened the eyes of some of my colleagues to the regime of subordinate legislation into which we are being sucked sometimes visibly and sometimes somewhat unwittingly. It seems that what the hon. Deputy Law Minister proposes is a legislation by proxy. What he wants to say is that we should delegate the powers to the executive government not only to implement the laws but, indeed, even to make laws, laws which are even more significant than that which is contained in this particular Bill. This, for example, would be the consequence

[Dr. L. M. Singhvi]

of clause 6 on which my hon. friends, Shri Dandekar, Shri Mukerjee and Shri Kamath have shed some light. It seems that this is a somewhat belated eye-opener, because the Government is quite accustomed to incorporate in most of the legislative enactments which it brings before the House such a clause for removal of difficulties and in the name of removal of those difficulties they wish to delegate powers to them to legislate.

Mr. Deputy-Speaker, you have presided over the Committee on Subordinate Legislation with distinction. I am sure you are familiar with the intricacies and with the ways of the Government in which insidiously power is sought to be appropriated and power is sought to be exercised by the executive government. I think it is a very serious matter. It is a good thing that this belated eye-opener has come before us and the House has begun to take a serious note of the fact that subordinate legislation, after all, cannot be allowed to extend its operation beyond a certain point. I think that point has been reached. This is a point beyond endurance. This is a vanishing point of parliamentary government where subordinate legislation takes the main part and the main legislation becomes really subordinate in every meaning of the word.

Sir, I should think that it is our duty, irrespective of party allegiance and affiliation, to resist any efforts at making subordinate legislation occupy a central place in the framework of our Government. Ours is a government by laws and if it has to be a government by laws in a democratic set up, it is very necessary that the Government must realise that it cannot in the name of removal of difficulties and in the name of extensive and pervasive subordinate legislation appropriate to itself powers of legislation which will supplant the main legislation and which will really be the content of the main legislation. I would, therefore, plead with this august House to resist any such efforts

to enable the executive government to appropriate to itself legislative powers which belong rightly to this House and the Parliament itself.

Shri Jaganatha Rao: Mr. Deputy-Speaker, objection has been taken for the piecemeal legislation. As I explained earlier my hon. friend, Shri Dandekar was not present then—these territories, these former Portuguese colonies, had an administration of their own. Therefore, we want to extend our Indian system of administration. Naturally, we have to proceed rather slowly. We cannot overnight introduce all the procedures prevailing in the rest of the country in these areas, because then there is bound to be confusion. Secondly, there is the assurance given by the late Prime Minister that the integration would be slow. Therefore, on the recommendation of the State Government we have been extending laws from time to time. As I said, 83 Acts of the Central Government have already been extended at the request of the Government of that Union territory. Now this Civil Procedure Code and Arbitration Act are being extended.

So, it is bound to be a slow process. We cannot overnight extend thousands of Indian laws to Goa.

14 hrs.

Dr. L. M. Singhvi: What is the difficulty? I don't understand it.

Shri Jaganatha Rao: They must be prepared for the change. Their civil system is entirely different.

Dr. L. M. Singhvi: Is it the suggestion of the hon. Minister that Goa is now prepared for the acceptance of the Civil Procedure Code from a particular date and not for the acceptance of other enactments?

Shri Jaganatha Rao: It is so.

Dr. L. M. Singhvi: Then it is a strange system.

Shri Jaganatha Rao: It is stated in

**The Statement of Objects and Reasons:**

"The Government of Goa, Daman and Diu are now undertaking legislation to reorganise the civil courts in the territory on the pattern obtaining under the Bombay Civil Courts Act."

It is not possible overnight to change the entire system and extend all laws to Goa.

**Shri Hari Vishnu Kamath:** Why not provide that every order so made shall be laid before Parliament?

**Shri Jaganatha Rao:** That provision is there in every Bill that is passed by this House. It is not a new clause.

**Shri Hari Vishnu Kamath:** Sir, on a point of order. You will please recollect that it has been decided by the House times without number that whenever a Bill confers powers on the Central Government to make orders or rules such orders or rules should be laid before Parliament and be subject to approval or modification; their they would be effective. That is not followed here. I do not know why it has been departed from.

**Mr. Deputy-Speaker:** It is not a rule-making power. There is no point of order. The question is:

"That the Bill be passed".

The motion was adopted.

14.02 hrs.

**MOTION RE: SUPPLY AND PRODUCTION OF CHEMICAL FERTILIZERS**

**Shri P. Venkatasubbaiah (Adoni):**  
I beg to move:

"That this House takes note of the statement of the Minister of Petroleum and Chemicals regarding supply and production of chemical fertilizers, laid on the Table of the House on the 27th August, 1965."

Mr. Deputy-Speaker, Sir, I wanted to move this motion to bring to the notice of hon. Members and also the Government the importance of production of fertilizers and the vital role it plays in increased agricultural production in the country. Fertilizer to agriculture is like steel to industry. In an agricultural country like ours, where the per-acre yield is low, supply is short of demand and population is increasing rapidly, the production of fertilizer assumes greater importance. The high per-acre yield in countries like USA and Japan is obviously due to higher consumption of fertilizer. In the present context of our facing two unscrupulous enemies who are eager to commit aggression and grab our territory, it is quite essential that we should give supreme importance to our defence requirements and defence production. At the same time, in order to keep this country self-sufficient and also to have an uninterrupted supply of foodgrains to our jawans who are fighting a valiant battle on our frontier, it is all the more necessary that we take steps to have increased agricultural production.

It assumes added significance when we consider the attitude of big powers, even those which have earlier promised assistance to India. They have no hesitation to equate us with Pakistan. Even when it is a question of economic aid, they say that they have to consider deeply whether they can give economic aid when there is armed conflict between India and Pakistan. So, we have to ensure that we no longer depend on any foreign country for our food. We cannot be at the mercy of foreign countries, especially when we have got the wherewithal and the necessary potentialities to increase our agricultural production and make this country self-sufficient.

In this context, I would say that fertilizer production plays an important role since it is an important input for increased agricultural production. Like water and good seed, fertilizer in adequate quantity and in right time will go a long way in increasing our