

Inquiry Act, 1952 to fully go into the facts pertaining to these clashes and to probe into the conduct of the officials of the two States and also to fix the responsibility. In this context, I rise to inform the House that the Government have decided that the Commission of Inquiry will be presided over by Shri B.C. Mathur, retired Secretary to the Government of India.

The Commission shall make an inquiry with respect to the following matters :

- (i) the sequence of events leading to and all the facts relating to the said conflict in the Merapani area on the Assam-Nagaland border ;
- (ii) whether the conflict and the resultant loss of human life and damage to property could have been averted ;
- (iii) the role of the authorities in both the States in mobilizing and deploying armed police forces including village guards of Nagaland ;
- (iv) whether there were any lapses or dereliction of duty on the part of the officials and uniformed forces of the two State Governments ;
- (v) the deficiencies in the police set-up of both the States and suggestions for revamping the same.

The Commission may also recommend short-term and long-term measures to prevent recurrence of such incidents and in that context make such other recommendations and an interim report, as it may deem fit.

The Commission of Inquiry has been asked to submit its report within six months. The notification to this extent has been published in the Official Gazette yesterday.

12.25 hrs.

[MR. DEPUTY SPEAKER *in the Chair*]

SALES PROMOTION EMPLOYEES  
(CONDITIONS OF SERVICE)  
AMENDMENT BILL\*

[English]

THE MINISTER OF STATE OF THE MINISTRY OF LABOUR (SHRI T. ANJIAH) : Sir, I beg leave of the House to introduce a Bill further to amend the Sales Promotion Employees (Conditions of Service) Act, 1976.

MR. DEPUTY SPEAKER : The question is :

"That leave be granted to introduce a Bill further to amend the Sales Promotion Employees (Conditions of Service) Act, 1976."

The motion was adopted.

SHRI T. ANJIAH : Sir, I introduce the Bill.

JUDGES (PROTECTION) BILL\*

[English]

THE MINISTER OF STATE IN THE MINISTRY OF LAW AND JUSTICE (SHRI H.R. BHARDWAJ) : Sir, I beg to move for leave to introduce a Bill for securing additional protection for Judges and others acting judicially and for matters connected therewith.

MR. DEPUTY SPEAKER : Motion moved :

"That leave be granted to introduce a Bill for securing additional protection for Judges and others acting judicially and for matters connected therewith."

\*Published in Gazette of India Extraordinary, Part-II, Section 2 dated 22-8-1985.

**SHRI G.M. BANATWALLA (Ponnani) :**  
Mr. Deputy Speaker, Sir, I rise to oppose the introduction of this Bill, namely, the Judges (Protection) Bill, 1985.

I am second to none in my anxiety to see that the judges are duly protected and have the necessary immunities while they discharge their judicial functions. However, here we are concerned with the provisions of the Bill and I have only three brief submissions to make.

In the first place, the Bill violates article 235 of our Constitution. According to article 235 of the Constitution, the power to take action against judicial officials is vested exclusively in the courts, but here, according to clause 3, sub-clause (2), the Government reserves for itself, retains for itself, the power to take even departmental proceedings against a judge. You can understand the seriousness of the situation. I submit that in *West Bengal v. Nripendra*, 1966 I S.C.R. 771, the Supreme Court held that the Government of India has no power to hold a disciplinary inquiry against a judge. Similarly, in *G.S. Nagmati v. Mysore*, 1970 A. Mys., 309, it was held that the High Court alone was competent to hold a disciplinary enquiry against the judicial officers. In *Samsher Singh v. Punjab*, 1974 A. SC. 2192, the High Court even asked the Government to depute the Director of Intelligence to hold the enquiry. Here, Chief Justice Ray observed, and I quote :

"It is indeed strange that the High Court which had control over the subordinate judiciary, asked the Government to hold an enquiry through the Vigilance Department....The High Court has failed to discharge the duty of preserving its control.

Therefore my submission is this. In so far as Clause 3, sub-clause (2) retains for the Government the power to institute even a departmental enquiry against a judge, the same is violative of Art. 235, 236 and 237 of the Constitution.

