

15.42 hrs.

LOKPAL BILL— Contd.

By Shri P. K. Deo

MR. DEPUTY-SPEAKER: We will now take the Lokpal Bill moved by Shri P. K. Deo.

SHRI GEV M. AVARI (Nagpur): Sir, I rise on a point of order. We are already discussing the Lokpal Bill moved by Shri P. K. Deo. Now the Government have also introduced a Bill on the same subject. What is the necessity for separate discussion on the Government Bill?

MR. DEPUTY-SPEAKER: There is a difference. Shri P. K. Deo has already moved the motion for consideration of the Lokpal Bill and the House is now seized of the matter. Further discussion on the Bill has to continue according to our procedure. Now there are two stages through which the Bill can pass—either the Member withdraws the Bill with the leave of the House or the motion for consideration has to be put to the vote of the House and a decision taken thereon. In case the House passes or negatives the motion for consideration of the Bill, in either case any other substantially identical bill on the subject cannot be taken up for consideration under Rule 338 during the same session, as the House would have already given its decision on the principle of the Bill. There is no decision of the House on the principle of the Bill in case the Bill is withdrawn. If Shri P. K. Deo withdraws his Bill with the leave of the House, there will be no bar for consideration of the Government Bill on the subject during the same session. Therefore, I would request Mr. P. K. Deo to consider the whole situation because his main purpose is to see that the objective is served.

SHRI P. K. DEO (Kalahandi): I have the highest regard for all the

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elders of the House. Most affectionately, I address Mr. H. V. Kamath as Gurudev. All the elders are my acharyas. So, I do not want that the Lok Sabha be converted into "Kurusabha" where Daronacharyas and Bhismacharyas would be there. I have been pursuing this Bill as early as 1960 and as Abhimanyu I have tried to enter the "chakravihwa". But I won't allow myself to be killed or the spirit of my Bill to be killed. At the same time, I will suggest a via-media by which no obstacle can be put in the passage of the Government Bill. Let me finish my speech because I have partly dealt with it.

MR. DEPUTY-SPEAKER: You can withdraw it at any stage.

SHRI P. K. DEO: Mr. Deputy-Speaker, Sir, on the previous occasion I was speaking that my respected leader Rajaji in a policy statement of the Swatantra Party stressed the importance of an institution like Ombudsman, particularly in the country like India where the moral fabrics has been corroded by corruption. And in his various articles in the 'Swarajya' he had tried to sell the idea to the people. In the Third Lok Sabha when all the stalwarts of the Swatantra Party were defeated at the polls, mentle of leadership fell on my shoulders and I tried to project the image of the Party and tried to focus this point in the shape of various resolutions and various amendments to the President's Address and in various ways. At last, I was able to focus the attention of the public in this regard.

In 1966, the Government was conscious of the magnitude of this problem and appointed the Administrative Reforms Commission which was headed by no less a personality than Morarji Bhai, our Prime Minister. My esteemed friend, Shri H. V. Kamath was also a member and Shri V. Shankar who is now the Private Secretary, was its Secretary. Under

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their various terms of reference, they were supposed to give consideration to the need for ensuring the highest standard of efficiency and integrity in public offices and to solve the problem of redressing citizen's grievances.

The Commission was alive to the urgency of the problem and in their first unanimous report, they made a specific recommendation for appointment of an authority 'Lokpal', incidentally the swadeshi name for Ombudsman. In the last para of the recommendation they say:

"We should try to emphasise the fact that we attach the highest importance to the implementation at an early date of the recommendations contained in our interim report. We are not alone in recognising the urgency of such a measure. It is, clear from the British example we have quoted above."

Sir, the history of Ombudsman makes a very interesting study. The oldest institution of this type called Chancellor of Justice in 1713. It changed its name to Ombudsman in 1809. That was in Sweden. It was followed in Finland in 1919, in Denmark in 1955 and in Norway and New Zealand in 1962 and 1967 respectively. In 1967, Britain also established this institution and called him the Parliamentary Commissioner. The first incumbent was Sir Edmund Campion, the former Auditor-General.

