

SHRI SOMNATH CHATTERJEE (Bolpur): What is that item?

SHRIMATI SHEILA DIKSHIT: That is the Legal Services Authorities Bill.

[*Translation*]

SHRI SOMNATH CHATTERJEE: Will we be free after that?

SHRIMATI SHEILA DIKSHIT: We will not allow you to be free so soon.

[*English*]

MR. CHAIRMAN: It is agreed I think.

SOME HON. MEMBERS: Yes.

MR. CHAIRMAN: So, we take up item No. 18. Shri H.R. Bhardwaj.

16.22 hrs.

LEGAL SERVICES AUTHORITIES BILL

[*English*]

THE MINISTER OF STATE IN THE MINISTRY OF LAW AND JUSTICE (SHRI H.R. BHARDWAJ): Sir, I beg to move*

"That the Bill to constitute legal services authorities to provide free and competent legal services to the weaker sections of the society to ensure that opportunity for securing justice are not denied to any citizen by reason of economic or other disabilities, and to organise Lok Adalats to secure that the operation of the legal system promotes justice on a basis of equal opportunity, be taken into consideration."

Articles 39A of the Constitution provides that the State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity and shall, in particular provide free legal aid, by suitable legislation or schemes or in any other

way, to ensure that the opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.

16.22 hrs.

[SHRI SOMNATH RATH *in the Chair*]

In pursuance of the above objective, the Government constituted two expert committees—one in 1972 headed by Shri Justice V.R. Krishna Iyer, the then Judge of the Kerala High Court and Member of the Law Commission of India, and the other in 1976 headed by Shri Justice P.N. Bhagwati, the then Judge of the Supreme Court. In the light of the recommendations contained in the reports submitted by these committees to the Government, a Committee known as the "Committee for Implementing Legal Aid Scheme" (CILAS) was constituted by the Government in September, 1980 under the Chairmanship of Shri Justice P.N. Bhagwati, the then Judge of the Supreme Court, to implement and monitor the legal aid programmes on a uniform basis throughout the country. This Committee has since been reconstituted from time to time and at present Shri Justice R.S. Pathak, Chief Justice of India, is its Patron-in-Chief.

The legal aid programmes evolved by the Committee for Implementing Legal Aid Schemes have been adopted by almost all the State Governments and some of the Union Territories. A large number of poor people have been provided free legal aid throughout the country. Lok Adalats have also gained considerable popularity in many states and a very large number of cases have been settled amicably.

On the basis of experience gained in the implementation of the various schemes including the Lok Adalats and the meetings which the CILAS had with the Chiefs of the Legal Aid and Advice Boards of the States etc., the Committee for implementing Legal Aid Scheme recommended that the legal aid programme should be given statutory base. The question of enactment

* Moved with the recommendation of the President.

[Shri H.R. Bhardwaj]

of suitable legislation has been discussed at the meeting of the Consultative Committee of Members of Parliament attached to the Ministry of Law and Justice since 1985. It was also discussed at a meeting of the State Law Ministers convened by the CILAS in October, 1986. Suggestions have been received from other eminent persons, including the Chairman of the Law Commission of India. Taking into consideration these and other suggestions so far made, the Government has finalised the Bill. The Bill has the following salient features:—

1. There would be Legal Services Authority at the National, State and District level. The National Authority will advise, co-ordinate and monitor the State Legal Service Authorities and will be the main agency to extend legal aid to the needy.
2. The National Authority would be mainly financed from the funds allocated to it by the Central Government while the State and District Authorities would be financed by the State Governments. The National Authority will also extend financial help to the State Legal Aid and Advice Boards as well as voluntary agencies for specific schemes.
3. At the national level as well as the State and District levels, the Authorities would have "Legal Aid Funds" for meeting the cost of legal aid to the deserving person and for meeting other expenses of the Authority concerned.
4. The National Authority would function under the Chief Justice of India assisted by a serving or retired Judge of the Supreme Court and other eminent persons in the field of legal aid work as

may be appointed by the Government. Similarly, the State Legal Service Authorities would be headed by the Chief Justice of the concerned High Court or his nominee and other eminent persons as Members as may be appointed by the State Government.

5. At present, persons belonging to the weaker segments of the Society, namely, the Scheduled Castes, the Scheduled Tribes, women, children etc. are entitled to free legal aid without any income ceiling. The Bill covers economically weaker citizens who will be entitled to free legal aid if their annual income is Rs. 9000 or less for cases in the High Court and Rs. 12000 or less for cases in the Supreme Court.
6. In a separate chapter on Lok Adalats, it is provided that every award of the Lok Adalat shall be deemed to be a decree of a Civil Court and where a settlement has been arrived at in a suit or proceeding transferred to it from a Court, the Court fee paid shall be refunded. The Lok Adalat will have for the purpose of holding any enquiry, the same powers as are vested in the civil court while trying a suit.
7. Thus, in keeping with the mandate contained in Article 39A of the Constitution, the Bill is intended to give a statutory base to the legal aid programmes operating in the various States in the country so as to make them more effective and also to confer more powers on Lok Adalats which are based on voluntary efforts for settling disputes between the parties quickly and at a minimum cost and at their door-steps. I hope that the Bill will have the unanimous approval of this House.

8. I commend the Bill for consideration of the House.

MR. CHAIRMAN: Motion moved:

"That the Bill to constitute legal services authorities to provide free and competent legal services to the weaker sections of the society to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities, and to organise Lok Adalats to secure that the operation of the legal system promotes justice on a basis of equal opportunity, be taken into consideration."

SHRI E. AYYAPU REDDY (Kurnool): Mr. Chairman, Sir, better late than never. We are happy that at long last, much awaited Lok Adalat Bill or Legal Services Authorities Bill has come before this House. Articles 39 (a), if I remember correctly, was introduced more than a decade ago. There is a mandate that the Directive Principles must be carried out. But long after it was included in the Directive Principles, nothing precious was done. Subsequently, a Board was formed with Justice Bhagwati as the President at the Central level. Then, some of the State also began to adopt this legal aid Bill, legal aid scheme. I had the good fortune of inaugurating the Legal Aid Scheme in my own State. That was in the year 1981. That means after 9 or 10 years it was introduced. The scheme took nearly 8 or 9 years to be introduced in my own state which is considered to be one of the progressive states. If I may say so honestly, nothing precious has been done by way of legal aid. In some States, the funds allocated have not even been utilised. Only in two States, legal aid has become partly successful, not but thoroughly successful. We know fully well that the judicial system which we inherited is not suitable to a rural based poor country like India. The conventional scheme or conventional method of effecting settlement of disputes between a citizen and another citizen which was practised in India was given up or dispensed

with, during the British imperial days. The litigation became costly and continues to be very costly. Though people are very conscious of their rights and are prepared to spend anything for endorsement of their rights Indian people are considered to be having the most litigious nature—70% to 80% of our people are not able to get their grievances redressed in our present existing judicial system. It was realised, even at the time when article 39A was introduced, that the present judicial system is working in favour of the haves and the very rich because they alone can hire the most talented advocates and obtain the maximum utility by exploiting the lacunae in the law. A simple instrument for settling dispute between a citizen and a citizen is vital. It becomes a part and parcel of the law and order machinery. We are prepared to spend lakhs and crores of rupees for a raising CRP Battalion. But we are not prepared to go into the root cause of the dispute, root cause of unrest in society and find ways and means of redressing these grievances at the grassroot level. We all know fully well that in the rural areas, in ancient times, the Panchayat or Gram Panchayat used to conventionally effect the settlement of dispute between a citizen and a citizen or between a person and a person. It did not cost anything. There was no necessity for anybody to go outside. The dispute has to be merely raised in the village itself and they used to get settlement there itself. That used to have the finality about this settlement.

The courts are open to those only who go and knock at their doors. Poor people have got a number of grievances but unless they go to a civil court and file a complaint and unless they go to a criminal court and file a complaint, then only the law is set in motion. Otherwise it is not set in motion. There is no person who will go and hear these grievances and make efforts to settle the disputes. What I find is, legal aid to our rural poor or to the poor living in towns, in slum areas is as essential as medicare. Sometimes it is more essential than medicare. Therefore the need to have a simple system of settling disputes

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between a citizen and a citizen and a state or a Corporation or an Authority has always been found to be there.

Though I welcome and support this Bill, I am very sorry to say that the drafting lacks lucidity and clarity. I will presently point out the provisions of the Bill which are confusing and which will create any amount of problems. My first objection to this Bill is this.

Clause 1.

"It shall come into force on such date as the Central Government may, by notification appoint; and different dates may be appointed for different provisions of this Act and for different States, and any reference to commencement in any provision of this Act in relation to any State shall be construed as a reference to the commencement of that provision in that state".

It shall come into force on such date. Why should you not fix a date as to when the entire Act will come into force, all provisions of the Act come into force and in all states? Why this provision because the Government can straightaway give a notification under this Act? Subsequently thereafter, you have to frame again rules. For instance, take Clause 3.

"(1) The Central Government shall constitute a body called the National Legal Services Authority to exercise the powers and perform the functions conferred on a Central Authority under this Act.

.. ..

(c) Such other members, possessing such experience and qualifications as may be prescribed and nominated by the Central Government".

First and foremost, this Act has to be notified. You have not fixed any definite

date as to when it has to be notified or when it is likely to come into force. That is why, I have tabled a motion saying that not later than 15th August, 1988. You kindly fix a deadline before which the entire Act will come into force in all the States.

I have stated in my motion that 15th August, 1988 must be the deadline before which the entire Act must come into force. When you have got the provision of prescribing the rules for the qualification of the Central Authority, how long will you take to prescribe the rules and nominate the Central authority? Unfortunately, our experience is when an Act is passed, you take 18 months, 20 months or even 2 to 3 years to prescribe the rules. The prevention of Terrorism and Disruptive Activities Act was passed in 1985. But the rules were framed in November, 1986, 18 months after the Act came into force. You came with great urgency asking all the Members to sit and pass the Bill as if it was very urgent. But you took your own leisurely way of framing the rules.

Similarly, under the sick Industries Bill, how long have you taken to constitute the Board?

Our experience is wherever we are giving you authority to prescribe the rules and to constitute the authority, you are taking years. You must give a definite assurance to us that the Central Authority under Section 3 will be constituted at least by 1st January, 1988. Take not more than three months. We will come into the details of the Bill. But I am pointing out the difficulties. You are merely getting the Bill passed but actual fruits of the Bill will take years. Therefore, you have not spelt out a definite programme either in the objects or in the provisions of the Act. So, you are still going about in a leisurely manner. It is already a belated Bill. Then, the State Authorities have to be constituted. The difficulty, here again, is that the States have to prescribe the rules and constitute it. There is no time-limit as to when they must constitute it. In some States, they may not even constitute. What are the provisions in the Bill by which

you can compel a State to constitute the State Legal Authority? As I have said earlier, some States may not constitute it. They may take their own time. Therefore, you kindly prescribe a uniform date by which all the States are compelled to constitute the Authority.

Sir, the most important Chapter is relating to who is entitled to the benefits of this Legal Services. Kindly have a look at Clause 12. I am very sorry to say that Clause 12 is couched in such a manner that it is very difficult to spell out as to the number of persons who are entitled to it. Of course, you have made it very broad and wide. You are making it possible for every person, to a Plaintiff and a Defendant also to come to you and ask for relief. For instance, this is what is contained in Clause 12. It says: "Every person who has to file or defend a case shall be entitled to legal service under this act if that person is,— a member of a Scheduled Caste or Scheduled Tribe"...That means, irrespective of his status. Even if he is a Gazetted Officer or a Minister, he is entitled to it. All right, let it be. Let us agree to it. It further defines as follows: "a victim of trafficking in human beings; a women or child"—even a rich women, a rich child, a Princes, even a Prince, if she is a woman or if it is a child, they qualify for it. It is very difficult for you. With this wide entitlement, how many persons are going to benefit by it? There should have been a limitation and life-line. As per the Clause women or child means, without any reference to their income or their status. You cannot say every woman, every child is entitled to it. Let us see further wherein it says: "a person under circumstances of underserved want". That may be all right. Sub-section (f) says: "an industrial workman". What about an Agricultural workman? Only an industrial workman is made to avail of this facility. Why should you discriminate?

SHRI H.A. DORA (Srikakulam): He will declare Agriculture as an 'industry'....

SHRI E. AYYAPU REDDY: As per this provision an agricultural labourer is not

entitled to it. Only an industrial workman is entitled to it. What is the speciality about it? Then, take the Sub-section (h). What do you mean by: "any person or in receipt of income less than nine thousand rupees if the case is before a court other than the Supreme Court and less than twelve thousand rupees or such other amount as may be prescribed by the Central Government if the case is before the Supreme Court"...? When you say: "in receipt of income less than nine thousand rupees" are you suggesting that the total assets must not exceed Rs. 9000 or that his annual income should be only Rs. 9000/-

THE MINISTER OF PLANNING AND PROGRAMME IMPLEMENTATION AND MINISTER OF LAW AND JUSTICE (SHRI P.SHIV SHANKER): My colleague will reply in detail. There is amendment No.3 from Mr. Dora on this issue where he has put 'annual income'. We are going to accept that.

(Interruptions)

SHRI H.A. DORA: Very good.

(Interruptions)

SHRI E. AYYAPU REDDY: I have also tabled it regarding: "in receipt of Rs. 9000/- or....

(Interruptions)

SHRI H.A.DORA: I have said it as "annual income".

