

18.07 hrs.

# HIGH COURT AT BOMBAY (EXTENSION OF JURISDICTION TO GOA, DAMAN AND DIU) BILL,

THE MINISTER OF LAW, JUSTICE AND COMPANY AFFAIRS (SHRI P. SHIV SHANKAR): I beg to move\*:

"That the Bill to provide for the extension of the jurisdiction of the High Court at Bombay to the Union territory of Goa, Daman and Diu, for the establishment of a permanent bench of that High Court at Panji and for matters connected therewith, be taken into consideration."

The Union Territory of Goa, Daman and Diu is the only territory remaining in the country which is not served by any High Court. Soon after the liberation of Goa, a judicial commissioner's court was set up for that Union territory. Although the judicial commissioner's court has been declared a High Court for certain purposes of the Constitution, the institution has certain limitations and there has been persistent demand for the extension of the jurisdiction of a High Court to that Union territory and for the establishment of a permanent bench there of that High Court. The judicial commissioner's court is not a full fledged High Court. Since the judicial commissioner holds office during the pleasure of the President, he does not enjoy those constitutional safeguards which protect the independence of a High Court Judge. The earlier justification for this institution was that the Union territory was administered largely under Portuguese laws. This argument has lost much of its force as Indian laws have gradually been made applicable there and only a small proportion of cases pending in the judicial commissioner's court now pertains to Portuguese laws. The High Court of Bombay (Extension of Jurisdiction to Goa, Daman and Diu) Bill, 1980 thus seeks to meet a long standing and just demand of the peo-

## High Court at Bombay (Extension of jurisdiction to Goa, etc.) Bill

ple of the Union Territory and to improve the tone of judicial administration there by extending to it the jurisdiction of the Bombay High Court and establishing a Bench there of that High Court. This is a non-controversial measure, which, I am sure, will get the support of all sections of the House. I move that the Bill be taken into consideration.

MR. DEPUTY-SPEAKER: Motion moved:

"That the Bill to provide for the extension of the jurisdiction of the High Court at Bombay to the Union Territory of Goa, Daman and Diu, for the establishment of a permanent bench of that High Court at Panaji and for matters connected therewith, be taken into consideration."

SHRI SATYASADHAN CHAKRABORTY (Calcutta South): As the hon. Minister said, this is a non-controversial Bill and we wholeheartedly support it. In the statement of objects and reasons, it says that there should be a permanent bench at Panaji but the Point is: why could there not be a regular High Court for Goa and Daman and Diu. It has been the demand of the people of that area. I think the government should consider it seriously; instead of extension of the jurisdiction of the Bombay High Court, they should have a permanent High Court there to serve the people of that territory.

It appears to all of us that these days justice has become a very costly affair. There are thousands of cases pending in the different courts. It has also become very expensive. So, I take this opportunity to impress upon the Minister through you that efforts should be made not only in speeches but in action to make justice available to the poor people at a very low cost. That is why I think instead of damaging the independence

\*Moved with the recommendation of the President.

of the judiciary, talking about transfer of judges and of elected judiciary, they should give serious thought about how the poor people can get justice. You know that justice delayed is justice denied. I would like the Government to come forward with certain positive measures which will ensure justice to the poor people.

In this House, on innumerable occasions, our Law Minister has said about the defects in the judicial system. I would humbly submit to him, as a student of Constitutional Law, that it is the duty of the executive and of the elected representatives of the people to maintain the integrity, independence and impartiality of the judiciary, because as Prof. Laski said, a country has to be judged by the nature of its judiciary, whether it is functioning independently or not. The freedom of the people and liberty of the people is protected by the independent judiciary. Why do we hear irresponsible talks by irresponsible politicians denigrating the judiciary and undermining its independence? I should say that in spite of its many defects, the Indian judicial system has been able to preserve the freedom of the Indian citizens, though our Constitution contains certain undemocratic principles because of which they have to uphold preventive detention or laws like the National Security Bill. In spite of that, we have seen that in times of danger and in times of stress and strain, the Indian judicial system to a large extent has been able to uphold the liberty and freedom of the Indian citizen, in spite of the attempt of the executive to torpedo the judicial system. That is why I say that the present Government should give up its attempt of attacking the independence of the judiciary. I would like to remind the Minister that the system we are having today is not the gift of any political party. It is the outcome of a long, protracted struggle of the Indian people against foreign rule and colonial powers which wanted to

rob us not only of our wealth and resources but also of our freedom. As I said, this judicial system has many defects. You know I am a Marxist and I know that in a class-divided society, judiciary cannot be impartial. It is tilted towards the propertied class. But still, even within this system, it has maintained its limited independence and protected in a way the rights of the Indian people. I want to emphasise this on the Government through you: Today when you are attacking the judicial system, when you want to have a judicial system—in your own language a “committed judicial system”—you are acting against the aspirations of the Indian people. I would like to emphasize what we fought for during our freedom struggle, and it is for bread, it is for our shelter, it is for education, it is for our health and also it is for our freedom. That freedom should be guaranteed by the people themselves, no doubt, but also there should be constitutional checks and balances.

There is the theory of separation of powers. I do not want to sermonize. I do not want to educate, but I only want just to remind you that it has been the contention of all political scientists that this system of checks and balances is necessary for maintaining impartiality. The executive is checked by the judiciary and the laws passed by the Legislature also go to the judiciary for its scrutiny. This is a healthy system. I would utilize this opportunity to emphasize once again that this limited democracy, this limited freedom which we enjoy should be preserved. Because, I say that our Constitution does not contain the full aspirations of our Indian people, there have been curtailments of our rights, the Constitution does contain certain undesirable provisions; even then the attempt of the present ruling class to do away with the limited freedom, to have a committed judiciary, will simply destroy the whole system, which guarantees the limited liberty.