As I pointed out earlier, the citizens are subjected to improper and unjust administrative acts to which they find no adequate remedy and many cases of administrative delinquency to which there is absolutely no answer. I do not want to wash the dirty linen of the administration in this House NOR I want to bring in the various skeletons one by one from the cup-board. But there is no denying the fact that

opinions expressed inside the Parliament and outside have been cries in wilderness. The Santhanam Committee Report has been put in cold storage. Many memoranda have been submitted in the past to the Prime Minister against the misdeeds of various Chief Ministers and other dignitaries. But instead of entrusting these jobs to some impartial personality with a judicial background, the Prime Minister arrogated to himself or herself the power of the judge and appointed commissions of inquiry and exonerated persons according to his or her sweet will. It is not proper.

The latest issue of the *Illustrated Weekly* has published a special article on Commissions of Inquiry. So many commissions of inquiry were held against so many persons. It started with Shri B. R. Das to go into Kairon affairs, Shri S. K. Das on K. D. Malaviya affairs and the Khanna Commission on Biju Patnaik affairs, etc. etc. But all these were kept in the archives. There has been no follow-up action. So, these commissions of inquiry and their findings, except their academic value, are of least interest to the common man. The common man has lost all faith in commissions of inquiry. So, the recommendation of the Administrative Reforms Commission never got a stamp of approval of the House.

In 1967, I was constrained to bring forward this identical Bill for introduction in the House. But all sorts of impediments were put on the way by the Government. They tried to put all sort of obstacles and even denied the rudimentary courtesy of giving the President's recommendation to my Bill under article 117 of the Constitution as it involved some financial commitment. I, however, circumvented the technicality of it by moving a motion to elicit public opinion on it. When the House was divided, my motion was carried in spite of the Government's opposition. Shri Y. B. Chavan was the then Home Minister. He vehemently opposed my motion to elicit public opinion on the Bill. Any way,

it was put to vote and, for the first time in the history of Parliament, the Government was defeated on a substantive motion. It created a parliamentary history. It was circulated and from every corner of the country voluminous support came which has been published in a separate publication of the Lok Sabha.

I am grateful to all of them. Then the Government brought forward their own Bill—the Lokpal and Lokayukta—in the Fourth Lok Sabha in 1987. It passed through the Joint Select Committee where the evidence of eminent witnesses like Mr. K. Santhanam, Dr. H. N. Kunzru, Prof. P. K. Tripathi, Mr. P.N. Saprú, late lamented M. C. Setalvad, Mr. C. K. Daffry, late lamented Mohan Kumaramangalam, Dr. L. M. Singhvi and others have been recorded. And, at the same time, the Secretaries of the various important Ministries also gave their evidence and that evidence had also been recorded. As it emerged from the Joint Select Committee, it belied the expectation of everybody. The whole objective was watered down. The Bill excluded the Prime Minister from the ambit of the Bill on the theory that the King can do no wrong. If at all it should apply, it should apply to the Head of the State, not to the Head of the Government.

SHRI JAGANNATH RAO (Berhampur): The Prime Minister is the Head of the Government.

SHRI P. K. DEO: So, it should not apply, that is what I say. There was one lacuna in the Report that instead of Lokpal having its own agency of investigation, the Lokpal will use all the government machinery. And we all know that when their career depends on the sweet will of the Minister how the government machinery will be helpful to the Lokpal.

Sir, as Fourth the Lok Sabha was prematurely dissolved. This Bill never saw the light of the day. In the Fifth

Lok Sabha, this Bill was introduced on the 11th August, 1971, but till 1977, even though the life of the Fifth Lok Sabha was extended by another year, it also never saw the light of the day. In spite of our various reminders to the then Minister of Parliamentary Affairs, Shri Raghu Ramaiah, which became a weekly ritual every Friday, he never took note of the objections raised from this side. This is how I have narrated the chequered history of this Lokpal Bill.