SHRI E. AYYAPU REDDY: What I am trying to submit is that this Bill lacks lucidity and clarity. Nobody seems to have gone through the provisions very carefully. It is such a vague provision to say like: "women or child". What do you mean by saying "women or child" without reference to their means? As I have submitted earlier, a Princes, a Prince are also entitled for it. If the Prince is a child, he is also entitled to it. Even a Princes can also claim relief. Sir, our funds are very very limited. You please restrict it according to the funds which are

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now available and according to our present circumstances; restrict it to a particular class of persons and to a particular section of people.

Then there are other provisions which are still more confusing. For instance, please refer to Clause 20 (1). Frankly, I was not able to understand it at all. Hon. Law Minister, Shri Shiv Shankar, may please have a look at Clause 20(1) I will read it for the benefit of the House. Clause 20(1) reads:

"Where, in any suit or other proceeding which is capable of being taken cognizance of by a Lok Adalat under the provisions of this Act and pending before any court or tribunal, if the parties thereof make a joint application to the court or tribunal indicating their intention to compromise the matter or to arrive at a settlement, the presiding officer of the court or tribunal, as the case may be, may, instead of proceeding to effect a compromise between the parties or to arrive at a settlement himself, and notwithstanding anything contained in any other law for the time being in force, pass an order that the suit or proceeding shall stand transferred to the Lok Adalat for arriving at a compromise or settlement."

What do you mean by this? If they want a compromise, let them compromise and be done with it. A compromise can be effected there itself. Why should the Presiding Officer refer it to the Lok Adalat? I can understand this situation: where the parties are not in a position to effect a settlement and the Presiding Officer feels that it is a fit case for compromise, he may refer it to the Lok Adalat. It is alright where the parties are recalcitrant and cantankerous and are not prepared to compromise the matter and the Presiding Officer feels that it is a fit case for effecting a compromise, he may refer it to the Lok Adalat for making use of its good offices for bringing sense to the cantankerous parties. But where the

parties are prepared to effect a compromise, why do you drive them again to the Lok Adalat? What is the sense or what is the purpose in driving such people to Lok Adalat? Will it not affect the compromise which can be effected then and there itself?

PROF. N.G.RANGA (Guntur): There may be some *mala fide*.

SHRI E. AYYAPU REDDY : There is no question of *mala fide*. I will give an example. A wife and husband file an application for divorce. The matter is pending before the subordinate court, Guntur. The matter is pending before the subordinate court, Guntur. The judge says: "The parties say that they have effected a compromise; please record the compromise". Both the advocates come and file the application under Order 23 of the Civil Procedure Code. Then they record it and be done with it. Why should the judge again refer the case to the Lok Adalat and drive them to Lok Adalat? What is the fun in doing that? Why should the Lok Adalat work on a matter which could be disposed of by that particular tribunal itself in no time?

SHRI INDRAJIT GUPTA (Basirhat): You have to keep the Lok Adalat busy.

SHRI E. AYYAPU REDDY : Again, some of these provisions are really astonishing. We had been pressing for this Bill for a very long time. We welcome this Bill. But at the same time we request the Central Government to be generous enough in allocating funds and see that these funds are properly utilised. You should also say that only a percentage of the funds will be spent for administrative charges. The general complaint in the Bar has been that, of the funds allocated, 80 per cent is spent on establishment and only 20 per cent is spent on rendering legal aid to the poor. We should not receive such complaints. In fact, 30 per cent of the funds alone must be earmarked for establishment charges and 70 per cent of the funds must be spent on rendering service under this Bill. You kindly fit some sort of proportion at least in the rules to be framed under this Bill.

Sir, again, the other provisions, of course, are the usual, normal provisions of the Bill. But with regard to the constitution of the State Authority and the District Authority, it is essential that the Central Government itself frames these rules.

With regard to the constitution of the Central Authority, I have given an amendment saying that any person who is entitled to be appointed as high court judge, any eminent jurist or eminent advocate who is committed himself to his service may be appointed as executive authority. But what you have prescribed is this:

"So far as the Central Authority is concerned, the Central Government shall constitute a body called the National Legal Service Authority in exercise of the powers enshrined, Central Authority shall consist of the Chief Justice of India who shall be the Patron-in-Chief

(b) A serving or retired judge of the Supreme Court nominated by the President, serving in consultation with the Chief Justice of India who shall be the Executive Chairman."

Now, so far as the serving judge of the Supreme Court is concerned, we have absolutely no objection. But is it necessary to go in for a retired judge of the Supreme Court? I have got great respect for our judges of the Supreme Court either serving on the Bench or retired. A judge retires after attaining the age of 65. Very few of them will have the stamina, will have the vigour to preside over, to be the Executive Chairman of such an Authority because he has to probably tour the entire India. That is why, we said that any person who is qualified to be appointed as high court judge, any eminent jurist or eminent advocate may also be considered, may also be qualified to be appointed as the Executive Chairman.

Similarly, with regard to State Authority and the District Authorities, you have to

make suitable provisions so that we get the services of eminent advocates. I have got only one more objection:

Sir, in this Bill, you have sought for the cooperation of social service organisations, universities and others. But it is pity that there is not even a mention whatsoever of the various Bar Associations of the High Court and also the Bar Council of India. What is the sin committed by these Associations when their cooperation is required at every stage? You have not even mentioned for the sake of courtesy that the cooperation of these persons are required when you have mentioned these social organisations and universities. With these remarks, I however, give my full support to this Bill.

SHRI SALAHUDDIN (Godda) : Mr. Chairman, Sir, I rise to support the Legal Services Authorities Bill, 1987.

[*Translation*]

I welcome this Bill because it seeks to give legal validity to the Lok Adalats based on our customs and traditions. Several objections have been raised in regard to this Bill but criticism for the sake of criticism has no significance at all but if the criticism is for the sake of directions, than we may consider that. In connection with this Bill, our colleague here has suggested that legal aid should be given to women, Scheduled Castes and Scheduled Tribes. I want to say that such can be possible only after both the parties agree to it. Our aim is to provide inexpensive justice to the poor people of villages. We cannot shut the doors of such courts to other people by saying that these are meant only for the poor. The rich people themselves may not come to these courts. In this Bill, no such question is involved whether this facility should be made available to the rich or to the women or to the members of the scheduled Castes and Scheduled Tribes, so the objection is baseless. The most important point in this Bill is to provide cheap and prompt justice to every poor villager. For this purpose we will have to awaken the

[Shri Salahuddin]

farmers, labourers, etc. for whom this bill has been brought. At the same time wide publicity will have to be given to it through the media. Today, 80 per cent of the Indian population lives in villages. They are not aware of the benefits which they can accrue from this law. A mention has been made of the voluntary organisations in this Bill. In India voluntary organisations have developed in a limited way. I want to suggest that the Sarpanch of a gram panchayat should have the right to represent the farmers in the Lok Adalat. The help of the voluntary organisations should also be sought in this regard. Gram Panchayats should also be included in the voluntary organisations. It will enable us to provide cheap justice, otherwise we will not get much benefit out of this bill. There are provisions for coordination at the Central, State and District levels in this Bill. It is a historical and a very comprehensive Bill. However, I think, there are some shortcomings in it. If these shortcomings are removed then the purpose of this bill which is to provide cheap and speedy justice to the farmers, labourers and other poor people will be fulfilled.

17.00 hrs.

The principle of 'Justice delayed is justice denied' is behind this bill. The poor people approach the law courts with petty cases and which drag on for five or even seven years. Their problems remain unresolved and in the meantime their land and other property are sold away. You have framed this bill for the benefit of the poor. Therefore, Lok Adalats should reach the poor people. Such courts should not be confined to the district headquarters only but should be organised in the villages also from time to time so that the members of the Scheduled Castes, Scheduled Tribes and other weaker sections of the society can avail of this facility and their difficulties can be alleviated. I am doubtful whether Lok Adalats will reach those poor people or not. Therefore I want to know as to how will it reach them and what will be the

medium because these things are not mentioned in the Bill. It has been stated by you:

[*English*]

"Organise legal aid camps, especially in rural areas, slums or labour colonies with the dual purpose of educating the weaker sections of the society as to their rights as well as encouraging the settlement of disputes through Lok Adalats;"

[*Translation*]

This is the main objective of this Bill. I want that it should be properly implemented. But this aspect has not been mentioned in this Bill. I want to read out one more clause of this Bill;

[*English*]

"(l) take appropriate measures for spreading legal literacy and legal awareness amongst the people and, in particular, to educate weaker sections of the society about the rights, benefits and privileges guaranteed by social welfare legislations and other enactments as well as administrative programmes and measures,

(m) make special efforts to enlist the support of voluntary, social welfare institutions working at the grass-root level, particularly among the Scheduled Castes and the Scheduled Tribes, women and rural and urban labour; and".

[*Translation*]

The aim of this Bill is laudable. I will reiterate my appeal that along with your efforts to enlist the support of voluntary organisations, the help of the Gram Panchayats should also be sought. This will enable you to render speedy and cheap justice. As it is our aim to ensure that science reaches your villages so it should also be our aim to ensure that cheap and prompt justice is provided in every villa-

ge. As our colleague has pointed out just now that if a compromise petition is pending in the court then the transfer of the case to the Lok Adalat will not be justified. However, I am of the view, that there should not be any objection if both parties request that their case may be referred to the Lok Adalat because even after filing a compromise petition, it takes a long time to pronounce the judgement. Hence, I don't think that there is anything wrong in the transfer of cases to Lok Adalats if both parties agree to it and judgement is delivered on a particular date. It is proper and should be allowed.

Mr. Chairman, Sir, it is a historical Bill and it will directly benefit the people in villages. But it is not clear from the Bill as to when it will be implemented and whether its benefits will reach the people. Therefore, these things may kindly be included in the Bill itself. Along with it, the hon. Minister should let us know the number of cases likely to be disposed of within one month. I think if this point is also mentioned in the Bill then it will help the poor people immensely.

[English]

SHRI INDRAJIT GUPTA (Basirhat): Mr Chairman, I welcome this Bill because it is giving statutory form for the first time to the principle of free legal aid and legal advice for the poorer or weaker sections of our society. In that sense, this Bill is overdue. As far as the main principle, on which it stands, is concerned, there can be no question that it should be supported and welcomed.

I have got one or two points, Sir, to make in this connection. I have not tabled any amendments because it really does not serve much purpose. As we find, at this stage, it will be impossible to get any amendment accepted. I hope that Law Ministry will also consider along with some other Ministries whether the Bills of this type should not first—before they are

brought to the House—be processed through some committee in which Members of different parties may also be associated and give their ideas and suggestions there. After that, the Bill should come here. It will be a much better and easier process. It is a fiction now—this business about tabling amendments—because no amendment is ever accepted at this stage.

SHRI P. SHIV SHANKER: I have accepted the amendment

SHRI INDRAJIT GUPTA : Oh, that is some minor one. My main contention, Sir, regarding this Bill—rather strong objection I have got—is about this provision in clause (3) which provides for and defines the constitution of this statutory body known as the National Legal Services Authority. My objection is that it provides here both in the case of the centre and of the States, the serving Judges—the Chief Justice of India in one case is to be the "Patron-in-Chief" and "a serving or retired Judge", it says but serving Judge is included, of the Supreme Court shall be the Executive Chairman. In the case of the State Legal Services Authority, it says:

"A State Authority shall consist of—
(a) the Chief Justice of the High Court, or any other serving or retired Judge of the High Court who shall be the Chairman of the State Authority;"

Nomination, Sir, is very wrong and harmful principle which is being introduced here because these statutory bodies which are going to be set up, are not judicial bodies to exercise only a judicial function.

They are also bodies which are going to have so many executive functions. If you see Clause 4, Functions of the Central Authority, it says:

"The Central Authority shall...perform all or any of the following functions..."

[Shri Indrajit Gupta]

Then under (a), (b), (c) and upto (n) all the functions which this authority is called upon to perform are given. You will find that many of these functions are executive functions; they are not in the nature of judicial functions at all. I do not see why serving judges including the Chief Justice should be brought into the constitution of this Authority which means that you are, in fact, for this purpose, destroying the principle of separation of judiciary from the executive. I think, many advocates, lawyers and such people would resent this kind of provision which is being made here and they would object to it because it will lead to some harmful consequences. There are sufficient eminent people available among advocates or retired judges. I have no quarrel with the retired judges being brought here, but the serving judges including the Chief Justice to be made *patern-in-chief* or chief executive of this body which is going to perform not only judicial functions, but also executive functions, is a very wrong idea and I am surprised that it has been brought here.

As the Minister said in his opening remarks when he was tracing the history of development of this whole concept of free legal aid, he mentioned himself about the Committee which had been set up earlier and which had given very valuable suggestions. These Committees were headed by distinguished jurists at that time, who are still alive and had subsequently retire. They were the real pioneers of free legal aid, whether it was Justice Bhagwati, Justice Krishna Iyer or Justice Desai. These are the people who headed these Committees and on the basis of whose valuable recommendations; the whole thing had subsequently been processed and sought to brought. Such people are available, very learned advocates are available, public men are available. It is not at all necessary and in my opinion, it is wrong that the sitting Chief Justice and sitting Judges of the Supreme Court in the case of the Centres or sitting High Court Judges and Chief Justice in the case of the States should be made an inte-

gral part; not only an integral part, virtually the presiding diety of this new statutory body. If it was a body which had to perform judicial functions, I can understand, but it is not so. Kindly read Clause 4 and see how many type of executive functions they are expected to do. I object to this. It is wrong. I know that it will not be amended at this stage, but I must say that it is a wrong principle which has been introduced here. This is my one main point which I wanted to make.