[Shri Satyasadhan Chakraborty]

Some of the members on the other side show their impatience, because these are hard truths and very difficult to swallow. Even then the truth should be said, however difficult it may be to swallow. Like good food, it should be swallowed, even if it is difficult to digest; that is what the doctors say.

With these words, I would urge upon the Law Minister that our judicial system should be re-organised, not to undermine it, not to attack its integrity, but to make justice available to the million of our people, who remain in the villages, who dwell in the *bustees*, who live in the slum areas, who do not have the wherewithal to go to the courts of justice. Sir, I am sure you will agree with me that even today it is said that money power is able to buy justice. Let us do away with this system and let us have a fresh look at the judicial system so that the poor people can get the benefit of justice.

With these words, I support this Bill.

**SHRI V. N. GADGIL (Pune):** Sir, I would like to congratulate the Government and the Law Minister for having brought this Bill, a Bill which extends the great history and the glorious traditions of the Bombay High Court, to which I have the privilege to belong, to the Union Territory of Goa. In 1956 a similar extension was made and the territories belonging to the former Nizam State, which are popularly called Marathawada area were brought under the Bombay High Court.

The Statement of Objects and Reasons says that there has been a persistent demand for a permanent Bench at Goa in order to tone up the judicial administration. Very briefly, I would like to invite the attention of the Law Minister to another area, where there has been a persistent

demand for a permanent Bench with a view to tone up the judicial administration, and that is the Marathawada area. There was a political-moral commitment in 1956. All parties agreed at that time, at the time of the States' Re-organisation Commission, that this Marathawada area should have a University of its own and a permanent Bench of the High Court. The University of Marathawada was established a few years back but the demand for a permanent Bench has not yet been satisfied. This has been an all-party commitment given at that time, at the time of the SRC, and that commitment ought to be fulfilled. Therefore, I would request the Law Minister, from the point of view of moral-political commitment of 1956, from the point of view of regional aspirations of the people of that area, their claim to have a permanent Bench in that area should be satisfied.

Lastly, it will provide a great convenience and will mean less cost to a number of litigants, who have to go all the way to Bombay. How costly Bombay is, how crowded Bombay is, every body knows. Further, this demand has been supported by the Maharashtra Legislative Assembly, the Bar Council of Maharashtra and, last but not the least, the Western India Advocates' Association, the importance of which, I am sure, the Law Minister knows. That Bar has produced Dr. Amdedkar and Dr. Jayakar; that Bar has produced number of Judges and two Chief Justices of India; and that is the only Bar in the country which had the honour to get the highest award in this country, namely, Bharat Ratna for Mahamahopadhyaya Dr. P. V. Kane. That Bar Association, which had this proud privilege and a proud history, that Bar Association has unanimously resolved that a permanent Bench for Marathawada should be conceded. So, from all these points of view, I would request the Law Minister to do justice to that area, by giving them a seat of justice.

\*SHRI R. K. MHALGI (Thane): Mr. Deputy Speaker, Sir, I rise to extend my support to the Bill moved by the hon. Law Minister, and congratulate him for bringing this Bill. It had already been included in the Business of the House. But the hon. Law Minister was pressurised by some hon. Members not to include it. It was not shown on the list of Business for quite some time and I had to raise this matter in the House and asked the Government to bring it forward and pass it. In the meantime, Maharashtra-Karnataka border dispute cropped up. Some hon. Members thought of having a bench of the Karnataka High Court instead of a bench of Bombay High Court. I am happy that the hon. Law Minister did not yield to the pressure and has moved the Bill.

Sir, I welcome the Bill all the more because the hon. Law Minister has refused to accept the recommendations of the 4th and 14th Report of the Law Commission to the effect that the benches of High Court should not be established. He has given up the outdated ideas and has agreed to establish the bench of Bombay High Court at Panji. The hon. Minister has done justice by recommending the establishment of the bench at Panji. Why not do the same by establishing benches of the Bombay High Court at Pune and Aurangabad? I would like to point out that there has been a persistent demand to establish benches at Pune and Aurangabad. Some hon. Members of this House namely, Shri Gadgil, Shri Uttam Rathode alongwith me have demanded this by introducing Private Members Bills on the subject. Shri Vaishampayan, and hon. Member of Rajya Sabha has also moved a similar Bill. I would not like to plead for the bench of High Court at Thane because Thane is nearer to Bombay,

but I insist that the bench of High Court should be established at Pune.

The hon. Law Minister has taken a good step by setting aside recommendations of Law Commission. I would like to humbly submit that Section 51 of the SRP Act of 1956 should be duly considered in this context. The Section says, I quote:

"The President may, after consultation with the Governor of new State and the Chief Justice of High Court for the State by the notified order, provide for the establishment of a permanent bench/benches of that High Court at one or more places within the State other than principal seat of the High Court and for any other matter connected therewith."

The provision allows the Government to establish more than one benches of the High Court. In accordance with Clause 2 of Section 51 of SRP Act, it would be well advised to establish permanent benches of High Court at Pune and Aurangabad.

From the practical point of view I would like to make a few suggestions. Let us know whether 'justice at the door of litigant' is just a slogan or it is to be put into practice. We have already given up outdated ideas that the judges of the High Court alone can give justice. Some people describe benches to be the glorified district courts. But this criticism is not proper. The efficient judges are available in Pune and Aurangabad. There are well-equipped libraries in these places. Therefore, the persistent demand for the establishment of benches at Pune and Aurangabad should not be neglected.

