

PARLIAMENTARY DEBATES

(Part II—Proceedings other than Questions and Answers)

OFFICIAL REPORT

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HOUSE OF THE PEOPLE

Saturday, 1st May, 1954

*The House met at a Quarter past
Eight of the Clock*

[MR. SPEAKER *in the Chair*]

QUESTIONS AND ANSWERS

(No Questions: part I not published)

PAPER LAID ON THE TABLE
BULLETIN NO. 19 OF CENTRAL SILK
BOARD

The Minister of Commerce and Industry (Shri T. T. Krishnamachari): I beg to lay on the table a copy of the Bulletin No. 19 of March, 1954, issued by the Central Silk Board. [Placed in the Library. See No. S-134/54.]

STATEMENT RE INDIAN CATTLE
PRESERVATION BILL

The Attorney-General (Shri M. C. Setalvad): Sir, a question, I understand, has arisen as to the competence of Parliament to entertain and enact the Bill which has been entitled the Indian Cattle Preservation Bill, 1952. The question, of course, has nothing to do with the merits of the measure: the question relates exclusively to the legislative competence of Parliament to enact this measure.

We all know that the legislative power of the country is a divided legislative power, divided between Parliament and the States. Parliament has its exclusive field. Then there is a common field between Parliament and the States. Then we have the exclusive field of the States.

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And, finally, we have, what has been called, the residuary field which is the field of Parliament.

When a question of this character arises, the method of approach is well accepted. What one does is to examine the subject-matter of the proposed legislation, what is called in legal language the pith and substance of the legislation. Of course, the pith and substance has to be arrived at not merely on the formal expression of the language but, by going behind the language, seeing the real purpose of the Bill and how it would operate. Having arrived at, by that method, the real subject-matter of the proposed legislation, the next step to be taken is to go to the Legislative Lists and find out where the subject-matter falls. If it falls within either the exclusive sphere of Parliament or the exclusive sphere of the States the matter is quickly determined; the right to enact it is the exclusive right of the one Legislature or of the other. Or, it may fall in the common sphere, in which case both legislative bodies can legislate in respect of that legislation.

Applying these principles to the present case one has first to examine the subject matter of the proposed Bill. The Bill is entitled, the long title of it is "A Bill to preserve the milch and draught cattle of the country". The matter is made plainer if one goes to the Statement of Objects and Reasons which states that India being an agricultural country, it needs draught animals and is also deficient in milk and needs milch cattle; it is therefore necessary to preserve and increase supply of draught animals and milch animals by stoppage of the slaughter of these animals. There-

[Shri M. C. Setalvad]

fore it is clear that the purpose of this legislation is to preserve cattle, both milch cattle and draught cattle. And the purpose is sought to be carried out by section 3 of the proposed legislation which prohibits the wilful killing or slaughter of cattle either for food or any other purpose, in a licensed slaughter-house or any public or private place.

These are the material provisions, and the preamble and the objects and reasons which have to be looked at in determining the subject-matter. Having seen these, it appears to me that the object of the legislation, or the pith and substance of the legislation, the purpose of the legislation, is clear. It is the preservation of our agricultural stock, draught cattle, cattle used for the purpose of drawing the plough or drawing loads, and cattle which are necessary for a proper supply of milk.

Having seen the pith and substance of the legislation or its subject-matter, we have next to examine where this subject-matter falls under the scheme of the Constitution. And when we are concerned with Parliament, as we are in the present case, what we have to do is to go first to the List I, the Union List. Scanning the Union List I find no entry under which this subject-matter can be placed or to which it can be related. The next step is to go to the Concurrent Legislative List and see if it can be related to any of the entries under that list. Here again I do not find any entry under which it can be brought. Once we reach that conclusion there is, really speaking, an end of the matter; because, the competence of Parliament is confined, excepting as to residuary subjects, to Lists I and III, that is the Union and the Concurrent Lists. But it is useful to examine the State Legislative List to see whether this subject-matter falls within any of the entries in the State Legislative List. And going through it one finds that this is clearly a subject-matter for State legislation. I am referring to Entry 15 which is "preservation, protection and improve-

ment of stock". This Bill certainly has as one of its objects the preservation and protection of stock. Further, in so far as it attempts to conserve and improve the milk supply of the country, it probably can be related to public health, which is Entry 6 in the State Legislative List. So that, it is clear, examining the State Legislative List, that the Bill clearly falls within these two entries. We may also think of the entry relating to agriculture. Because, broadly speaking, the preservation of stock will also help agriculture. That is Entry 14. It may perhaps be remotely related also to Entry 27, which relates to the production, supply and distribution of goods. It may be said that this legislation relates, no doubt remotely, to the supply of milk and may therefore have as its subject-matter one of those mentioned in Entry 27.