The other point that I wish to make is with regard to Chapter 4, Clause 12, that is entitlement to legal services, who are the people who will be entitled to get legal services under this Act. Here, in Clause 12, Sub-Clause (e), it says:

"A person under circumstances of undeserved want such as being a victim of mass distaster ethnic violence, caste atrocity, flood, drought, earthquake or industrial disaster"

Here, I hope the Minister will consider what I am suggesting; it is a minor thing but an important one. It may need a change in wording or an addition in the wording. Now, ethnic violence may be interpreted to exclude communal violence. Ethnic violence is not always the same as communal violence. I presume the intention is to cover communal violence also because that is the thing with which we are more familiar and which we have to encounter in our country almost all round the year. Then communal violence ..

PROF N.G RANGA (Guntur): Communal as well as caste violence.

SHRI INDRAJIT GUPTA : Communal violence or rather caste atrocities is given here but communal violence is not mentioned here. So, I would suggest, you mention the word ethnic violence and make it clear beyond any doubt that it includes communal violence because that is a more frequent phenomenon with which we have to deal and people may ask what is the meaning of ethnic violence. So that should be clarified.

Secondly, in sub-Clause (8) of Clause 12 which defines the ceiling income limit for other categories of people who would be eligible, it is laid down that the income should be less than Rs. 9000 if the case is before a court other than the Supreme Court and less than 12,000 rupees if the case is before Supreme Court. Sir, I would like to plead that this figure in the context of our country is too high. At least this ceiling of Rs. 9,000 should be reduced to Rs. 6,000 and the Rs. 12,000 limit should be reduced to Rs. 9,000. In our country I think when the whole thrust of legislation is to help the poorer section of people or less privileged people, even what I am saying is a bit too high. I have got nothing to do with the income. The Member of a Scheduled Caste and Scheduled Tribe may of course also include a person who is quite well off. This is the lacuna here.

17.16 hrs

[MR DEPUTY SPEAKER *in the Chair*]

SHRI H R BHARDWAJ: But generally they are not well off.

SHRI INDRAJIT GUPTA: Industrial workmen is included. An ordinary farmer, for example, who may not be earning more than Rs. 6,000 or Rs. 9,000 a year, is not included in any of these categories. He is excluded.

THE MINISTER OF STATE IN THE MINISTRY OF SCIENCE AND TECHNOLOGY AND THE MINISTER OF STATE IN THE DEPARTMENTS OF OCEAN DEVELOPMENT, ATMOIC ENERGY ELECTRONICS AND SPACE (SHRI K R NARAYANAN): He will come in (h). This is the general category.

SHRI INDRAJIT GUPTA: In that the industrial workmen would also come. But

you have made industrial workmen as a separate category irrespective of his income. Industrial worker of course, whom I represent to some extent, certainly some of them are earning much more. But you have put them there. Then why not other people should also be included?

SHRI H R BHARDWAJ: May I intervene. The whole thrust of giving legal aid is to the sections of society who have so far been exploited. The industrial workers come in that category because they are being exploited.

SHRI INDRAJIT GUPTA: What about the agricultural workers? You have assumed that every agricultural worker belongs either to the Scheduled Caste or to the Scheduled Tribe, but that is not correct.

SHRI K R NARAYANAN: He comes under (h).

SHRI INDRAJIT GUPTA: Everybody can be put under (h). You have specified certain categories and then you say that the industrial workers can come under (h) also. That is why I am pleading that the Bill should be processed properly before it is brought and others' opinion should also be taken into consideration. But this is done in a rather clumsy way. Anyway my suggestion is that these two income limits of Rs. 9,000 and Rs. 12,000 which are put here should be reduced to Rs. 6,000 and Rs. 9,000 respectively.

My other point is that this ethnic violence business should be clarified so that there is no doubt that it includes communal violence also.

[Shri Indrajit Gupta]

My main objection to which I have referred in the beginning is to the inclusion of the sitting Chief Justice of the Supreme Court of India, sitting Chief Justices of High Courts and other sitting judges as the chief executives of this statutory body. This is not a judicial body. This is a judicial-cum-executive body. I do not think sitting judges should be involved in this. There are plenty of competent and able persons who can be appointed for this purpose. This should be given another thought.

[*Translation*]

SHRI DHARAM PAL SINGH MALIK (Sonepat): Mr. Deputy Speaker, Sir, I rise to support the 'Legal Services Authorities' Bill, the intention of which is good and quite clear that Government wants to give free legal aid to all those people who are not able to get justice because of poverty. In this connection, I want to suggest certain points which should be kept in view while framing rules under this legislation so that the intention behind this Bill can be fulfilled.

We see that there are Government pleaders in every State. In some States they are called Government Pleaders and in other States they are called District and Assistant District Attorneys. They are Government employees and in every criminal case, they are required to plead on behalf of the Government. But the trouble is that the people are still not able to get justice. Generally inefficient advocates are appointed as Government Pleaders. So, usually, the clients or the complainants also engage lawyers privately. But this Bill does not have any provision under which a client can engage a lawyer of his own choice to fight his civil or criminal case. In order to get justice only financial aid is not enough. There are so many other things

which are required to be done. Many such cases are filed which are based on all true facts but the poor client is not able to produce witnesses to prove those facts. You can provide lawyers but how can the cases be settled without the production of witnesses?

Secondly, it has been seen that rich people in order to harass the poor go on dragging the cases, which proves the saying that 'Justice delayed is justice denied.' As a result the poor are deprived of justice. Hence, I want to request you that the intention behind the bill is to enable poor people to get justice and not to merely provide financial aid. If this is the intention then other measures would have to be taken. In the past assessors used to sit in Sessions Courts to make their own assessment of the cases. Now that provision is not there. The intention behind it was to ensure that the actual facts of the case reach judges because in the absence of such facts the rich people can afford to engage smart lawyers who take undue advantage of the technicalities of laws and are able to get the judgement pronounced in favour of their clients. Therefore, laws will have to be simplified and made fool-proof otherwise justice cannot be provided to the poor people. Every person interprets every case in his or her own way and faces defeat or achieves success accordingly. Therefore, I want you to bring such laws which are simple and fool-proof. It has been often observed that lawyers charge their fees just to file suits though there may be nothing much in the cases. The laws should be simplified so that the common man can understand them and only then more people can be benefitted and the intention of this Bill can be given a practical shape.

Besides, it has not been categorised in the Bill as to who are going to be given the benefit of the provision of legal aid. It has been nowhere mentioned as who are

entitled to get legal aid. But in certain criminal cases of rape, moral turpitude, dacoity, theft etc. who will get legal aid? This should be given a serious thought. If some one commits a murder in broad daylight and gets legal aid, it will amount to mockery of justice. In the case of Late Shrimati Indira Gandhi, no one can deny that it was a broad daylight murder, yet the case is pending in the court for the last two years. One lawyer is taking recourse to untruth and is trying to manipulate and falsify the case.

Therefore, this law should not be too flexible to do justice in genuine cases. Otherwise this law will be of no use. Similarly, how can legal aid be provided to smugglers? Even a Harijan can be a smuggler, an industrial worker can be a smuggler, even a lady can be a smuggler or in other words, any person can be a smuggler. It is necessary that these things are defined clearly so that its misuse can be checked and only intended persons are able to get benefit of these provisions

I want to submit another point. In fighting a legal case only a lawyer's fee is not enough. There are some other expenses which are very important. For example, in the civil cases, in the landed property cases court fees etc. area so high that it becomes impossible for a poor man to bear this expenditure in addition to the lawyer's fee. So this Bill should be modified in the light of these facts, if we want to help the poor, otherwise their exploitation will go on as usual.

I want to draw your attention to another point. No doubt, Government will make available the services of lawyers to the poor to plead their cases but what action will Government take against those lawyers who do not plead their cases properly? It has often been observed that Government cases fail because the Government

lawyers who get fixed salary every month irrespective of the fact whether they do any work or not, do not take interest in the cases. But the private lawyer works hard and tries his best to get the case tilted in favour of his client even if the facts of the case are against him. So I want that you should give serious thought to it as to what sort of lawyers should be appointed to ensure that these lawyers are not able to exploit their own positions and justice is provided to those people, who are entitled to it, without any exploitation. This matter is required to be looked into.

This Bill has been brought forward with the purpose of educating the people about the law through private organisations and to remove ignorance in this regard. Common people have little knowledge about the intricacies of law and that is why they are exploited in law courts at all levels through the Surpanch or a Panch because they are completely ignorant about the law.

In this connection, I want to suggest that school text books right from the primary standard upto the highest level should contain some knowledge about common laws to enable the common people to understand laws. It is said that ignorance of law is no excuse. 90 per cent of the common people are not aware of the intricacies of laws and the educated people who know about the law take advantage of the ignorance of the people and exploit them. Thus, the poor masses because of their ignorance become victims of rich people. Hence, I want to request that common provisions of laws should be included in the school text books to enable the common man to get some knowledge of them and protect himself from exploitation.

In the end, I want to say that this Bill has been brought forward well in time and its

[Shri Dharam Pal Singh Malik]

intention is good. No doubt this Bill will benefit a large number of people but it would only be so when rules under this law are framed in accordance with the intention of the Bill. Generally, the work relating to framing of rules is left to the Government machinery and when these are placed on the Table of the House, we do not make a thorough study of them due to which we are not able to provide the required benefit of the legislation to the people. Not only is the procedure laid down in the rules but also the intention of the legislation take a concrete shape in them. We approve the rules without making any comprehensive study. Therefore a thorough study should be made of the rules before approving them. I want to suggest that the rules should be framed keeping in view the intention of the legislation so that the poor people are able to get its benefits.

With these words, I wholeheartedly support this Bill

KUMARI MAMATA BANERJEE (Jadavpur): Mr Deputy Speaker, Sir, I welcome and support this Bill. It is a very important Bill. Keeping in view the provisions concerned in article 23 in regard to certain welfare measures for Scheduled Castes, Scheduled Tribes, woman, Children, mentally ill and disabled persons, victims of a man disaster, violence, caste atrocities, flood, drought, an industrial disaster and also for industrial workmen Government has set up the Legal Aid Cell to provide legal help to people who cannot afford to engage advocates and pay other expenditure. In 1980, the legal aid scheme was formulated under the leadership of Justice Bhagwati Prasad and which is very important. We have various law like the Dowry Prohibition Act, The Indecent Exposure of Women Bill, the Child Labour Act, etc. but

they are not being implemented properly. We should look into this state of affairs. The decision which the Government has taken is prepared and I welcome it.

At the same time it is our responsibility to ensure proper implementation of the provisions of the Bill. We should pay maximum attention towards this aspect. We often say that justice delayed is justice denied. We have opened the Legal Aid Cell. Still proper justice is available only when we are able to pay for good lawyers and can afford other expenses. Our Government should see as to how laws help big people. Therefore, I want to request the hon. Minister that though Bills are passed here for the welfare of poor people yet the fact is that they are not aware of these Bills. They are not aware as to what legal rights are provided in them.

The Dowry Prohibition Act was passed here. There is another law in connection with equal opportunities. Now we have the Legal Aid Bill. The poor people are not aware of them. The laws will not benefit them unless full publicity is given in this respect. People should be educated in this direction. Those who are poor and are backward should be made aware of their legal rights. Only then can we ensure the proper implementation of such a legislation.

Sir, in this Bill, a mention has been made of the role of voluntary organisations. There are a number of voluntary organisations in the country. Some are functioning quite well. I want to suggest that Women's voluntary organisations and people's forums should be given somewhat more importance. Government alone will not be able to implement this Bill but the help of the voluntary organisations will have to be sought in this regard.

Sir, it has been provided in this Bill that

importance must be given to it at the District and State levels. However, it is at the district or the local level that maximum emphasis will have to be given. If importance is accorded to it at the local level then the public will understand that this Bill has been framed for their welfare.

The Dowry Prohibition Act was passed by the Parliament. Even after its enactment there are some women who oppose it. The reason behind it is that the women are not getting enough benefits out of this Bill. Many women are not even aware that it is meant for their welfare. For this purpose, I want to request that Government should pay attention towards this aspect.

The Government's decision to set up Lok Adalats is welcome and I support it. Thousands of cases are pending in the Supreme Court, High Courts and in other small courts. Cases remain pending for years together. In Lok Adalats cases will be decided expeditiously. But who will appoint Magistrates for these courts? There is a controversy in this respect. In your bill it is provided that the District authorities would appoint Magistrates. Such appointments should not be made by political parties or by District authorities because that would mean that justice is dying behind the door. A High Court Judge should be entrusted with this responsibility. He should decide as to who should work in Lok Adalats and the Legal Aid Cell. Lok Adalats should be free from political manipulations. Our experience is that the judgement of the High Court judges are not implemented. Attention is not paid towards the drought affected areas as well. Whatever funds are allotted by the centre for this purpose are spent on elections. Last time, also the amounts allocated for the flood affected areas was utilised for election purposes. This time also Hon. Prime Minister has toured the flood hit areas and central funds will be released but the State Government will not spend it

now. This amount will be distributed among the party workers in the coming elections. In this way, how can we expect justice in those States.