[Shri R. K. Mhalgi]

Sir, hon. Shri Gadgil has pleaded the case of five districts of Marathwada in very befitting terms. The five districts namely, Sangli, Nagar, Kohlapur, Pune, Solapur should have a bench of High Court at Pune. The Bench of High Court at Pune would reduce the burden of work on Bombay High Court. I may hardly remind that after 1974 in 18 Courts more than 4,25,000 cases are being filed every year and many of them are still pending. Decentralisation, therefore, would be a good measure.

I would like to make one or two points regarding this Bill. The hon. Members who know the geography of Goa, Daman and Diu know that Diu and Daman are to the north of Bombay whereas Goa is towards the South. Would Panaji be nearer to the people of Diu and Daman? That is the question which I would like to pose. The proviso of Clause 9 of this Bill clearly states: I quote:

"Provided that the Chief Justice of the High Court may, in his discretion, order that any case or class of cases arising in such territory shall be heard at Bombay."

What about Filing? Whether the word 'heard' includes filing of the cases? If it is not so, the people of Daman and Diu will have to go to Panaji to file the cases while the cases would be heard in the Bombay High Court. I, therefore, feel that filing the cases and hearing them should be done at Bombay only. Such a provision should be made in this Bill.

Sir, I would like to stress that Aurangabad and Pune should be considered for establishing benches of High Court. Please do not reject this proposal outright. The Urban Development Minister of Maharashtra Shri Adik has already announced that Aurangabad is going to have a bench of the High Court. I would like to request the hon. Law Minister to inform the House in his reply to the

debate on this Bill whether there would be a permanent bench of High Court each at Aurangabad and Pune.

श्रीमती संयोगिता राणे (पणजी) :

उपाध्यक्ष महोदय, गोआ, दमन और दीव में उच्च न्यायालय की बेंच स्थापित करने के लिए जो यह बिल लाया गया है, मैं इसका स्वागत करती हूँ। इसी के साथ यह भी कहना चाहती हूँ कि गोआ में जुडिशियल कमिशनर के समक्ष हजारों की संख्या में सिविल और क्रिमीनल केसेज वर्षों से विचाराधीन हैं। उनकी सुनवाई अकेली बेंच नहीं कर सकती है। बेंच स्थापित करने से अनेक कठिनाइयाँ पैदा होंगी। अतः यह उचित है कि वहाँ हाई कोर्ट बनाया जाये, ऐसा होने से वहाँ न्यायिक प्रशासन में सुधार होगा और लोगों को न्याय शीघ्र मिलेगा। स्वतंत्र हाई कोर्ट मिलने से हमें 4, 5 न्यायाधीश मिलेंगे और हमारे शीघ्र ही केसेज समाप्त होंगे।

इस वक्त जुडिशियल कार्यालय पर लगभग डेढ़ लाख रुपया खर्च होता है, हाई कोर्ट स्थापित करने से कोई ज्यादा खर्च नहीं होगा। गोआ में जहाँ जुडिशियल कोर्ट है, उसी भवन में उच्च न्यायालय काम कर सकता है। जब भारत सरकार विकेन्द्रीकरण करना चाहती है, तो फिर बोम्बे हाई कोर्ट की बेंच देने से फिर केन्द्रीकरण होता है।

हमारे गोआ में अभी भी कुछ पोर्तुगीज कायदे कोर्ट में चल रहे हैं। जब भारत सरकार बोम्बे हाई कोर्ट की बेंच देगी तो वहाँ पर बोम्बे के न्यायाधीश आयेंगे और इस वजह से हमारे गोआ के न्यायाधीशों पर अन्याय होगा, क्योंकि उनकी

सिनियोरिटी नहीं मिलेगी । दूसरा कारण यह भी है कि गरीब जनता हर वक्त बोम्बे नहीं जा सकेगी क्योंकि वहां जाने से खर्चा भारी होता है ।

इसलिए भारत सरकार से मेरा यह निवेदन है कि गोआ, दमन और दीव को स्वयं उच्च न्यायालय बना दिया जाये ।

**SHRI BAPUSAHEB PARULEKAR** (Ratnagiri): I stand to support the Bill and I join my hon., colleagues in congratulating the hon. Law Minister. Though this Bill was on the Business List from 17th November to 28th November, may be for the reasons told by Shri Mahalgi, it did not come on the Business Paper. Better late than never. At least at this fag end of the Session we are considering this particular Bill.

I would like to make certain suggestions to the hon. Law Minister with reference to this particular Bill. But before making those suggestions I would like to make a request in all humility to the hon. Law Minister if really he wishes that our Judges in the High Court and Supreme Court should act and discharge their duty of administration of justice without fear of favour, as we usually say, if day in a day out all the top leaders including the hon. Law Minister are going to criticise the judges, I am afraid they will not be in a position to discharge their duties of administration of justice without fear or favour. They have no forum to refute the charges levelled against them.

The other day, it is reported that hon. Law Minister said that our judges are sitting on ivory towers. They are not conversant with social legislation and, therefore, they are not in a position to interpret the laws which the Parliament and the State Assemblies are legislating. May be. He may call all the judges, tell them

what is his intention. But in public speeches to say this! I met certain judges on the Bench. They have expressed their regrets. I take this opportunity to express and convey their regrets on this particular issue. They say whenever we sit for writing the judgement we feel what the hon. Shiv Shankar would say, or what the Prime Minister would say. In that way are we having the administration of justice? I would tell the hon. Members and the hon. Law Minister that we will not get fair justice.