The conclusion, therefore, is that the subject-matter of this Bill is not to be found in the lists with which Parliament is concerned, that is Lists I and III, and is to be found in various entries in List II which is the exclusive sphere of the State Legislature. That really concludes the question because in this view Parliament will not be competent to enact this legislation.

A question may be raised as to the directive principle contained in article 48. This article, no doubt, mentions as a directive principle of State policy,—I will read the actual words—'prohibiting the slaughter of cows and calves and other milch and draught cattle'. I am not concerned here with the scope of the provision in article 48. All that I am concerned with is to point out that article 48 has no manner of relevance to the question of legislative competence. What the Chapter in which this article occurs, lays down are the directive principles of State policy. But, as we all know, these are not heads of legislation and they do not confer on legislative bodies any legislative powers. We also know that these directive principles do not make any contravention of them a matter to be brought before a court of law. In other words, these directive principles

are not justiciable. That, I think, is the whole position about the matter.

Shri N. C. Chatterjee (Hooghly): May we make some statements regarding the validity and constitutionality of the statute to show that it is within the exclusive competence of Parliament?

Mr. Speaker: Order, order. Hon. Members will see that the hon. Attorney-General has made a statement giving his opinion about the legal position as he thinks it to be. Generally, it is not our practice to allow a discussion on statements. Further, this Bill will come before the House in due course, and hon. Members will have an opportunity of discussing it at that time. They can also take advantage of the opinion expressed by the Attorney-General, and express their dissent or their concurrence. The matter will then be open for discussion in the House. Today's occasion is not for a debate or discussion on the statement made by him

Shri Raghavachari (Penukonda): If a doubt arises and we would like to have it cleared, is it not permissible?

Mr. Speaker: I am afraid it will not be permissible. If I once allow a doubt or a question or some argument advanced in the form of a doubt, it means that I must allow a discussion or a debate. That is what it will come to in practice.

Shri Radhial Vyas (Ujjain): May I make a submission? The learned Attorney-General has not heard our views also. If he can make it convenient to be present on the day which the Bill will be taken...

Mr. Speaker: That may be taken into consideration. If the House so desires, he may be requested to remain present. I am sure he will make it convenient for him to be present in the House on such dates.

Shri Gadgil (Poona Central): May I ask one question? The tradition has been that the Chair has never ruled whether a particular Bill was *intra*

vires or *ultra vires* of the powers of this House. Will it depart from this in case it comes to the conclusion that it has no power?

Mr. Speaker: Perhaps I should enlighten hon. Members on what happened in this House. If I mistake not, the question was raised and the Chair left it to the House. It was the desire of the House to have a statement from the Attorney-General. The Attorney-General was requested to make a statement. When I said two minutes ago that the question will be open for discussion in the House, it clearly meant that the Chair is not going to decide.

सेठ गोविन्द दास (मंडला-बबलपुर-दक्षिण) : अध्यक्ष महोदय, मैं यह जानना चाहता था कि यदि यह विधेयक आगे फिर बहस के लिये आने वाला है तो यह कब आवेगा, क्योंकि जिस समय मैंने इसका मुल्तवी किया जाना स्वीकार किया था उस समय मैंने यह कह दिया था कि मैं यह नहीं चाहता कि यह विधेयक फिर से गैर सरकारी दिन आये क्योंकि उसमें ब्रैलट का झगड़ा पड़ता है, और पार्लियामेंटरी अफेअर्स के जो मंत्री महोदय हैं उन्होंने इस बात का आश्वासन दिया था कि इसी सेशन में किसी न किसी सरकारी दिन ले आया जायेगा। अब यह अधिवेशन २१ मई को समाप्त हो रहा है। तो मयह जानना चाहता था कि उनके आश्वासन के अनुसार यह किस सरकारी दिन आयेगा, क्योंकि उन्होंने ही यह आश्वासन दिया था कि यह सरकारी दिन आ सकता है। मैं नहीं चाहता कि इसको इस तरह मुल्तवी कर दिया जाय ताकि यह न इस सेशन में आ सके और न अगले सेशन में आ सके और ब्रैलट के झगड़े में पड़ जाय। सरकार इस विषय में क्या करना चाहती है यह सरकार को ज्ञापित करना चाहिये क्योंकि देश यह जानना चाहता है कि सरकार इस विषय में क्या करना चाहती है। यह विषय सारे देश में इतने महत्व का हो गया