Some hon. Members have stated that the entire responsibility of Lok Adalats should be entrusted to Panchayats but I think that there should be a neutral set up for Lok Adalats. (*Interruptions*)

The Congress party is dedicated to the cause of the country but for the Marxists, China and Soviet Russia are the motherland and India a step motherland... (*Interruptions*)

The Forward Block which is a partner of the parties like the CPI and CPIM has complained against the State Government as relief material has not reached them so far. You may enquire into it. I wonder if they will tell the truth. The Congress party is committed to the upliftment of the poor.

Similarly, I want to make some suggestions about female prisoners. Today in almost every State of the country, there are women prisoners who are not able to get justice in the absence of any legal aid. They are in jails for the last ten or more years. The Government should pay attention towards this matter. This problem exists in our State as well, and I request the Government to conduct a survey and help the women by providing legal aid.

The Government lawyer who pleads on behalf of Legal Aid Cell is not given any remuneration by the Government due to which he does not take any interest in the case. I want to suggest that some sort of permanent arrangement should be made and the advocate who pleads the case should be given due remuneration so that he takes interest in the case.

I welcome this Bill, but due to non-implementation of such a legislation results are not forthcoming. Therefore, proper publicity should be given to it through radio and T.V. Besides, seminars

[Kumari Mamta Banerjee]

and symposia should be organised to educate the people. Radio should be used as a medium because T.V. sets are not widely available in the villages.

In the end, I want to submit that in the 'Indian Post' a newsitem has appeared with the heading 'Justice after ten year' A person could not receive justice for ten years because he could not hire the services of a lawyer. Such incidents are happening in every State. It is important to be vigilant in this regard. It is essential to pay attention to the poor. With these words, I support the Bill.

[English]

SHRI AMAL DATTA (Diamond Harbour): Sir, this is a Bill which reminds me of the expression that the way to Hell is paved with good intentions. I do not know about the good intentions of the concerned Minister, Mr. Bhardwaj. He is a good man and a good friend of mine and I am sure that with very good intentions he has brought this Bill. But I do not know whether he has gone through the Bill himself with sufficient care.

For one thing, it is a small Bill and it has a corrigendum of 19 mistakes and still there are more mistakes which if I have time I shall point out.

Now, the Preamble to the Bill is very illuminating of the way the Government of this country has been functioning for the last 37 years.

Sir, this Bill has been brought to provide free and competent legal services to the weaker sections of the society. So, it is an admission that the weaker sections of the society were not being given legal service either free or competent. It is to ensure that opportunities for securing justice are not denied to any citizen for reasons of economic or other disabilities. So, it is an admission that the opportunity to secure justice was being denied so long, in spite of

the specific provisions of the Constitution. So, violations of the Constitutions are hereby admitted.

Then, the most important is: They say that Lok Adalats are being constituted and are given legal footing to secure that the operation legal system promote justice on a basis of equal opportunity. So long justice was not based on equal opportunity. It is a good admission. I congratulate the Law Minister for having made these admissions of the failure and weakness of the system so far administered by this Government. Now, Sir, what is the ultimate test of the good intentions and the bona fides of the Government? They say, we are going to secure you justice. We are going to put justice on equal footing so that people having no money will not suffer from that disability. Sir, how much money is being made available under this Bill? Sir, I have gone through the financial Memorandum and it says that the total amount will be Rs. 73.26 lakhs. Sir, We are eighty crores of people in India. If one rupee was provided per person, it will be Rs. 80 crores. Only less than one paise per person is being provided and will that secure justice for all the people of India? Then why did not you do so for so long? Providing less than one paise per person is wonderful.

This figure of Rs. 73 lakhs includes Rs 43 lakhs which was already being granted under the Legal Aid Scheme, which was prevalent. So only Rs. 30 lakhs is being added to the Budget because of this Bill. This is the ultimate test of bona fides, in which the Bill fails and the Government stands bare before everybody else that it does not want really to implement what it implies, what it states, it is wanting to secure.

Then, Sir, this Bill says that so many powers have been given to the National Level authority. While stating on the principles, legal services will be made available, framing schemes and all that, It has not been given the power to ensure that the money is spent for legal services and not for the benefit of bureaucrats. I am in a

small way associated with the legal services in my State. I happen to be a Member of the State Board and I find that bureaucrats have eaten away all the money which is given for the services. Only twenty to twenty five per cent is spent on lawyer fees and other services related to courts. The bureaucrats take away the rest, because they always frame the schemes in such a way that the bulk of the money goes to them. So this is going to happen again. I do not know whether Mr. Bhardwaj or anybody in the Department knows how much of the money which has already been available to the Central Budget, viz. Rs. 43 lakhs or maybe a little less in the last Budget, was actually spent on legal services or services connected with court matters or disputes and how much went for servicing the bureaucrats. I think, the figure will be something like 75 to 80 per cent in every State—the money which went for servicing the bureaucrats—and only 25 per cent went for legal services. This is again going to happen here unless some specific instructions are given that this money is only for legal services or services connected with courts and not to be paid for bureaucrats' salaries, their cars, housing and all these kinds of things, this again is going to meet the same fate.

Another thing which we have found in the course of whatever little service we have been able to render so far in our State for legal aid, is that it is not primarily the cost of legal services which hold people back from coming to courts. It is ultimately the ignorance of legal rights and ignorance of the provisions of law which hold the people back. The people just do not know

what their rights are. One of the reasons why they do not know is that while the Central Government has taken up the burden of translating the laws and the Constitution into Hindi, it has not spent any money to see that the laws and the Constitution are translated into other regional languages. And the States do not have resources to be able to translate them into local and regional languages. Of course, the purpose will not be served only by

doing that, because even then the law books translated into local and regional languages will be too difficult for the ordinary people to understand. Short summaries of the legal provisions will have to be brought out in the simple language that people can read and understand. If they do not read and it is read out to them, they will be able to understand them. These efforts have not been made. And yet what they enumerate as the function of the national level committee is that they will also take up the legal research. There are various institutions for the purpose of doing legal research. The Law Institute of India is there. The universities have their own departments doing legal research. And yet another body is being added for doing legal research. Now somebody having Degree in Law will come and a post will be created and Rs. 2 lakhs will go for funding of that research. So all these paraphernalia should be cut off so that you can concentrate and focus your attention on the main problem. So I beseech the Minister that he should try his best... He is not listening. What can I do?

SHRI H. R. BHARDWAJ: I may point out that Mr. Datta is getting more attention. Two Ministers are listening to him.

SHRI AMAL DATTA: What is required is more money and focussing on the main problem. Too many functions have been given. They are not necessary. They should concentrate on the main provisions. First make the law known, make the people conscious of their legal rights and duties and then tell them what opportunities exist for them to take advantage of the legal institutions. If they do not know, what is your point in having this kind of institutions. We have also gone to these camps—not credit camps, Sir, but law camps—But even there we have found that the people are not able to understand. By having a law camp for half-a-day or a day, it is not possible to make people understand. They must get this knowledge from people with whom they have day-to-day intercourse. They are local leaders. So, the literature must be available in local language in a

[Shri Amal Datta]

lucid manner, and after knowing, after at least understanding what the law contains, then they can approach a lawyer and yet to know it better. But that primary opportunity is not there now. So, there is no point in having.... (*Interruptions*).

MR. DEPUTY SPEAKER: Now wind up please.

SHRI AMAL DATTA: Sir, you have given so much time to Mamata Banerjee and you are not giving me.

MR. DEPUTY SPEAKER: Why are you comparing with her?

SHRI AMAL DATTA: Sir, the Bill suffers from many informities, some of which have been pointed out by Mr. Indrajit Gupta. Take the eligibility conditions. I take great objection to the way the eligibility conditions have been set out, some without any limit to the income or wealth. A person who is a victim of ethnic violence or a mass disaster may be a rich man but just because there has been a flood in a town or a village, the village landlord or money-lender will be able to get advantage of this particular law. He will be able to be financed by the Government for his legal disputes. It is unbelievable. What I point out is that there are so many mistakes. I am only pointing out to the fact that the Government has not really applied its mind. The people in the Government should have gone through this Bill carefully, formulated the Bill carefully because it is one of importance. In spite of the fact that practically there is no additionality of funds to it, it is an important beginning. We hope that in the coming years more funds will be made available to these. Weaknesses will remain. You say a victim of mass disaster, 'a victim of flood, drought, earthquake'. A person who is very rich may also be a victim. There must be a means test, either in terms of wealth or in terms of income, or both. If that is not there, any person of the Scheduled Castes and Scheduled Tribes - there are many persons who

are Scheduled Tribes who are very rich - will get advantage. Why? Then there will be less money available for even people of Scheduled Tribes who do not have the means. This kind of weaknesses should be removed by the Government, if possible, by putting in a common means test for all categories of people.

Then, Sir, there is a clause regarding women. I am a supporter of women's rights in all forms but that does not mean that Mrs. Rattan Tata can come and say: "I am a women, therefore, the Government must give me legal aid". This is unthinkable - maybe unthinkable for them also. Such women may not come but they may come. The Government is making it possible for rich millionaire women also to come and get legal aid just on the ground that they are women. So, that should not be possible.

Lot of weaknesses are there but it is at least a welcome sign of the Government's consciousness that it has done very little up-till now to see that justice is secured to the weaker section of the population. So, long with the weaker sections, they are including lot of other people who are not so weak. But at least I hope that the Government will be able to focus its attention to the primary questions, primary problems as to why people are not able to come to court, why they are not able to secure justice, and these will be primarily tackled amongst all the multifarious functions that have been given to the national level and State level authorities. Thank you, Sir.

SHRI THAMPAN THOMAS (Mavelikara): Mr. Deputy Speaker, Sir, of course there can be no two opinions on the question of the intentions of the Bill. But I think proper home work has not been done before piloting this Bill. It has been done in a haphazard manner. Certain informations have been got and this Bill has been drafted and produced here. That is my impression. Even before this Bill has been introduced, I had occasions to associate

myself with such movements by the lawyers. I belong to a bar of Kerala.

When I practised, all the judges as well as the advocates jointly ventured to organise Lok Adalat, in our language, it is called 'Niti Mela'. The retired Supreme Court judges and the judges of the High Court and the Members of the Bar associated in the 'Niti Mela'. We disposed of thousands of cases. A good number of cases were disposed of without much delay and people appreciated it. We called it 'Niti Mela'. It was a sort of some festival where people come and the advocates agree to decide the cases in the Lok Adalat. I know that at least in one of the colleges had run a legal aid clinic connected with the Law College where the students after getting their Degree and do their research work join together and they call it a legal aid clinic. Whenever, these people want to get information and study about the legal problem, they refer their matter to them and without any payment they get the information from them. In this experience, I was personally involved and therefore I know what had happened there and how it had happened. Mr. Amal Datta pointed out some of the points which were very very pertinent. So, Sir, in regard to the judicial system, more investigation and indepth study has to be made. Fortunately, the Senior Minister was a judge and the State Minister was a lawyer and they know the problem of legal profession, how it has come in the country and how it has created a class suppression and the very approach of our Constitution is that justice should go to the poor people without difficulty and that is why this has been introduced. It is in the Objects and Reasons. Now, the point is: how far the present judicial system is capable of doing that? Recently I read in the paper that in Delhi one of the judges was dismissed from the service because of misbehaviour or because he received bribes or something like that. I saw his photograph in the newspaper.

Sir, there are cases in my own State

where there is a body like CBI, Investigation Officers are appointed by the State Government to enquire into the behaviour of the munsiffs or the judges who are working in the Courts. So, there is a body like CBI connected with the High Court and see how much really justice is denied to the people. The system was there to aid the poor people from the State fund. Even when I entered the Bar as a junior lawyer, I still remember that we could take up the case from a person who was in jail. I took up the case. I still remember that the system was very much there, how it was available to the people who were in need of it. There was no proper investigation. There was nothing serious. It is to please somebody that this Bill has been brought forward in this House. It is abundantly made clear that it is in Sub-Section 12 and when the provision in the Section is there, how could it be expanded? May I explain one thing? The industrial worker is also included. I also belong to trade union. I have had occasions to organise trade union. The industrial workers have their own channel to decide the cases. But I know that in the case of agricultural workers, by the recent amendment of Industrial law, if the agricultural worker is taken away from the worker's definition - and many sections have been taken away from the Industrial Disputes Act - then today really there is no forum to plead their cases. May be that the agricultural workers are not included. I would like to know from the Hon'ble Minister whether he would be kind enough to go into this Act. Is there anybody whose income is less than Rs. 6000 so that he can go to the State for pleading his case free of charges? I say there is no proper investigation, proper study. All these things should have been considered before piloting the Bill. I think it is only to please somebody, to play some political gimmick this has been brought forward.

Therefore, Sir, a detailed indepth study of the judicial system in the country is necessary as to how it is possible for the poor people to approach the courts for justice. There is a joke which is said like

[Shri Thampan Thomas]

this. In the Court, an advocate starts saying before the judge and the client looks at him. The advocate prays to the judge, 'Sir, I want an adjournment of the case'. That the court says, "I grant adjournment". The poor client who stood behind does not know English. Then, the advocate says, with much difficulty, I got the adjournment form you. So, you have to pay double the fee for me." It is happening because a poor client cannot understand the law. I am telling this because, it is happening like this. Why I am impressing this point is, language is an important thing. I was telling this in the context of what Mr. Amal Datta said. The poor client and the poor people cannot understand English. But we use in the bar, the law of the other nation. We say something which the client does not know and he pays the fee and goes away. Therefore, proper investigation into the system should be made. (*Interruptions*)

MR DEPUTY-SPEAKER Please, Order

SHRI THAMPAN THOMAS I am associated with such things and therefore I am telling. The whole system has to be studied, and there should be revitalisation of the things applying the proper intention of the Constitution, to see that justice reach poor people without much difficulty.