The second point to which reference was made by Shri Gadgil and my friend Shri Mahalgi is about the establishment of benches where it should be at Aurangabad or at Poona. If it is to be given at Poona, it is at 120 miles from Bombay. I am at 400 miles. It is the birth place of Lok Manya Tilak who fought litigation throughout. I will be justified if I claim that. But I am not on this point whether it should be given at this place or that place, I am on this point that the litigant should be provided a facility of a High Court so that no one should be required to travel more than 200 miles. We are speaking of the legal aid to the poor. We have to bring justice at the door step of the litigant. My Constituency people are required to go 400 miles to Bombay. May I, therefore, request the hon. Minister that in my Constituency Ratnagiri five taluks are at a maximum distance of 50 miles from Panji, but I will be required to travel 500 miles to go to Bombay. Is it not possible to make an amendment in this particular clause, if not now, but subsequently and connect these five taluks to Goa so that they may not be travelling 500 miles for matters being heard especially when both are under the same High Court viz., Bombay. I have made this particular suggestion and again I will take this opportunity to suggest that more benches should be established so that nobody is required to take long journey.

One more suggestion I would like to make. If really we want to do

[Shri Bapusaheb Parulekar]

our business, we will have to give serious thought that delays have to be curtailed. Many people say justice delayed is justice defeated. It is true but I do not want justice to be midway in between the two. In that in a hurry. Our Advocate General once said—justice delayed is justice defeated and justice hurried is justice hurried. So, we have to find the midway in between the two. In that connection I would request you to consider the suggestion so that the delays especially of the matters which come from the mofussils could be curtailed. You can divide this work between the work coming from mofussils and the work coming from the metropolis. In the Bombay High Court, if you take into consideration the ratio, 80 per cent of the matters pending are from Bombay city and 20 per cent are from districts. We have to stand in queue for months and years because Bombay matters are not being decided. This can be made applicable to Goa also. You can legislate so that the matters from the metropolis or big cities can be entrusted to some persons and other matters to other judges. That way, the delays can be curtailed.

With reference to the suggestion made by Mr. Mhalgi, I endorse that. The litigants from Daman and Diu will have to go to Bombay, will have to pass through Bombay, and travel 500 miles for reaching Panaji and the people from Ratnagiri have to come from the north—the people from Daman and Diu have to come from the south—and travel 500 miles. Why waste money? We are poor people. We cannot afford to engage advocates. If the Benches are established at various places, the same advocate who is engaged in the lowest court can continue upto the High Court. It would not be correct to say that only persons practising in the Bombay High Court can appear and argue. We have meritorious advocates in mofussils. They can go and practice in the High Court. This excuse which is

being given at high levels. I am sorry, I am not in a position to agree.

I would like to make one more submission. It is with reference to the Judicial Commissioner. I tried to go through the entire Bill. I do not find as to what status we are going to confer on the Judicial Commissioner. At the most, you may refer us to clause 5. But that is no reply. I want to know whether the Judicial Commissioner automatically becomes a High Court judge. What is the status that is being given to the Judicial Commissioner? Are you going to revert him as a Sessions judge? He has put in 8 or 9 years as the Judicial Commissioner. That will be a demotion. You have to take into consideration the position of the person concerned. At present, the Judicial Commissioner is a freedom fighter who was convicted and who was in Lisbon for many years. He was practising in the Bombay High Court; he was a Sessions Judge and he became the Judicial Commissioner.

SHRI XAVIER ARAKKAL (Ernakulam): Please refer to Clause 3 which says:

"On and from the appointed day, the Court of the Judicial Commissioner shall cease to function and is hereby abolished;"

SHRI BAPUSAHEB PARULEKAR: I think, I have not made myself clear. What status are you going to confer on the Judicial Commissioner Mr. so and so? What is his position? At the most, he will be at your mercy. You have to take into account that aspect also.

Then, I do not understand how this Bill has been drafted. It has not been drafted properly. I would request the Law Minister to tell us as to why Clause 6 and Clause 8 are drafted. I do not find any difference between the two. Clause 6 reads:

"Subject to any rule made or direction given by the High Court at Bombay in this behalf, any person who, immediately before the appointed day, is an advocate en-

titled to practise in the Court of the Judicial Commissioner shall be entitled to practise as an advocate in the High Court at Bombay."

Again, Clause 8 reads:

"Any person who, immediately before the appointed day, is an advocate entitled to practise "in the Court of the Judicial Commissioner and was authorised to appear or to act in any proceedings transferred from that Court under Section 7, shall have the right to appear or to act, as the case may be, in the High Court at Bombay in relation to those proceedings."

*Ad verbum*, it is the same. I do not know whether there is a mistake or whether there is some negligence in drafting this. This will speak volumes. When the matters go before the people, they will say, this is how the Parliament of India drafts the Bill. I would request the Law Minister to have one clause, either Clause 6 or Clause 8.

I would say a word with reference to employees also. In other Bills, like, the taking over of the Bengal Chemicals, a provision was made for the employees. What about the employees of the Court of Judicial Commissioner of Goa? Are they servants of Goa Government or are they servants of Central Government? Now, they come under the Bombay High Court. I want to know whether they will be the servants of Maharashtra Government. You have not made any provision with reference to that. Complications will arise and there will be many writ petitions. The problem will not be solved. No serious thought has been given to it. I do not want this matter to be delayed. This Bill should be passed. I would request the hon. Minister to consider all these things and make proper amends.

With these words, I support this particular Bill and, as early as possi-

ble, the Bench should be established. On behalf of the people of Goa, I extend an invitation to the Law Minister to come to Goa for this particular function.