My second submission is this. Clause 3 (2) of the Bill, in so far as it reserves the right of the Government to take depart-

mental action against judges, undermines the independence of our judicial system. I understand that they may be talking about the subordinate judiciary. They may be talking about the magistrates and others. But, here, I must say that this attitude of the Government to preserve and to retain for itself the power of enquiry and departmental action against any judicial officer, however high or low his rank might be militates against the spirit of our constitution. Therefore this clause 3 sub clause (2) is against the spirit of Article 237. Article 237 says that even in respect of any class of magistrates or judicial officials not covered by the Constitution, the Governor may, by notification apply this provision of the Constitution. Sir, that is the spirit of our Constitution, that, in case there is any judicial officer who is not protected by Article 235 of the constitution, then, in that case, the Government under Article 237 of the constitution, should issue the necessary notification to extend the protection of Article 235, namely, they being brought under the disciplinary control of a court, to such judicial officers. But, Sir, in total departure of the thinking and the spirit of our Constitution, we have this Bill, which really speaking, undermines the independence of the judiciary or the judicial official of the lower rank. I must say that any attempt to undermine the independence of the judiciary is to say the least a treachery and a fraud upon the Constitution.

My third submission is this, and that is, with all due respect to the courts in our country, that while extending the protection to judges discharging their judicial duties it must be remembered that judges are, at once privileged and restricted. Therefore a judicious balance has to be struck between the need for protection and restriction so that the privileges do not degenerate into licence. Sir, unrestricted immunity paves the way for judicial tyranny.

I may here refer only to a recent decision of the Supreme Court in *MOHD. AHMED KHAN VS. SHAN BANO BEGUM—AIR 1985, SC 945*. This is a sacrilegious attack upon religion especially Islam,

**MR. DEPUTY SPEAKER :** Mr. Banatwalla, it is not proper. Don't bring in all these things here.

**SHRI G.M. BANATWALLA :** Sir, every judicial restraint was thrown to the winds. Therefore it is necessary that while we extend the privileges, the necessary restrictions should also be maintained. Therefore, the present law, as it is found in various enactments and in various provisions is adequate to take care of the situation. There is absolutely no need to have such a Bill.

Therefore, I have made three submissions : Firstly, it is violative of the Constitution. Secondly, it is a departure from the spirit of the Constitution. And, thirdly there is need for balancing privileges with restraints.

With these words I oppose the Bill and I request the Government to withdraw it or this House should come to the rescue of seeing that the independence of the judiciary is not undermined.

**SHRI H.R. BHARADWAJ :** Sir, the very arguments of the hon. Member are self-contradictory and he does not perhaps appreciate the edifice of judicial system in this country. I will tell him for his knowledge that the system of administration in the Supreme Court is fully autonomous and the Government does not have any sort of interference in the matter of Supreme Court, in the matter of High Courts, and the judiciary down below to the rank of a Munsif/Magistrate is absolutely under the control of the Government in the matter of taking any action against them. Now, if you will care to read the definition of a Judge which has been given in this proposed Bill, it does embarrass certain people who are under the Executive because the definition of the Judge given here also has certain executive officers who have to give a definite opinion about particular issues involved and for those people this provision has been retained. Nobody is more anxious to protect judiciary than the Government and it is sometimes when we hear from Mr. Banatwalla criticism of the judiciary, it becomes difficult for us even to defend him in this matter.

In regard to the protection to the Judges, this Bill is a simple amendment to the earlier provisions of Judicial Protection Act, viz. that earlier they were only entitled in relation to the criminal protection, we are only extending the benefit even in civil matters. How do you expect a Judge to write the Confidential Report of one of his colleagues if you take him to the court and drag him into the litigation ? How do you expect another Judge to make recommendation in the matter of Judges if you expose him in the litigation and all that ? It is with a view to facilitate the administration of justice and justice alone that has prevailed upon the Government to bring this proposed amendment.

So far as other matters are concerned, I say the convention of the House is that when a Bill is introduced, it is never opposed, but I think he is more concerned in opposing the convention than in maintaining in. (*Interruptions*).

If he wants to discuss Shah Bano's case, that is, in another from, on a motion, it can be done. So, I would request him to withdraw his opposition and then allow me to introduce the Bill.

**MR. DEPUTY-SPEAKER :** The question is :

"That leave be granted to introduce a Bill for securing additional protection for Judges and others acting judicially and for matters connected therewith."

The motion was adopted.

**SHRI H.R. BHARADWAJ :** Sir, I introduce the Bill.

#### ESTATE DUTY (AMENDMENT) BILL

[*English*]

**THE MINISTER OF STATE IN THE MINISTRY OF FINANCE (SHRI JANARDHANA POOJARY) :** Sir, I beg to move for leave to introduce a Bill further to amend the Estate Duty Act, 1953.