I am afraid, if this Bill is passed, there will be two classes of persons. One man will feel, he is Scheduled Caste, Abarna. The other man is Sabarna. Sabarna is a person who has got money and goes to the court. Abarna is a person who will go to Lok Adalats and other forum. You are creating two classes. People themselves will feel inferiority complex. You are developing such a system where one is a costly system and another is cheaper system. And the cheaper system may be thrown away to them. So, such a sort of discrimination will be made. But that does not mean that I am against it. It has to be implemented and poor people should be given proper assistance in this manner. But it should not be with an intention to create two separate systems.

What Mr. Indrajit Gupta has told is a very pertinent point. One of the cardinal principles of our Constitution is, judiciary and executive are to be separated and that separation has to be maintained in the system. But you are mixing these two things together. It is a very cardinal principle of our Constitution, of our jurisprudence that a person cannot be a judge, witness and prosecutor. When the Chief Justice is involved in the executive capacity and when these things are settled in this manner, these three components of our jurisprudence correlate together and the matter gets decided in that way. That is not fair. Therefore, of course, I will have to encourage the Naxalite call for people's court. That is also happening in my State. I know, people's courts were held by Naxalites. They gave a verdict that a particular man has to die because he was exploiting the poor people, the agricultural workers. In Wynad/one of my friends sitting there is representing that constituency, they executed the order of the Naxalite court, what they called, the people's court. They killed that man and they did it. And they said, it is the verdict of the people's court as called by the Naxalites. So the things have to be studied in detail to see what is the impact of this law on our judicial system. Therefore, there should be some regulatory things of that nature, as the real intention of the Constitution is to take justice to the poor people, in a proper manner. Therefore, I suggest that a proper study and investigation has to be made. Therefore, this Bill may be referred to a Select Committee.

PROF. SAIFUDDIN SOZ (Baramulla): Mr. Deputy-Speaker, I have stood to make a brief intervention. It is a very good measure and I wholeheartedly congratulate the Government on having brought this measure before the House. On the last page of the Bill, it says: "It is a Bill to constitute legal services to the weaker sections of the society to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities,

"and to organise Lok Adalats to secure that the operation of the legal

system promotes justice on a basis of equal opportunity."

It is a very laudable measure. Therefore, I wholeheartedly support it.

Having said this, I want to say that this Bill suffers from some shortcomings. I have never been a lawyer. (*Interruptions*). I have never been a liar as also a lawyer. But as a layman I studied this Bill and I feel that this Bill suffers from some shortcomings.

It is an innovative measure. Mr. Ayyapu Reddy said that it is a belated legislation. I agree with him. But it has come before us. So, we welcomed it wholeheartedly and if we succeed in implementing the various provisions in this Bill, there will be a revolution and there will be a qualitative change in the whole judicial system. But it is a revolutionary measure and it requires a commitment.

I want to draw the Minister's attention to the Statement of Objects and Reasons—I have moved some amendments. Those amendments will come later—I wanted to say as Mr. Indrajit Gupta perhaps by telepathy said what I am going to say.—

MR DEPUTY SPEAKER: Don't repeat

PROF. SAIFUDDIN SOZ: I won't I say that it requires a very big commitment and since you want to create a revolution, I remind you that legal aid Schemes received a fillip at the hands of Justice Bhagwati. Even the Bill says:—

"With the object of providing free legal aid, Government had, by a Resolution dated the 26th September, 1980 appointed the "Committee for Implementing Legal Aid Schemes" (CILAS) under the chairmanship of Mr. Justice P. N. Bhagwati (as he then was) to monitor and implement legal aid programmes on a uniform basis in all the States and Union territories."

"The Hindustan Times" also reminded you

yesterday editorially that the experiment was started in Junagad district of Gujarat in 1982 but the Lok Adalat movement gained momentum owing to the pioneering effort of the then Chief Justice of India Mr. Bhagwati in 1985-86. I do not know Mr. Bhagwati closely. Mr. Indrajit Gupta mentioned a couple of names including Mr. Krishna Iyer. I do not know Mr. Bhagwati very closely as you know but I know that he has done a pioneering work in this field. I would wish that you had chosen Justice Bhagwati for a pivotal position in this scheme. In Clause 3, you put Chief Justice of the Supreme Court as "Executive Chairman" of the Legal services Authority. I do not deny that Chief Justice of India could be the person to be the Executive Chairman but the kind of revolution that is in your mind can be organised by a committed persons who will be a whole timer. As I said, I do not know Mr. Bhagwati in the sense that I would be pleading his case. To start with, I would very much appreciate if a person like Mr. Bhagwati would be the Executive Chariman of this Legal Services Authority. Not that other Judges are not competent I do not think that. I have respect for those who have retired and for those sitting in the Chairs there. But Justice Bhagwati has been emotionally involved in this kind of legislation. He has done pioneering ork and he retired recently. He is a fit man for doing this job. Why I mention Mr. Bhagwati's name is not because I hold a brief for him but because I did not find myself in agreement with the provision for involving the Chief Justice of Supreme Court in organising legal services for the needy - a job which such a busy person can hardly do.

SHRI SOMNATH CHATTARJEE (Bolpur): As Patron-in-Chief...

PROF. SAIFUDDIN SOZ: If Bhagwati were there as Executive Chairman I would suggest that case that the Patron-in-Chief should be the President of India because this is a legislation which will bring about a qualitative change throughout the country. So, why not the President of India himself be the Patron-in-Chief?

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The President of India has not to perform any Executive functions but he would be Patron-in-Chief. Sir, everybody in the country - I mean the 70 crore people would know that here is a legislation carrying great importance in that the Patron-in-Chief of the legal Aid Authorities is the President of India himself because the President is the Visitor to many Universities. Then, why could not he be the Patron-in-Chief for this kind of a legal system? Further, if you would start with Justice Bhagwati as the Executive Chairman you would have a judge for two years or for three years and who could provide a sound basis to the whole system. Why I say that a sitting Chief Justice of India cannot do justice is because of the fact that Mr Bhardwaj informed this House last year that one lakh and thirty thousand cases were pending in the Supreme Court of India. That is what I remember. But he knows the figure better and he can stand up and contradict me if I am wrong. He gave the figure. Now, tell me how can the Chief Justice of India devote time in organising legal aid to the needy.

(Interruptions)

THE MINISTER OF STATE IN THE MINISTRY OF LAW AND JUSTICE (SHRI H. R. BHARDWAJ): With your permission, Sir, I would like to inform the hon. Member that Justice Bhagwati himself, when he became Chief Justice, suggested this that he would like to be the Patron-in-Chief and Justice Mishra would be the sitting judge. (Interruptions)... I would like the hon. Members to know that this whole scheme of Patron-in-Chief, Executive Chairman was suggested by Justice Bhagwati himself and it was accepted by the Government.

PROF. SAIFUDDIN SOZ: My dear friend, I am congratulating you that this kind of a legislation will bring about a qualitative change. I am just pointing out that that man could do better because the Chief Justice of India is a very busy person.

There are one lakh and thirty thousand cases pending in the Supreme Court of India and Justice Bhagwati is available for this kind of job; and the President of India would be the Patron-in-Chief.

[Translation]

SHRI ZAINUL BASHER: You nominate under this Bill.

PROF. SAIFUDDIN SOZ: Not nomination

[English]

I just mentioned it. It could be any other retired Chief Justice. I do not hold any brief for Justice Bhagwati. But I take it when you say 'sitting judge or retired judge', there is no reason for rejecting him. A competent retired Chief Justice could do it better. I just pointed out to you why you did not consider Justice Bhagwati as the *Hindustan times* reminded you yesterday editorially. I say it with emphasis that he had done a pioneering work and he would do this job far better.

SHRI H. R. BHARDWAJ: Justice Bhagwati is being considered for better jobs for the last two years.

(Interruptions)

PROF. SAIFUDDIN SOZ: That is very good. At least I got this news from you. Now, I would like to come to a couple of amendments because you have already alerted me that I must not repeat. So, the hon. Law Minister Shri Shiv Shanker just briefly intervened to say that he has accepted Mr. Dora's certain amendments. It is very good.

SHRI P. SHIV SHANKER: It was amendment No. 3..

PROF. SAIFUDDIN SOZ: Sir, there is no qualitative change there in that Clause. He has added the Backward Class. When we come to Scheduled Castes and Scheduled Tribes, he said Backward Class should also

be there It is a very welcome suggestion. So kind of you that you have accepted it. When you mentioned about income, you have said in terms of annual income.

SHRI HAROOBHAI MEHTA (Ahmedabad): What is accepted is different. The annual income means it is 'per annum'.

PROF. SAIFUDDIN SOZ: Now, I am coming to the definition of a women or child. What is your view about the women or child. Will you leave it like that? Because, women will have to be defined as to what kind of women. Could you not consider leaving it to the Public Prosecutor or some other functionary to declare it as one who is in need of aid? This service is available in the compound of a Court. Somebody must say which women is entitled. If you do not define that, if you do not define which child is entitled, it would remain vague. About the agricultural labourer, as has been pointed out by Shri Thampan Thomas, that category has been left out.

SHRI P. SHIV SHANKER: We cannot leave it to the Public Prosecutor to define it

(Interruptions)

PROF. SAIFUDDIN SOZ: Anybody else. I am a lay-man. You have been a judge. Mr. Bhardwaj has been an advocate. So, my point is that as a lay-man, I cannot leave it like that! "women or child" needs to be qualified if you want the benefit to trickle to the needy. *(Interruptions)*

In Clause 3, Sub-Section (3) the Bill says 'The Central Government shall appoint an officer of the Department of Legal Affairs of the Ministry of Law and Justice of the Government of India, not lower in rank than that of a Special Secretary'. Why a 'Special Secretary'? Why not a full-fledged Secretary to the Government of India? When you are dealing with the kind of a Bill, Legal Services Authorities Bill, he should not be of the rank of a Special Secretary but a Secretary to the Government of India. If you mention only 'Special

Secretary, it means that you are downgrading this institution.

SHIR H. R. BHARDWAJ: At present he is not even Joint Secretary. We are upgrading it.

PROF SAIFUDDIN SOZ: You have come forward for a revolution. Have a full-fledged Secretary. This Bill, if properly implemented, will certainly bring about a revolution in the country.

Then I come to Clause 4(j) which reads:

"(j) recommend to the Central Government grants-in-aid for specific schemes to various voluntary social welfare institutions and the State and District Authorities...."

Why should they, not straightway sanction? Why should they only recommend to the Government? What for? The Executive Chairman should have the authority. This point should be made clear

I come, finally, to the District Court. That is a very important Court. The District Judge will be the District Authority. You say that he will be provided with some staff. But ultimately he will have to sit in judgment. It is he who has to decide the cases. Have you done some survey as to how many cases are pending in the District Courts? He is already a busy man. Now think of the High Courts. You have proposals for providing more judges to High Courts. There is a terrible backlog. If you go to any District Court, you will find that the whole compound is full of people all the time and, as my friend said, it is 'adjournment' after 'adjournment' of cases all the time; and the lawyers fleece their clients. If the same District Judge becomes the District Authority, can we expect justice? Why I say this is because I only want you to consider the implications of this legislation. Your intentions are honest. It is for the first time that all the Members have wholeheartedly welcomed this measure. But I cannot understand as to why you cannot remove the lacunae. I have talked

[Prof. Saifuddin Soz]

about the Supreme Court, the Chief Justice of India, how busy he must be and how he will not be able to attend to this kind of business. The same thing applies to the High Courts of various States. When you come to the District Court, as I said, the District Judge is a very busy person, and if he becomes the District Authority, no justice can be expected from him.

I would conclude by saying one thing. It is a very good piece of legislation, and I have congratulated the Government for this measure. This is a measure for which you would get widespread support and applause in the country. But can you ponder over what I have said?

Is it possible for you to think over and have these shortcomings removed? We can wait. There is no urgency. There is no time-frame provided with Bill. After all, a suit is lodged before the District Authority. When he will decide it, there is no time-frame for it provided in this Bill. We can therefore, wait for some time without losing mind. Make it a pucca legislation, have all the loopholes plugged and all the shortcomings removed. If you do that, you will be doing a great service to the people.

THE MINISTER OF STATE IN THE MINISTRY OF LAW AND JUSTICE (SHRI H. R. BHARDWAJ): Sir, I am grateful to the Hon. Members for wide support they have lent to this Bill and for suggestions which they have made on various issues. Sir, I would not take much time of the House. I will touch some of the very important aspects of this legislation to put before the House the spirit behind this legislation, history of this legislation.

You kindly recall, in 1980 when Mrs. Gandhi came to power, it was thought that the movement of legal aid which was stopped during the preceding three years had to be revived. And my senior colleague Shri Shiv Shankarji became the Law Minister. It was he who took up immediate steps to translate into action and Justice Bhag-

wati Committee known as Central Committee for Implementation of Legal Aid in India was constituted. I am reminding this only to bring home, to some of the Members who said nothing has happened during the last few years.

I will briefly submit before the House, just a few statistics to show how much has been done by this Committee under the chairmanship of Justice Bhagwati. Although I have told on many occasions and submitted before the House about the work which has been done by the Central Committee on Legal Aid, I would just put a few statistics. In our country, during the last four or five years, we have held more than 1,000 Lok Adalats, we have settled more than 6,14,000 cases in all in which 15,000 cases were of the motor vehicles accidents alone and about Rs. 31 crores were paid to the poor litigants through the mechanism of this Lok Adalats.