SHRI MANORANJAN BHAKTA (Andaman and Nicobar Islands): Sir, I congratulate the hon. Law Minister, who is worthy of his name, on his having brought forward this Bill to extend the jurisdiction of the Bombay High Court to the Union territory of Goa, Daman and Diu, for the establishment of a permanent bench of that High Court at Panaji. At the same time. I was thinking that he would bring a comprehensive Bill for such other areas also where the people are facing a lot of difficulties, where litigants are facing a lot of difficulties for getting justice, such as my constituency, Andaman and Nicobar Islands. For a long time, the people of that area have been demanding a permanent bench of the Calcutta High Court at Port Blair. The reply I have received from the hon. Minister to that the Calcutta High Court is not willing to have a permanent bench at Port Blair. This is one argument. Another argument he has given is that there may not be sufficient number of cases which would justify having a permanent bench in that part of the country. I would like to urge one point here. There are certain areas in the north-eastern region which may not justify many developmental activities there, but the Government of India, if they want to do certain things for improving the lot of the people of that area, have to do. Areas like Andaman and Nicobar Islands, Lakshadweep, and several such isolated areas are areas where it may not be justified, but still Government has to do. Sometimes what happens is that people, because of the long distance involved and the expenditure that they have to incur, do not like to go to Calcutta to file suits for seeking redressal of their grievances. If you provide an opportunity for them by having a permanent bench



[Shri Manoranjan Bhakta]

of the Calcutta High Court at Port Blair, automatically those persons who are aggrieved and who could not otherwise go to Calcutta, will go to the permanent bench and seek justice. Thus, the number of cases will automatically increase. That is why, my submission is this. It is a very commendable move that the hon. Minister has made. The court of Judicial Commissioner is an inferior type of judiciary and in these days, we cannot have such inferior type of judiciary. That is why, he must consider, so far as Andaman and Nicobar Islands are concerned, providing a permanent bench of the Calcutta High Court at Port Blair.

I would also like to say a few words to Prof. Satyasadhan Chakraborty who was very eloquent while he was speaking about independence of judiciary. I would like to ask him one point. Is not the Left Front Government in West Bengal interfering in the matter of judiciary? Has not the Left Front Government in Calcutta withdrawn thousands of cases, including even murder cases? Not only that, when the particular Magistrate... (*Interruptions*) we did not interfere when your leader spoke. Why are you interfering now? If you have any faith in democracy, you must not interfere. You must have the patience to listen....

**SHRI SATYASADHAN CHAKRABORTY:** On a point of only clarification....

**MR. DEPUTY-SPEAKER:** Mr. Bhakta, are you yielding?

**SHRI MANORANJAN BHAKTA:** No, Sir. In West Bengal, thousands of cases have been withdrawn, including murder cases—cases of persons against whom there are charges of murder. Not only that; when some Magistrate or Sessions Judge, did not agree to withdraw particular cases, then he was transferred on promotion, and persons of their liking were put there so that the cases could be withdrawn. (*In-*

*terruptions*) My point is this Prof. Chakraborty talks about independence of judiciary. He claims to be a Marxist. Can he cite an example, in which Marxist-ruled country or communist country, they have independent judiciaries? They will always do what suit them under the circumstances. My submission is this. When I was listening, I was listening to my hon. friend on the other side very carefully. Then I thought he should be speaking on a public platform but all of a sudden, I realised that we are in Parliament and we are debating some important issues here. My humble submission and request to the hon. Law Minister is that he should not be cruel. He should be very kind to the people of Andaman, Nicobar Islands. They are in very remote and far-flung areas and they are scattered islands and I will request him that in the next session he should bring a Bill so that a permanent Bench can be set up in the Union Territory of Andaman and Nicobar islands.

**SHRI SATYASADHAN CHAKRABORTY:** Only one point of clarification. The hon. Member, Shri Manoranjan Bhakta has rightly said that many cases are withdrawn against criminals. That is true. But the reason is this. The Congress(I) there claimed that they are all Members of Congress (I) and assured the Chief Minister that they will take responsibility for them. But what happened on 22nd—we all know.... (*Interruptions*).

**MR. DEPUTY-SPEAKER:** If you had got up and said in the House that you have not withdrawn any case like that, it would have been good. I expected that from you.

**SHRI SATYASADHAN CHAKRABORTY:** I say, Sir, that we have withdrawn cases because Congress (I) took the responsibility/saying that "They are our members and you release them." and we believed them and released and now they are misbehaving.

**SHRI MANORANJAN BHAKTA:**  
Against one of their members there was a case. It was withdrawn and he was made a Minister in the Left Front government.

**MR. DEPUTY-SPEAKER:** Mr. Vijaya Kumar Yadav.

**श्री विजय कुमार यादव (नालंदा) :**  
उपाध्यक्ष महोदय, मैं भी इस बिल का समर्थन करता हूँ और जैसा कि बहुत सारे लोगों ने विधि मंत्री को धन्यवाद दिया है, मैं समझता हूँ कि वे धन्यवाद के और ज्यादा मुस्तहक होते, अगर वे गोआ, दमन और दीव के लिए बाजाबता परमानेंट इंडिपेंडेंट हाई कोर्ट की स्थापना का बिल लाते। बहराल, जो कुछ भी मंत्री महोदय द्वारा लाया गया है, उसका चारों ओर से समर्थन हो रहा है। लेकिन जिस उद्देश्य से वहाँ बम्बई हाई कोर्ट को जुरिसडिक्शन को बढ़ाने की बात कही गई है, और साथ ही साथ वहाँ एक परमानेंट बैंच की स्थापना की बात कही गई है, वह इसलिए है, क्योंकि इस प्रकार की व्यवस्था से जो तीनों भाग उस सैन्ट्रली एडमिनिस्ट्रस स्टेट के हैं, वहाँ की गरीब जनता को न्याय मिलने में सहायित नहीं होगी, जब तक कि वहाँ एक परमानेंट हाई कोर्ट की स्थापना नहीं होती है।

कई माननीय सदस्यों ने इस सदन में यह सवाल उठाया है कि कई जगहों पर परमानेंट हाई कोर्ट बैंच की जरूरत है। चूंकि अभी जो स्थिति है, उसमें लोगों को अपने सूबे से हाई कोर्ट तक काफी दूरी तय करनी पड़ती है और ऐसी स्थिति में जो गरीब लोग हैं, जिनकी आर्थिक स्थिति खराब है, उनके लिए हाई कोर्ट में जाना मुश्किल हो जाता है। हमारे देश की जो न्यायिक पद्धति है, बावजूद इस बात के कि हमारे देश के अन्दर कांग्रेस की हुकुमत काफी लम्बे असे से ...