[सेठ गोविन्द दास]

है कि वह चाहता है कि वह किसी न किसी सरकारी दिन आ जाय और इसी सेशन में हो जाय ।

अध्यक्ष महोदय : मैं तो यह समझता हूँ कि सरकार को जैसा योग्य लगे उसी रीति से वह निवेदन करे । अभी जो स्टेटमेंट एटार्नी जनरल साहब ने दिया है उसके साथ इसका कुछ सम्बन्ध नहीं है । उन्होंने तो लीगल पोजीशन के बारे में अपनी राय दी है । तो यह इतना ही है । लेकिन जैसा मैंने अभी कहा कि जब यह बिल आयेगा, मैं नहीं जानता कि कब आयेगा, उस वक्त अभी जो चर्चा चल रही है वह हो जायेगी ।

सेठ गोविन्द दास : कब आयेगा ?

अध्यक्ष महोदय : कब आयेगा यह तो आप मिनिस्टर साहब से मिल कर तै कर लें ।

सेठ गोविन्द दास : आप उन से पूछ लें ।

Mr. Speaker: We are not concerned with it.

COMPANIES BILL—Contd.

Mr. Speaker: The House will now proceed with the further consideration of the following motion moved by Shri C. D. Deshmukh on the 28th April, 1954, namely:

"That the Bill to consolidate and amend the law relating to companies and certain other associations, be referred to a Joint Committee of the Houses consisting of 49 members, 33 members from this House, namely, Shri Hari Vinayak Pataskar, Shri Chimanlal Chakubhai Shah, Shri Awadeshwar Prasad Sinha, Shri V. B. Gandhi, Shri Khandubhai Kasanji Desai, Shri Dev Kanta Borooah, Shri Shriman Narayan Agarwal, Shri R. Venkataraman,

Shri Ghamandi Lal Bansal, Shri Radheshyam Ramkumar Morarka, Shri B. R. Bhagat, Shri Nityanand Kanungo, Shri Purnendu Sekhar Naskar, Shri T. S. Avinashilingam Chettiar, Shri K. T. Achuthan, Shri Kotha Raghuramaiah, Pandit Chatur Narain Malviya, Dr. Shaukathullah Shah Ansari, Shri Tekur Subrahmanyam, Col B. H. Zaidi, Shri Mulchand Dube, Pandit. Munishwar Dutt Upadhyay, Shri Radhelal Vyas, Shri Ajit Singh, Shri Kamal Kumar Basu, Shri C. R. Chowdary, Shri M. S. Gurupadaswamy, Shri Amjad Ali, Shri N. C. Chatterjee, Shri Tulsidas Kilachand, Shri G. D. Somani, Shri Tridib Kumar Chaudhuri and Shri C. D. Deshmukh, and 16 members from the Council;

that in order to constitute a sitting of the Joint Committee the quorum shall be one-third of the total number of members of the Joint Committee;

that the Committee shall make a report to this House by the last day of the first week of the next session;

that in other respects the Rules of Procedure of this House relating to Parliamentary Committees will apply with such variations and modifications as the Speaker may make; and

that this House recommends to the Council that the Council do join in the Joint Committee and communicate to this House the names of members to be appointed by Council to the Joint Committee."

Shri Tek Chand was speaking. He is absent. I call Shri Sadhan Gupta.

Shri Sadhan Gupta (Calcutta South-East): The Finance Minister, when he was moving the motion for reference of the Companies Bill to the Select Committee, had quoted from the Company Law Committee's Report to say that it was a Bill to bring organisation and capital and labour together in a certain relationship and