(Interruptions)

SHRI THAMPAN THOMAS: The only thing which you have omitted in this is the Motor Vehicles Act.

SHRI H. R. BHARDWAJ: This is a rough estimate which I have given about the performance of the legal aid system in this country and the Central Committee on Legal Aid monitored the legal aid in the country during the preceding years. As I submitted, this was started only in 1980 and before that it was completely stopped. During the period from 1977 when Mrs. Gandhi lost, up to 1980 nobody talked about legal aid. It is here you see the difference of approach. In 1987 we have come with this Bill on the legal aid which is a very highly appreciable step and the work done by the Central Committee for Legal Aid is the basis for this Bill. That is why, I read what Justice Krishna Aiyar and Justice Bhagwati suggested, which has been translated into action through this Bill, which is before this august House.

Now, one point has been raised regarding Clause 12 where women and child has

been mentioned. One of the - Hon. Members from that side said that every woman should not be entitled to legal aid and every child should not be entitled to legal aid. If you kindly apply your mind again to the category of the people who are entitled to legal aid, you will find that it is in consonance with the spirit of this fact, that is social objectives behind it. You will find that categories mentioned there clearly deserves legal aid. Again, Sir, when we say Category A, there should not be any problem because we all accept that this is the most exploited class.

Similarly, women and child. You have so many problems of women who are facing litigation and of the exploited children. I myself filed petitions in Supreme Court in public interest when so many children were languishing in jails. All these matters could not be attended to because there was no provision for legal aid specifically for this category of children working in hazardous industries everywhere. So it is not something bad that you can say as to why child has been mentioned, why woman has been mentioned. It is particularly to protect the exploited classes of our society that we have put them.

I was astonished when our Marxist friends said as to how industrial workers are mentioned. I was surprised when Mr. Amal Datta said why industrial worker has been put. I say that he should appreciate it because this is completely in tune with the social aspects of this legal aid.

SHRI BASUDEB ACHARIA (Bankura): He has not objected to it.

SHRI H. R. BHARDWAJ: I similarly submit that when we say that everybody who has an income below Rs. 9000/- or Rs. 12000/- respectively for litigation in the High Court or courts below and the Supreme Court should be given legal aid, it is something very fair.

Because if you go to the Supreme Court today, you need a thousand rupees or two only to file an SLP. Money is required on

printing charges itself and so many other things are required. This money is not adequate. So, if a person who has got only a thousand rupees income in a month, he can hardly face litigation or file litigation in the Supreme Court. That is where we have tried to accommodate as much population as possible in the country to provide this protection of legal aid.

Legal aid is not something doling out of our pocket money to a person; it is to protect his interest, to protect him against exploitation, to bring him that constitutional commitment of equality before justice and equal protection of justice enshrined in our Constitution. There should be no criticism on this issue because promises after promises were made; at least now it is a hundred percent fulfilled because the Central Committee on Legal Aid.

SHRI SOMNATH CHATTERJEE (Bolpur): Is it a hundred percent fulfilled?

SHRI H. R. BHARDWAJ: Yes, a hundred per cent. Because we have covered more or less every aspect of the society which needed protection.

SHRI AMAL DATTA: There are many other aspects.

SHRI H. R. BHARDWAJ: Mr Datta, you should appreciate this. I wonder what type of a Marxist are you!... (*Interruptions*)...

I personally feel that somebody must educate Mr. Datta because we are here to protect a vast majority of people who have been exploited so far. All these classes will be mentioned, their categories will be mentioned so that nobody will say that they don't deserve protection. So, I am submitting that they are very valid objectives and they need to be given in the Act.

SHRI INDRAJIT GUPTA : Before you move away from Clause 12, I want to ask as to what about the victims of communal violence

SHRI H. R. BHARDWAJ: I am coming to that.

This was given specifically to say that every exploited class is included. When Shri Ayyapu Reddy spoke, he said that rules framing will take a long time. I can assure this Hon. House that immediately after this Bill is passed by both the Houses, we will speed up the framing of rules and I hope to keep our promise that this Act would be brought into force along with the rules as early as possible and there will be no cause for delay, because we will not allow any negligence or letting up on this matter as this work is continuing. It is not that when this Bill was not there, the legal aid was not going on in the country. The legal aid work is still going on through the Committee headed today by the Chief Justice as Patron-in-Chief and the same system is working today.

We are now giving it a legal base. Because you will find that this Bill is in two parts. One is with regard to the legal aid and the other is the Lok Adalat. So far as the legal aid is concerned, it has more or less now gained the confidence of the people because the Central Committee on legal aid has gone around the country. They have held legal aid literacy programmes, camps to educate people about their legal entitlement. We have attracted a large number of social action groups and activists who have come forward. University professors and everybody have come forward and contributed to the success of legal aid programmes. That is where our programme on legal aid has now come to a stage where we must have a statute on this, so that it gains further momentum. I would submit that after this Bill is passed, the legal aid programme will gain further momentum because more and more participation will come from the States.

So far, only with the coordination of the Central Committee that the legal aid programme was spread to various States. Of course, there is some lethargy in some States, including West Bengal in which

they have not held any Lok Adalats and they have not provided legal aid to as many people as they deserve it.

SHRI SOMNATH CHATTERJEE: What are you talking again? Do you want to be partisan on this Bill also? Have you ever been to any of the Lok Adalat there? Can't you resist the temptation? (*Interruptions*)

SHRI H. R. BHARDWAJ: Why you feel wild, Mr. Chatterjee? If you want the statistics of West Bengal I can give you. (*Interruptions*)

You kindly bear with me. No Lok Adalat has been held in West Bengal so far. This is the tragedy. You make long speeches defending the weaker sections of the society.

SHRI AMAL DATTA: What do you mean by Lok Adalat, Mr. Bhardwaj? We have held legal aid camps there. I myself told you. (*Interruptions*)

SHRI SOMNATH CHATTERJEE: Former Chief Justice, Mr. Bhagwati has gone there a number of times.

SHRI H. R. BHARDWAJ: I am submitting the work of Lok Adalat in West Bengal is minimal. I request you to speed it up. If you want figures I can give you.

SHRI SOMNATH CHATTERJEE: We do not believe in gimmicks on this issue. What is the expenditure of the Central Legal Aid Committee? How much you have spent on tours, seminars and conferences?

SHRI H. R. BHARDWAJ: I will answer that also.

SHRI SOMNATH CHATTERJEE: I did not wish to raise this thing. We want to cooperate. Do not try to score a debating point? (*Interruptions*)

SHRI H. R. BHARDWAJ: I am not scoring any debating point. I am only making a submission. That is not democracy if you do not want to listen to Mr. Chatterjee let

us hear each other. It is no good that you pass all these undeserved remarks
(*Interruptions*)

I have no complex like you Mr. Chatterjee. Sir, another objection raised was that the serving judges should not be involved in the movement of legal aid. I do not subscribe to these views.

SHRI INDRAJIT GUPTA: I said in the statutory body which is being set-up they should not be made part and parcel of that in an executive post.

SHRI H. R. BHARDWAJ: This is not a sound approach. The judges contribute a lot in the administration of legal aid under the general laws also. If you look at the CrPC and CPC it is again the judges who give legal aid to the litigants whenever it is desired. If you see the Code of Criminal Procedure it is the judge who is trying the case and sees somebody is indigent then legal aid is given to him. There is no question of judiciary being separated from executive on these issues because always under the scheme of various statutes it is the judges who grant legal aid. They refer the expenses to the State everywhere. Ex-Chief Justice of Supreme Court, Mr. Bhagwati himself suggested that this should be the framework. Chief Justice of India being patron-in-chief is only to lend prestige to this organisation and authority because he will be independent. Chief Justice of India being the patron-in-chief there will be absolutely no controversy on this and the executive Chairman being a sitting or a retired judge he will devote whole time to this because he needs the cooperation of various High Courts under the Scheme of the Act. He will need the cooperation of various judges down to the district level. So you are expected to involve the judiciary, lawyers and other people into this movement because you cannot expect legal aid to succeed unless everybody lends its little might to it and everybody supports this movement. There should be no reservation in anybody's mind on this because after all you are achieving an objective which is enshrined in the Direc-

tive Principles of the Constitution. So there should be no difficulty in giving the Chief Justice of India status as patron-in-chief to this legal aid authority and the serving or retired judges heading it. As a matter of fact, this entire scheme was suggested by Justice P.N. Bhagwati himself and the present Chief Justice and the present executive Chairman. We have not added or omitted much from what they suggested. It was discussed in the conference of Law Ministers of all the States. Not one State was missing when we discussed this - giving the legal aid authority. We have given full autonomy to the State and National Legal Authorities. They will function independently. We will only monitor through the Central Committee of Legal Aid, Sir. So, there is no problem when keeping the Chief Justice as a Patron-in-Chief because this will give lot of status. This will involve the judiciary in a big way. The Bar Council, the Bar Association, everybody will be involved in it.

SHRI THAMPAN THOMAS: Anything about the Bar Council or Bar Association?

SHRI H. R. BHARDWAJ: Bar Council or Government, non-Government bodies - it is provided here and rules also say so specifically. Then members who will be appointed to the National Legal Service Authority under section 6, they will say that the Bar Council of India Chairman or the Bar Council of the State Chairman will be a Member of these Authorities. This need not be provided in the Act. But they will be specifically provided in the rules. Without their cooperation, you can't expect the legal aid programme to make much headway. So, all these programmes are necessary.

So far as the participation of Members of the Bar is concerned, I again submit that this will be taken care of and they will be invited to take part into this movement.

Regarding funds for the Central Committee, the Central Government will allo-

[Shri H.R. Bhardwaj]

cate funds. The States are expected to allocate their own funds to their authorities so that they function properly. We will only give token grants as we are doing now.

...(Interruptions)...

Sir, so far as grants are concerned, they will be provided to the Central Authority by the Central Government. The State Governments will provide to their State Authorities. We will give grants from the Central Committee only when some schemes and programmes are given by the State Committees on some request to the Central Committee. So, all these programmes are given completely in the Act.

So far as the participation of the Lok Adalat is concerned, there would be no difficulty. Already without their statutory backing, the Lok Adalats have shown results. Now it is only wherever there is a settlement possible outside the court, then only you can refer the case to Lok Adalat because regular court may take time. The parties may not negotiate in the presence of the court. They can go there and application can be made to the regular court. Then they will refer the case to the Lok Adalat. It will be only in those cases the Lok Adalat adjudicates when there is a compromise between the parties or settlement by negotiation between the people who are involved in negotiation. They are all very important citizens of this country having legal knowledge. They take part there. Then in the presence of everybody, everybody participates and the judgment is pronounced. So, this Lok Adalat programme has been attempted as an experiment. This has been a grand success with the results of the regular court being very much. The involvement of the retired judges and other people is, therefore, very necessary in the legal aid programme through the mechanism of Lok Adalat.

Now, Sir, there was another point made that the lawyers who are provided through the legal aid are not very strong lawyers;

there are not very many lawyers. Sir, there is always a panel right upto the Supreme Court, in the High Court and in the District Court. The legal aid panels are kept there and the choice is left to the client to choose the lawyer he wants. The scales of fee are also prescribed and the money is provided through the court to be given to the lawyer to defend the case as a legal aid case. So, there is no difficulty in selecting good lawyers. It is only a question of willingness. There are good lawyers who are willing to work for the legal aid programme. There are young lawyers who are much more willing. These able lawyers also are willing. The people have done free cases and there are people who even if they pretend to be great socialists, render no legal aid. We have seen people. This is only a question of faith and a question of belief. Whatever is being said and has been mentioned has been taken care of. The only point that is to be kept in mind is that after all vast majority of the people of this country are poor people and when they go to court, they should not feel handicapped. That is where we must see. If we want to protect that section, there has to be a large movement, a movement from all directions so that this legal aid becomes a success.

In spite of the criticism and suggestions that have been made, and we have tried to accommodate all sections of society, I request that this Bill be passed.

SHRI INDRAJIT GUPTA: Why is he excluding any specific mention of the victims of communal violence. They have not referred to the victims of communal violence, that is happening every day in our country. You say ethnic and communal violence.

MR DEPUTY-SPEAKER: There are many amendments. You can get it clarified. The question is:

"That the Bill to constitute legal services authorities to provide free and competent legal services to the weaker sections of the society to ensure that opportunities for secur-

ing justice are not denied to any citizen by reason of economic or other disabilities and to organize Lok Adalats to secure that the operation of the legal system prompts justice on a basis of equal opportunity, be taken into consideration".

The motion was adopted.

MR. DEPUTY- SPEAKER: Now, the House will take up clause by clause consideration of the Bill.

MR. DEPUTY-SPEAKER: Clause 2. The question is:

"That Clause 2 stand part of the Bill."

The motion was adopted.

Clause 2 was added to the Bill.