**MR. DEPUTY-SPEAKER:** We are not discussing it here in this Bill. Where is the provision? Please speak on the Bill proper.

**श्री विजय कुमार यादव :** उपाध्यक्ष महोदय, इसकी सीमा बहुत ही महद्द है, इसलिए जूडिशियल सिस्टम पर ही कुछ बोल सकते हैं। मैं ज्यादा नहीं बोलूंगा, आप मुझे बोलने दीजिए।

**MR. DEPUTY-SPEAKER:** You must help me. Why should I tell you on what you should speak? I can tell you that you should speak with regard to this Bill proper.

**श्री विजय कुमार यादव :** मैं इसी बिल के मुताबिक बोल रहा हूँ। इस देश के अन्दर इस समय जो कानून की व्यवस्था है वह निश्चित तौर पर अभी भी ऐसे लोगों के लिए है जो अमीर हैं, जिन के पास पैसा है। देश की आबादी का 45 प्रतिशत जो गरीबी की रेखा के नीचे रहने वाले हैं, मुझे बतलाइये उन में से कितने हाई कोर्ट तक पहुँच सकते हैं, हाई कोर्ट में अपनी बात रख सकते हैं। आज न्याय महंगा होता जा रहा है, न्याय-जगत में भ्रष्टाचार व्याप्त है, जरूरत इस बात की थी कि मंत्री महोदय इन तामाम चीजों को दूर करने के लिए कोई काम्प्रोहैन्सिव बिल, विस्तृत और व्यापक बिल लाते। जूडिशियरी के सम्बन्ध में आज यह शिकायत उठ रही है कि वह जनता के प्रति जिम्मेदार नहीं है। जूडिशियरी का यह फर्ज होना चाहिए कि वह देश की आम जनता के प्रति जिम्मेदार हो, न्याय का इस्तेमाल आम जनता के लिए किया जाये। लेकिन आज होता यह है कि सरकार जो नियम बनाती है, उसका इस्तेमाल अमीरों के पक्ष में किया जाता है। मैं इस सम्बन्ध में एक सुझाव देना चाहता हूँ—मैं जानता

[श्री विजय कुमार यादव]

हूँ जिस बात को मैं कहने जा रहा हूँ, बहुत से माननीय सदस्य उस से सहमत नहीं होंगे। मैं चाहता हूँ कि हाई कोर्ट में जजेज की एप्पाइन्टमेंट प्रोसेस की जरूरत होनी चाहिए। और सुप्रीम कोर्ट में पार्लियामेंट के जरूरत होनी चाहिए। यदि ऐसा हो जाय ग्राज तो जो हम इम्पार्लियल जूडिशियरी की बात करते हैं, उस की गारंटी कर सकते हैं।

इन शब्दों के साथ मैं इस बिल को सपोर्ट करता हूँ।

MR. DEPUTY-SPEAKER: One hour was allotted to this Bill. We have already completed it. We started at about 5-41. Now it is 6-55. Therefore, I would request the hon. Minister to reply.

SHRI HARISH KUMAR GANGWAR (Pilibhit): I want to speak on this Bill.

MR. DEPUTY-SPEAKER: No, no. The time is over. I have to conduct the business. The Minister will now reply. I have no powers to extend the time. The Minister will now reply. Please help me. This Bill is for a limited purpose.

Shri Daga and Shri Arakal will please listen. The time for the discussion is over. Everybody is making a request for starting a bench in his constituency.

I have already asked the Minister to reply. So, all of you will please take your seats. Now, the Minister will reply. Shri Shiv Shankar.

THE MINISTER OF LAW, JUSTICE AND COMPANY AFFAIRS (SHRI P. SHIV SHANKAR): Mr. Deputy-Speaker, Sir, by and large, the hon. Members have supported the Bill and I am grateful to them for the support that they have extended. Two Members from the hon. House, while supporting the Bill, had extended

their left-handed complements to me on the general question of the criticism of the judiciary itself, my hon. friend from the Marxist Party had complained and blew hot and cold. He even found fault with the persons who were trying to criticise the judiciary. At the end, he concluded by saying that we do away with the system and give a fresh look and bring in a system which ultimately caters to the needs of the poorer sections of the society. That is how he broadly put it. I thought that this was a Chinese line which he was very fond of (*Interruptions*) Sir, the point is this. The question is, time and again whenever a matter of this type is coming up my hon. friends from the other side are raising a bogey of criticism that we are criticising the judiciary. I am compelled to presume, Sir, that there seems to be some oblique motive in hurling this type of accusations when, in fact, it is not so.

Sir, I would like to ask a question to the hon. members whether anybody has said about 'X' judge, 'Y' judge or 'Z' judge. If somebody says that this judicial system which is the legacy of the British Imperialism is not suited to the hopes and aspirations of the people of India does it amount to saying that it is a criticism of the judiciary itself. I fail to understand this concept. One of the hon. Members has gone to the extent of saying that we are even affecting the independence of the judiciary. These are very good phrases that could be coined and used on a public platform but I am only sorry that they would like to use the debate in the Parliament on Goa, Daman and Diu Bill with reference to a bench of the Bombay High Court to be established there for the purposes of vailing out their feelings in order to gain a very wrong sympathy from those reactionary classes with whom they would like to become very good bed fellows. But unfortunately they would never be allowed to share the bed with

them. This seems to be the position. I would not like to go into the details because this is a different Bill altogether. But I am prepared to face the challenge from the other side on any other occasion when the matter with reference to the judicial system comes up.

Sir, I am proud because one hon. Member has said that I have said that the judges are living in ivory towers. I repeat that. I am proud because if this system does not adopt itself to the cry of the millions in this country I have a fear that the system might develop strains and it might one day break. If at all I am raising this voice I am only trying to raise the voice so that there should be a correctional approach. Those who are concerned with the judicial system including my friends, Shri Parulekar and Shri Chakraborty and and others who have something to do with the judicial system must think to re-fashion and analyse the role of the judicial system so that it subserves the interest of the people at large. We cannot rest our ears on the legacy of the British who built up a system which suited their genius of administration of justice. If I have voiced this, I voice it more from the point of a correctional approach; more from the point of view of my inherent interest in the system itself of which I had been a part for the last thirty years. My friends cannot doubt, my bonafides. I have said this more in the interest of the system. You must watch it and coolly ponder over the whole issue. All my friends are aware of how this system is developing strains. We have got necessarily to stop this deteriorating trend in the system. I am administering only a warning when I say that one day we will have to repent once the system breaks. You cannot allow it to deteriorate. This system has become more or less obsolete to our needs and hopes and aspirations...

19 hrs.

DR. SUBRAMANIAM SWAMY: Preview of the next month you are giving.

SHRI P. SHIV SHANKAR: You have been giving previews of the past and if I give about the future you must welcome it.

DR. SUBRAMANIAM SWAMY: I am a reactionary; you are a professor.

SHRI P. SHIV SHANKAR: You are such a reactionary that (*Interruptions*). You hobnob on one side with China and on the other side with the United States; you seem to have become a strange bed fellow with both these persons. Any way, let us not go into those things..

DR. SUBRAMANIAM SWAMY: If it is reflection on morals I object under Rule 353.

SHRI P. SHIV SHANKAR: I am saying about good conduct; I am giving a certificate; why are you getting worried? I would not like to go deeper into this aspect least it should be misunderstood that I am taking any advantage of this Bill to say certain things. Now, Sir, some of my friends have referred to benches at different places. Benches would be constituted in the background of taking steps to take justice to the doorsteps of the common-man. I firmly believe in this theory, whether it is Aurangabad or any other place, for that matter. But it would be difficult for me to consider at this stage segregating Ratnagiri from Bombay or Bombay with Goa because the people there might say that the entire work in Goa gets dominated by persons like the hon. Member from Ratnagiri. I would not like to give him any undue advantage over the others.

The hon. Member said about filing of the cases. This is provided in the rules that have been framed by the Bombay High court. It may be Nagpur or any other place; undoubtedly before this bench the filing process

[Shri P. Shiv Shankar]

will have to be taken up; otherwise no purpose will be served by establishing a bench there. So far as the position of the Judicial Commissioner is concerned, the said office goes with the establishment of this bench. My hon. friend from Ratnagiri is very well aware. He cannot *ipso facto* become a High Court judge. The process will have to be gone into. The procedure that is laid down in Article 217 will be followed. (An hon. Member: Till then what will be his status?) I get reminded of my erstwhile Hyderabad State; when it was trifurcated two Judges of the High Court were left in the lurch and both of them were brilliant judges. But they had to be rest assured by the protection of their salary, by the protection of their tenure and their status could not be of the status of a High Court judge of Hyderabad because when Hyderabad itself got disintegrated, they were accommodated in a different position. I can only say this much that whatever rights that a person enjoys, I can assure on the floor of this House that those rights would certainly be preserved and that would be ensured to him but whether he would be appointed as High Court Judge or not, I cannot say. That is a matter which has got to be looked into from a different angle altogether. My hon. friend from Ratnagiri has raised a question about the defect in the drafting and drew my attention to Clauses 6 and 8. There is an essential difference between Clause 6 and Clause 8 of which he is well aware. The language of both the clauses is so clear that one deals with the transfer cases where the advocates must have already filed their 'vakalatnama' once under clause 7 of the Bill, those cases are deemed as transferred and treated as the cases to be disposed of by the Bombay High Court Bench, the right is given to the advocate not to file again the 'vakalatnama' or again any type of case but to appear in those proceedings as though those proceedings are the proceedings where they have filed the 'vakalatnama' or already

received instructions from the parties but when it comes to the question of Clause 6, that gives the general right to the advocate and I am aware that the hon. Member from Ratnagiri...

**SHRI BAPUSAHEB PARULEKAR:**  
You are practising in High Court and I am practising in a mofussil court. That is the difference.

**SHRI P. SHIV SHANKAR:** I can assure you, as a few of the hon. Members have said, that the talent is not merely confined to a High Court at all and I am one of those people who believe that there are much better advocates in the District Courts as compared to many in the High Courts and one such person I can cite is my hon. friend from Ratnagiri. One question that was raised was: why don't you have a separate High Court? In fact the opener of the debate himself raised this question that it would have been better to have a separate High Court. Sir, there is a High Court Judge who is normally expected to dispose of 650 cases. This figure has been arrived at not by the executive in any form but by the Highest judiciary itself and norms have been laid down and it is a matter of immense satisfaction that by and large, generally, the various judges of the High Court have been disposing of cases at this standard. Now, if a High Court is to be established in Goa only, the person who will be the Chief Justice will also be a puisne Judge and everything is imbibed in himself. So, that creates a problem. The same problem is to be faced by Andaman and Nicobar Islands. I do not know if the hon. Member from Andaman and Nicobar Islands is interested in more litigations. The people in Andaman and Nicobar Islands are very peaceful, rarely they fight and if it is his intention and if it is his motive.....