Clause 3—(Constitution of the National Legal Services Authority)

SHRI H. A. DORA: I beg to move:

Page 2, line 35,—

omit "serving or" (1)

PROF SAIFUDDIN SOZ: I beg to move:

Page 2,—

for line 34, substitute -

"(a) the President of India who shall be the Patron-in-Chief" (9)

Page 2, line 35, —

*for "serving or retired" substitute -
"retired Chief Justice of India or a"
(10)*

Page 2, line 43, —

omit "Special" (11)

SHRI D. B. PATIL (Kolaba): I beg to move:

Page 2, line 38, —

after "members" insert "not more than eleven" (16)

SHRI H. A. DORA: Mr. Deputy-Speaker, Sir, Clause 3(2) of the Bill empowers the President to nominate a serving or retired judge of the Supreme Court as the executive Chairman of the Central Authority. The President is empowered to exercise this power in consultation with the Chief Justice of India. In this context, the use of the words "serving" between 'President' and in 'consultation with' does not make any sense. Please read that provision. Does it convey any meaning? It is wrongly worded. This needs to be deleted. That is my amendment. That word 'serving' is redundant. Senior advocates are here; they would better understand this provision. The expression 'President serving in consultation with the Chief Justice' — what does it convey?

THE MINISTER OF PLANNING AND PROGRAMME IMPLEMENTATION AND MINISTER OF LAW AND JUSTICE (SHRI P. SHIV SHANKER): You have not read the corrigenda. The word 'serving' has been deleted.

SHRI H. A. DORA: Then, it is all right.

SHRI D. B. PATIL: In clause 3(2) (c), you have mentioned: 'such other members'. Nowhere the number has been specified. I have suggested that the persons should be not more than 11. I have moved my amendment to that effect.

SHRI P. SHIV SHANKER: I presume that the hon. member Shri Dora has spoken on all his amendments. The position with regard to Clause 3(2) (b) is this. It is true that what is stated herein is "a serving or retired judge of the Supreme Court..... be the Executive Chairman." Many an hon. member has mentioned that a serving

[Shri P. Shiv Shanker]

judge should not be the Executive Chairman because he many have to perform varigated functions. We take note of this aspect. We will take care to see that we do not bring in a serving judge.

So far as 'serving' is concerned, I have already brought it to the notice of the House that we have put it in the corrigenda.

MR DEPUTY SPEAKER: I shall now put the amendments moved by Shri Dora, Shri Patil and Prof. Soz to the vote of the House

Amendments Nos. 1, 9 to 11 and 16 were put and negatived.

MR. DEPUTY SPEAKER The question is:

"That Clause 3 stand part of the Bill."

The motion was adopted.

Clause 3 was added to the Bill

Clause 4--(Functions of Central Authority)

SHRI SHANTARAM NAIK (Panaji) I beg to move:

Page 3, line 24—

after "litigation" insert "and in particular". (6)

PROF. SAIFUDDIN SOZ: I beg to move:

Page 3, line 44,—

for "recommend to the Central Government"

substitute "sanction" (12)

SHRI D.B. PATIL: Sir, I am not moving Amendment No. 17. But I move 18, 19 and 20.

I beg to move:

Page 4, line 1,—

after "literacy" insert "particularly amongst the illiterates."

(18)

Page 4, line 3,—

after "society" insert—

"like landless and other agricultural and unorganised industrial workers." (19)

Page 4, line 8,—

after 'Scheduled Tribes,' insert "other Backward Classes" (20)

SHRI SHANTARAM NAIK: Sir, Clause 4(d) says that the Central Authority shall subject to the general directions of the Central Government, perform all or any of the following functions namely..... (d) take necessary steps by way of social justice litigation with regard to consumer protection, environmental protection or any other matter of special concern to the weaker sections of the society...." Sir, you are restricting the provision by confining it to weaker sections and only to certain aspects. If in a middle class family, a dowry death takes place, and if some social litigation has to be initiated, can it be possible under this' provision or not? I say this because the middle class family may not come under 'weaker sections of the society' The cause 'dowry death' does not concern consumer protection or enviornmental protection Therefore, I suggested this amendment, that is, to add "and in particular" after social justice litigation. This is my humble submission

SHRI P SHIV SHANKER: The hon. member wants to add the words "and in particular" after "social justice litigation". But if you see the clause, we have stated in it "or any other matter of special concern". Therefore, it takes care of that aspect.

SHRI SHANTARAM NAIK : Sir, I withdraw my amendment.

MR. DEPUTY SPEAKER : Is it the pleasur of the House that the amendment moved by Shri Shantaram Naik be withdrawn?

SEVERAL HON. MEMBERS: Yes.

Amendment No.6 was,by leave, withdrawn.

MR. DEPUTY SPEAKER: I shall now put the amendments moved by Prof. Soz and Shri Patel to the vote of the House.

Amendments Nos. 12 and 18 to 20 were put and negatived.

MR. DEPUTY SPEAKER : The question is:

"That Clause 4 stand part of the Bill."

The motion was adopted.

Clause 4 was added to the Bill.

Clause 5 was added to the Bill.

Clause 6—(Constitution of State Legal Services Authority)

MR. DEPUTY SPEAKER: Prof. Soz, are you moving your amendments?

PROF. SAIFUDDIN SOZ: No Sir, Thank you.

SHRI D.B. PATIL: I beg to move:

Page 4, line, 28,—

after "member" insert "not more than eleven" (21)

Sir, it is stated that the state authority has to take some decisions in consultation with the Central Government. It is undermining the authority of the State Government.

SHRI P. SHIV SHANKER: There is nothing to reply.

MR. DEPUTY SPEAKER: I shall now put the amendment moved by Shri D.B. Patil to the vote of the House.

Amendment No. 21 was put and negatived.

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.

MR. DEPUTY SPEAKER: Now Clause 7 Mr. Shantaram Naik, are you moving your amendment?

SHRI SHANTARAM NAIK: No Sir.

MR. DEPUTY SPEAKER: Mr. Patil, what about you?

SHRI. D.B. PATIL: I am not moving my amendment, Sir.

MR. DEPUTY SPEAKER: The question is:

"That Clause 7 stand part of the Bill".

The motion was adopted.

Clause 7 was added to the Bill.

Clause 8 was added to the Bill.

Clause 9 (Constitution of Direct Authorities)

SHRI D B PATIL I beg to move:

Page 5, line 28,—

after "members" insert "not more than eleven" (23)

Page 5,—

after line 29, insert—

"(c) the Public Prosecutor of the district who shall be its Secretary." (24)

Sir, in this amendment I have proposed that the Public Prosecutor of the district shall be the Secretary of the District Authority. For Central and State Authorities, it has been defined in the Bill as to who will act as the Secretary. But it is not spelt out for the District Authority. So, I have brought this amendment

SHRI P. SHIV SHANKER: No reason is assigned as to why the Public Prosecutor

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should be appointed as the Secretary. Therefore I oppose it.

MR. DEPUTY SPEAKER: I shall now put the amendments moved by Shri D.B. Patil to the vote of the House.

Amendments Nos. 23 and 24 were put and negated.

MR. DEPUTY SPEAKER: The question is :

"That Clause 9 stand part of the Bill."
The motion was adopted.

Clause 9 was added to the Bill

Clauses 10 and 11 were added to the Bill.

19.00 hrs.

Clause 12—(Criteria for giving legal service)

MR. DEPUTY SPEAKER: Mr. Dora, are you moving?

SHRI H.A. DORA: Yes, Sir. I beg to move:

Page 6, line 24, —

add at the end, —
"or Backward Class" (2)

Page 6, line 39, — for "income" substitute "annual income" (3)

MR. DEPUTY SPEAKER: Mr. Patil. Are you moving?

SHRI D.B. PATIL: Yes, Sir. I beg to move:

Page 6, line 22, —
after "case" insert "or a suit or a proceeding" (25)

Page 6, line 24,—
add at the end—
"or other Backward Classes" (26)

Page 6,-

after line 28 insert—

"(dd) a physically handicapped person;" (27)

Page 6, line 31,-

after "earthquake" insert

"storm, cyclone, fire or any other natural calamity" (28)

Page 6, line 39,-

for "nine thousand rupees" substitute

"twelve thousand rupees per year" (29)

Page 6, line 41,-

for "twelve thousand rupees"

substitute—

"fifteen thousand rupees per year"

(30)

MR. DEPUTY SPEAKER: Do you want to say anything?

SHRI H.A. DORA: Yes Sir, Clause 12 enumerates the categories or persons who are entitled to legal service. One such category of person is Scheduled Castes and Scheduled Tribes. The object of my amendment is to extend similar free legal service, even to the backward classes as well. What harm did they do to the Government? Why backward classes are not included? I think the Minister will definitely consider this particular aspect.

MR. DEPUTY SPEAKER: Mr. Patil, do you want to say anything?

SHRI D.B. PATIL: Sir, it has been provided, as my friend has just stated that legal aid be given to the Scheduled Castes and Scheduled Tribes persons. There is a large section of persons who are other backward classes who are socially educationally backward.

Under Article 340 of the Constitution, the Mandal Commission was appointed to identify the communities and castes which are socially and educationally backward. That Commission has submitted its report

to the Government in 1980. The Government has not taken a decision on this, so far. So, I submit that after the word 'Scheduled Castes' the word 'or other Backward Classes' should also be added.

Then, Sir, the Government has enumerated in detail, who are the persons, who will be benefited by the Legal Aid Scheme.

In 'd' it has been stated 'a mentally ill or otherwise disabled person' will get the legal aid. I have proposed that 'physically handicapped person' should also be included in the list because it may perhaps be argued that 'otherwise disabled person who are physically disabled persons' perhaps be put together with 'mentally ill or other disabled' can be interpreted as 'physically handicapped persons' who have not been covered.

In 'e' the Government has enumerated all the disasters, such as 'being a victim of a mass disaster, ethnic violence, caste atrocity, flood, drought, etc.' I have proposed 'after earthquake' 'storm cyclone, fire or any other natural calamity' should also be included and those who are suffering from cyclone, those who have suffered from storm or fire, should also be benefited.

About the income limit, it has been explained that it will be 'per year' but in the original provision, it was not mentioned anywhere, whether it would be for 'per month or per year' The Government has explained that it would be 'per year'.

I suggested that instead of 'nine thousand rupees' upto the level of High Court, it should be Rs. 12,000, and upto the Supreme Court level, instead of Rs. 12,000 it should be Rs. 15,000

SHRI P. SHIV SHANKER: Sir, in this Clause 12, I accept the amendment to Sub-Clause 5 to Clause 12, what the hon. Member wanted that he should be in receipt of annual income. 'Annul' word

should be added. That part of the amendment, I accept.

MR. DEPUTY SPEAKER: That is the third Amendment.

SHRI P. SHIV SHANKER: Yes, it is the third Amendment. But one of the hon. Members wanted that apart from the members of the Scheduled Castes and Scheduled Tribes, members of the other backward classes should also be included. The hon. Members are aware that this is a Central legislation and there are no backward classes that have been recognised by the Central Government. Therefore, it will not be possible for us to bring in here the concept of other backward classes because backward classes that are recognised are recognised by the States. The Centre has not recognised it. But nonetheless, those of the backward class people who had income of less than Rs. 9,000 and Rs. 12,000 they can take advantage under Clause 12 (h). But in the ultimate analysis, the economic criteria has been...

(Interruptions)

SHRI H.A. DORA: It is not a special favour done to the backward classes. Seventy per cent of the population of our country are backward. The benefit is not extended to them.

SHRI P. SHIV SHANKER: I appreciate your anxiety. If I include it that would be totally illegal because the Central Government has not recognised the list of backward classes.

On Sub-Clause 'd' my submission is, 'otherwise disabled persons takes care of physically disabled as well'.

Then we come to (e) I am sorry to say that there is a slight misunderstanding by the hon. Member. The categories that had been mentioned there, are illustrative categories. They are not exhaustive. If you kindly read (e) you will see this:

"a person under circumstances of

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undeserved want such as being a victim of” etc.

If a person is being a victim of some other circumstance, that is as Mr. Patil said, of storm, earthquake or cyclone, it is taken care of as it is illustrative, not exhaustive. The courts have always taken the liberty to interpret and say that apart from illustrative items, the other facet also which comes in, in the broad generic sense of the words, would be taken in. Therefore, they need not be mentioned. In fact, I thought that even the word ‘communal violence’ would come under the expression ‘ethnic violence’. I was trying to see the Webster’s Dictionary for the definition of it. It says, i.e. the word ‘ethnic’ has been defined to say

“pertaining or peculiar to a people, especially to those groups sharing a common language, or set of customs or traits pertaining to such people, their origin, characteristics and classifications.”

But even assuming for a moment that if there is any doubt that ‘ethnic’ shall not include ‘communal violence’ my submission will be that in as much as this is only an illustrative list, exhaustively, the court can interpret it —interpret it having regard to the main portion of the clause which governs the illustrative categories that have been mentioned. Therefore, there should be no difficulty about it

MR. DEPUTY SPEAKER: Mr. Minister, I want to know whether he is accepting amendment No.3 in Clause 12.

SHRI P. SHIV SHANKER: Yes, that of Mr. Dora because it is clarificatory in nature.

MR. DEPUTY SPEAKER: I will then put it to vote first. The question is:

Page 6, line 39,—

for “income” substitute “annual income”(3)

The motion was adopted.

MR. DEPUTY SPEAKER: I will now put amendment No.2 moved by Mr. Dora, and amendments No. 25 to 30 to the vote of the House.

Amendments Nos.2 and 25 to 30 were put and negatived.

MR. DEPUTY SPEAKER: The question is:

“That Clause 12, as amended, stand part of the Bill.”

The motion was adopted.

Clause 12, as amended, was added to the Bill.