**SHRI MANORANJAN BHAKTA:**  
Everyone is going to Calcutta. There are about 2000 or 3000 cases pending.

**SHRI P. SHIV SHANKAR:** My hon. friend knows very well that in a month, hardly one or two cases come to Calcutta. He is very much aware of that..... (*Interruptions*). What we have been doing is that whenever there are cases, the Calcutta High Court sends a bench for the disposal of cases there, and the matters are disposed of so quickly that even one week's work is not available for a judge who goes from Calcutta. In view of this, it may not be possible to consider at this stage for a permanent bench there and burden the administration.

**SHRI MANORANJAN BHAKTA:**  
The Calcutta High Court judge who goes to Port Blair for circuit bench does not take up the cases which are filed at Calcutta High Court itself. Only the cases which are filed at Port Blair are attended to by him. That is why the people have to run every now and then to Calcutta.

**SHRI P. SHIV SHANKAR:** The filing part has necessarily to be done at Calcutta because the judge has to go whenever there is work and dispose of the cases there.

**SHRI MANORANJAN BHAKTA:**  
At the Port Blair also, there is a registrar there. But the cases under Article 226, writ petitions are not filed at Port Blair; these are filed at Calcutta and are taken up at Calcutta only, not at Port Blair.

**SHRI P. SHIV SHANKAR:**  
The question is—how many cases are there so that a bench could be

constituted there. That was the difficulty which I expressed.

**SHRI MANORANJAN BHAKTA:**  
Because of the special conditions of the Islands, you may reconsider this.

**SHRI P. SHIV SHANKAR:**  
He is appealing to my heart that it is a matter of Islands. But he has never invited me to come there.

**SHRI MANORANJAN BHAKTA:**  
I invite you readily.

**SHRI P. SHIV SHANKAR:**  
Sir, I do not think that there is any other point which I should reply now. I again thank the hon. Members for their valuable suggestions.

**SHRI BAPUSAHEB PARULEKAR:**  
In the high courts they take up matters on chronological basis and the matters from the mofussils are not decided for years together unless the matters from the metropolitan areas are decided. Can we not bifurcate? Will you seriously do something so that the mofussil matters could be disposed of earlier and they do not stand in the queue? As we know, the ratio in these cases is 80: 20.

**SHRI P. SHIV SHANKAR:**  
I assure the hon. Member that I will take up this with the Chief Justice of Bombay High Court and request him to consider the grievances of my friend and see if the cases coming from the mofussils, which are called the appellate side cases could be disposed of early.

श्री हरीश कुमार मंगवार (पीलीभीत) :  
 मंत्री महोदय ने अपने भाषण में कहा है  
 जहां कहीं भी हो सकेगा वहां बेंच का  
 कायम की जायेंगी। मेरा कहना यह है  
 कि जिन राज्यों की एक करोड़ या उससे  
 भी कम आबादी है उनके लिए भी एक  
 हाई कोर्ट है और ऐसे राज्य भी हैं  
 जिन की दस बारह करोड़ की आबादी है  
 और वहां भी एक हाई कोर्ट है। उत्तर  
 प्रदेश की आबादी तथा वहां के लोगों की  
 मांग को देखते हुए क्या आप यह निश्चय  
 करेंगे कि मेरठ या बरेली में कोई बेंच स्था-  
 पित की जानी चाहिए ? उत्तर प्रदेश की  
 बारह चौदह करोड़ की आबादी है और  
 उसकी एक ही हाई कोर्ट है।  
 मंत्री महोदय के भाषण को सुन कर ऐसा  
 लग रहा था जैसे श्री जैल सिंह बोल रहे  
 हों। बातों बातों में उन्होंने ढाल दिया  
 है। मैं जानना चाहता हूं कि आबादी को  
 देखते हुए क्या आप हाई कोर्ट के बेंच  
 स्थापित करेंगे या नहीं करेंगे ?

SHRI P. SHIV SHANKAR:  
 I am sorry that the hon. Member has  
 not followed me. Perhaps my Eng-  
 lish was not that good that could  
 make him understand. I said that  
 the principle that would be follow-  
 ed by this Government would be to  
 keep in view the interest of the  
 common man and wherever it is ne-  
 cessary from that point of view to  
 take justice to the door of the com-  
 mon man, we will certainly consider  
 establishment of the benches.

I think, this should make the point  
 clear.

MR. DEPUTY-SPEAKER: The  
 question is:

"That the Bill to provide for the  
 extension of the jurisdiction of the  
 High Court at Bombay to the  
 Union Territory of Goa, Daman  
 and Diu for the establishment of  
 a permanent bench of that High  
 Court at Panaji and for matters  
 connected therewith be taken into  
 consideration."

*The motion was adopted.*

MR. DEPUTY-SPEAKER: Now,  
 we will take up clause by-clause  
 consideration of the Bill. There are  
 no amendments to Clauses 2 to 14.  
 The question is:

"That Clauses 2 to 14 stand part  
 of the Bill."

*The motion was adopted.*

*Clauses 2 to 14 were added to the  
 Clause 1, the Enacting Formula and  
 the Title were added to the Bill.*

SHRI P. SHIV SHANKAR: I  
 beg to move:

"That the Bill be passed."

MR. DEPUTY-SPEAKER: The  
 question is:

"That the Bill be passed."

*The motion was adopted.*