Clause 13—(Entitlement for legal services)

SHRI SHANTARAM NAIK: I beg to move:

Page 7,—
after line 4, insert—

“Provided that the concerned Authority shall not require the person seeking legal services to produce the evidence before it to satisfy itself of existence of any *prima facie* case but shall rely as far as possible, on the contents of the application/ statement made by the person unless there are strong reasons to disbelieve the contention of such persons, in which case only the person may be required to produce further evidence to satisfy the concerned authority with respect to the existence of *prima facie* case.”(8)

Sub-clause (1) of Clause 13 provides that a person who requires legal aid has to prove that he has got a *prima facie* case. Now the question arises how that person is going to prove the existence of a *prima facie* case. In case the authority which is supposed to give him legal aid says: ‘If you have got seven witnesses in support of your case, bring at least two witness before me. I will hear the two witnesses and then give you legal aid.’ and follows this procedure, every person who is trying to seek

legal aid will be in trouble. Therefore, I want to add a proviso to sub-clause (1) of Clause 13. This proviso reads:

"Provided that the concerned Authority shall not require the person seeking legal services to produce the evidence before it to satisfy itself of existence of any *prima facie* case but shall rely as far as possible, on the contents of the application/statement made by the person unless there are strong reasons to disbelieve the contention of such persons, in which case only, the person may be required to produce further evidence to satisfy the concerned authority with respect to the existence of *prima facie* case."

So, if this amendment is accepted, the person seeking legal aid will not be in trouble.

SHRI P. SHIV SHANKER: I am sorry this amendment of a proviso is difficult to be accepted, because if it is to be left to the sole statement of a particular person - supposing somebody comes and says, 'I am a Scheduled Caste' and the concerned authority does not know who he is, and if one has to rely only on his statement, it creates problems. Therefore Clause 13 has been taken care to see that he shall satisfy the concerned authority, say, by producing some certificate or something like that. Therefore, I don't think it will serve any purpose: it will create more problems.

MR. DEPUTY SPEAKER: Has Mr. Shantaram Naik leave of the House to withdraw his amend?

SEVERAL HON. MEMBERS: Yes.

Amendment No. 8 was, by leave, withdrawn.

MR. DEPUTY SPEAKER: There is no amendment to Clause 14. So, I shall put Clause 13 and Clause 14 to the vote of the

House together. The question is:

"That Clause 13 and 14 stand part of the Bill"

The motion was adopted.

Clause 13 and 14 were added to the Bill.

Clause 15—(National Legal Aid Fund)

SHRI D.B. PATIL: I beg to move:

Page 7, line 20,—

after "person" insert

"Who is not in arrears of any tax payable by him under any law" (31)

Page 7, lines 21 and 22,—

omit "under the orders of any court or" (32)

Under Clause 15 it has been provided that "the Central Authority shall establish a fund to be called the National Legal Aid Fund and there shall be credited thereto." Then under (b) it says "any grants or donations, that may be made to the Central Authority by any other person". I have qualified any person who is not in arrears of my income tax or any other tax. I have suggested this amendment with some intention that the economic offenders many a time give grants to such schemes like legal aid and other things. Now there are droughts. In Bombay, there would be processions and cine actors and actresses would be collecting fund for drought as in the past even though they are in arrears of crores of rupees, so far as income tax and other taxes are concerned. So, my intention is that the economic offenders should not be given any status by which they will be entitled to say that they have given such and such aid and for that they should not be praised in any way. Under (c) it has been provided that "any amount received by the Central Authority under the orders of any court or from any other source." I do not understand the meaning

[Shri D.B. Patil]

of this provision: "under the orders of any court of from any other source." All the courts are being involved in this scheme about legal aid and Lok Adalat. So, from the "orders of the court" I am not in a position to follow this scheme. I want some clarification on this point.

SHRI P. SHIV SHANKER: The amendment to clause (b) - the intention of the hon. member is very good, but it cannot be put into practice because of the very provision which will be carried out. If some person comes with an amount and if the authority goes into the question whether he is in the arrears of tax or not, then it will not be possible and this is not practicable. Therefore while I said that the intention of the mover is good and I appreciate it, but it is not practicable. Therefore, it is not possible for me to accept it. As far as (c) is concerned, when he says, orders of any court applying the principle of ejusdem generis the other part will have to be read and therefore it would be from any tribunal or any other authority. From those sources, if there is a direction for the purpose of sending money to that authority that money will be received.

MR. DEPUTY SPEAKER: Now I shall put amendment Nos 31 and 32 moved by Shri D.B. Patil to the vote of the House.

Amendments Nos. 31 and 32 were put and negatived

MR. DEPUTY SPEAKER: The question is:

"That Clause 15 stand part of the Bill"

The motion was adopted.

Clause 15 was added to the Bill.

Clause 16— (State Legal Aid Fund)

SHRI D.B. PATIL: I beg to move:

Page 7, line 33,—

after "person" insert

"who is not in arrears of any tax payable by him under any law." (33)

Page 7, lines 35 and 36,

omit "under the orders of any court or" (34)

(Interruptions)

SHRI D.B. PATIL: You do not understand the meaning of them. Have you read them?

MR. DEPUTY SPEAKER: Now I shall put amendments no 33 and 34 moved by Shri D.B. Patil to the vote of the House.

Amendment Nos. 33 and 34 were put and negatived.

MR. DEPUTY SPEAKER: The question is:

"That Clause 16 stand part of the Bill."

The motion was adopted.

Clause 16 was added to the Bill.

Clause 17—(District Legal Aid Fund)

SHRI D.B.PATIL: I beg to move:

Page 8, line 6,

after "person" insert -

"who is not in arrears of any tax payable by him under any law" (35)

Page 8, line 7 and 8.—

omit "under the orders of any court or" (36)

MR. DEPUTY SPEAKER: Are you speaking on them?

SHRI D.B.PATIL: No.

MR. DEPUTY-SPEAKER: Now I shall put amendments nos.35 and 36 moved by Shri D.B. Patil to the vote of the House.

Amendments Nos. 35 and 36 were put and negatived.

MR. DEPUTY SPEAKER: There are no

amendments to Clauses 18 and 19. The question is:

"That Clauses 17 to 19 stand part of the Bill."

The motion was adopted.

Clauses 17 to 19 were added to the Bill.

Clause 20—(Cognisance of cases by Lok Adalats)

SHRI D.B.PATIL : I beg to move :

Page 9, lines 11 to 14,-

omit "instead of proceeding to effect a compromise between the parties or to arrive at a settlement himself, and notwithstanding anything contained in any other law for the time being in force,"(37)

Page 9, line 14,-

after "pass" insert —

"notwithstanding anything contained in any other law for the time being in force," (38)

Page 9,

after line 16, insert-

"Provided that the presiding officer of the court or tribunal may proceed with to effect a compromise between the parties or to arrive at a settlement himself." (39)

Page 9, line 19,—

for "any person" substitute "Both the concerned parties" (40)

Page 9, lines 41 to 43,—

for

"proceed to deal with such suit or proceeding from the stage at which

it was before the suit or proceeding was transferred to the Lok Adalt"

substitute —

"transfer such suit or proceeding to the nearest court or tribunal" (41)

I would like the hon. Minister to listen to the arguments rather carefully. One of my friends while speaking on the Bill has mentioned that while debarring the courts from arriving at a compromise even if the party is prepared to arrive at a compromise, where the court proceedings are going on, or where the trial is going on or where the case is going on, the case may be transferred to the Lok Adalat. That is one of the things. That means they have to go to some other place. It is not necessary. Moreover, it has been provided in Sub-Clause (2) that if an application is received from any person it will be transferred to Lok Adalat. So far as the concept of the Lok Adalat is concerned, the concept of settlement between the parties, by a compromise means when the consent of both the parties is there. It cannot be done with the consent of only one party.

Then, Sub-clause (6) provides—

"Where under sub-section (5) the parties to a suit or proceeding intend to continue the proceeding in such suit or proceeding before the court or tribunal from which it was transferred, such court or tribunal....."

MR. DEPUTY SPEAKER: The amendments are circulated. You say whatever you want to say.

(Interruptions)

SHRI D.B. PATIL : When a case has been transferred from a court to a Lok Adalat in the Lok Adalat no decision can be arrived at because the two parties are not prepared to compromise. Then it is proposed here that the same case can be tried in the same court. I am against it. Because if it is

[Shri D. B. Patil]

tried by the same court, the court will be prejudiced against the party who was not prepared to have a compromise before the Lok Adalat. If the court is prejudiced the ends of justice will not be met.

So far as the Lok Adalat is concerned, the court in which the case has to be tried, which has jurisdiction, confirms one part only on the Lok Adalat and it is a principle of common jurisprudence that if a person is prejudiced then the case should not be tried there. *(Interruptions)*

SHRI P. SHIV SHANKER: The arguments on sub-clauses (1) of clause 20 at the first blush, might appear to be attractive. But really it is not so. There are two submissions of mine on this. Because the question is, supposing in a court the parties would like to have a compromise, why is it that it should be referred to the Lok Adalat? It appears as though it is absurd. But the fact of the matter is that if one goes to the Lok Adalat and the matter is sorted out there within the meaning of Section 21, then the party is entitled to the refund of the entire court fee. It is having regard to this that it has been thought that it is better that parties who would like to compromise, **there**, the matter should be referred to the Lok Adalat so that they get back the amount of court fee whether it is criminal or civil it is immaterial, because that is what they wanted to do. Because, mostly these cases are the cases which arise out of the civil litigation. That is why this provision has been provided. Then the other part of it is, if you read 21, it uses the word "may". It is left to the court whether it would transfer it or not. *(Interruptions)*

[*Translation*]

If this running commentary continues, it will be difficult for me to carry on with the reply

[*English*]

Therefore, I think, this amendment is not acceptable. On Sub Clauses 2 and 6, there is no valid argument put forth in support of

his amendment. Therefore, the amendment is not acceptable.

MR. DEPUTY SPEAKER: I put amendment to Clause 20 to the vote of the House.

Amendment Nos.37 to 41 were put and negatived

MR. DEPUTY SPEAKER: The question is:-

"That Clause 20 stand part of the Bill"

"The motion was adopted.

Clause 20 was added to the Bill.

Clause 21—(Award of Lok Adalat)

SHRI D B PATIL: I beg to move —

Page 9, line 45,—

after "civil court" insert "or a judgement of a criminal court or" (42)

It has been provided Every award of the Lok Adalat shall be deemed to be a decree of a civil court or order of any other court". It does not say about the criminal courts. In Clause 19 Subclause 3, it has been provided, 'to a dispute in respect of any matter falling within the jurisdiction of any civil criminal or revenue court'. So far as criminal court is concerned, if it is not there in your region, then it should not be raised. Why criminal court is not mentioned?

SHRI P. SHIV SHANKER: I do not think that the argument is attractive in any form and that it does not call for any reply.

MR. DEPUTY SPEAKER: I put amendment to Clause 21 to the vote of the House.

Amendment No. 42 was put and negatived.

MR. DEPUTY-SPEAKER: There are no amendments to Clauses 22, 23, 24, 25, and 26.

The question is:

"That Clause 21 to 26 stand part of the Bill"

The motion was adopted.

Clauses 21 to 26 were added to the Bill.

Clause 27—(Power of the Central Government to make rules)

SHRI H.A.DORA: I beg to move:-

Page 11 (i) lines 17 and 18,-

for "such rules" substitute "the Central Government"

(ii) line 19, omit "by the Central Government" (4)

MR. DEPUTY SPEAKER: I put amendment to Clause 27 to the vote of the House.

Amendment No.4 was put and negatived

MR. DEPUTY-SPEAKER: The question is:-

"That Clause 27 to 30 stand part of the Bill"

The motion was adopted.

Clause 27 to 30 were added to the Bill.

MR. DEPUTY SPEAKER: The question is:

"That Clause 1, the Enacting Formula and the title stand part of the Bill".

The motion was adopted.

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

SHRI H.R. BHARDWAJ: I beg to move:-

"That the Bill, as amended, be passed"

MR. DEPUTY SPEAKER: Motion moved:

"That the Bill as amended, be passed".

SHRI P. NAMGYAL (Ladakh) : Sir, thought my esteemed colleague Shri Sc will raise the issue of applicability of the Act to the State of Jammu and Kashmir which is not applicable at present in the Bill, perhaps because of the constitutional problem. I would request the hon. Minister to take the concurrence of the State Government immediately so that the jurisdiction of this Bill could be extended to the State of Jammu and Kashmir without any further loss of time. By delaying this, the people will be denied of justice. This is important for any constituency, which is comprising about two third of the entire State of Jammu & Kashmir.

We have got only one Sessions Court of two districts and it keeps on moving for six months in one district and another six months in the other district. Because of this problem most of the cases are decided on ex parte basis as the people from far flung areas cannot afford to cover long distances to plead their cases. At the same time, they do not get enough legal assistance. Because of this reason, I request the hon. Minister to take up this issue with the State Government of Jammu & Kashmir.

With these words I whole-heartedly support this Bill.

SHRI P.SHIV SHANKER: The hon. Member's observations have been noted and appreciated. We will commend it to the State of Jammu & Kashmir.

MR. DEPUTY-SPEAKER : The question is:

"That the Bill, as amended, be passed".

The motion was adopted.

THE MINISTER OF PARLIAMENTARY AFFAIRS AND MINISTRY OF FOOD AND CIVIL SUPPLIES (SHRI H.K.L BHAGAT): Dinner arrangements have been made for the hon. Members and the staff.

MR. DEPUTY-SPEAKER: How long are we going to sit?