The main feature of the Bill is that a person of eminent stature will be appointed by the President on the advice of the Prime Minister after consulting the Leader of the Opposition and the Chief Justice of India. He will be answerable to Parliament. He will have the status of the Chief Justice of the Supreme Court and can only be removed as per the provisions applicable for the removal of the Chief Justice of the Supreme Court under Clause 5 of Article 124 of the Constitution. I hope the Government Bill which has been brought forward and which is lacking in regard to appoint the Lokpal in consultation with the Leader of the Opposition and in Consultation with the Chief Justice of India that part should be struck off and if any amendment of that nature comes, the Government should be prepared to accept it.

He will sever all connections from Parliament if he is an M. P. from businessmen, if he is businessman or if he is a holder of any office of profit, from politics, if he is a politician and the term will be for five years. He will be eligible for another term, but he would not be eligible for further employment in any capacity as an Election Commissioner or like that.

He will investigate such cases of injustice due to mal-administration, cases of undue favour shown to somebody accrual of personal benefits or gains to the Minister or to the Secretary on the basis of a written complaint or even *suo motu*. That is the

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very purpose of my Bill. During investigations, if the Lokpal is satisfied after full opportunity being given to the Minister or the Secretary to comment on it that injustice has been caused to the aggrieved person as a consequence of mal-administration, he will direct that action to remedy should be taken immediately. If no remedy is taken, then he will make a special report to the Lok Sabha. He will also submit annual reports to the Lok Sabha on the activities of the Lokpal which will be for discussion in this House. I hope the report of the Lokpal will not have the same fate as the Reports of the Commissioner of Scheduled Castes and Scheduled Tribes are having, which are hardly discussed and several years pass in between. The submission of the Annual Report to the Lok Sabha and its annual discussion will be mandatory. It will be a good thing if various achievements of the Government and its failures are properly viewed in their proper perspective.

It will be a good thing if various Government achievements and failures are properly viewed in their correct perspective. It will be good for the Services and the Ministers. An institution of this type will be able to project the correct picture in its true character. What is democracy? It is government for the people of the people by the people. In the prosperity of the people lies the strength of the Government and in the strength of the Government lies the stability of democracy. Now, at present, for the ventilation of the grievances of the citizens, there are only two avenues left. The first is the Parliament, if the Members are vigilant and try to focus attention on the various grievances of the citizens who have been victims of the malafide commissions and omissions of the Government. But the remedy is not adequate in Parliament as the Parliament can hardly devote its time to each individual case. Next comes the court, but we know how many thousands of

cases are pending in the courts. Moreover, these are beyond the common man's reach and it is a dilatory and expensive process.

In the past, State activity was very limited: it was limited to things like of law and order; but at the moment the activities of the State have become multifarious. State activity has now spread to things like control on commodities of daily consumption, contractual relationship legislation, social security, insurance, banking, trade, labour and so many other things which directly touch the people. In most of the cases, discretion is in the hands of the administrative authority. How far they are corrupt or are justified in the exercise of their discretion is a question which has to be kept under constant examination; vigilance is the price of liberty. Their actions cannot be regulated by the usual rules and regulations, instructions and orders. In the exercise of discretion it cannot always be expected of them to be always just. It is therefore necessary to provide an institution to which the citizens can have access for redress of their grievances and to make complaints. The institution will act as a sword as well as a shield. It will act as a sword against corrupt Ministers and other officials and it will act as a shield for the honest ones against whom frivolous charges or motivated attacks are levelled or against whom blackmail is attempted. As I conceive it, the institution of Lokpal is essentially an extended arm of the Parliamentary apparatus in the cause of redressing public grievances and cannot be drifted outside Parliamentary constellation because the complexities of modern administration, limitation of Parliamentary procedure and modalities, increasing proliferation of administrative functions and the accompanying dangers of abuse of discretion and, finally, the immense public advantages of an impartial and objective apparatus for investigation and redress of grievances and allegations—all point to the pressing need for an institutional

framework which finds a meaningful expression in this Lokpal Bill. No persuasion would be necessary to pass or accept the very principle of the Bill. If this is coming by way of a Government Bill, then no effort would be necessary on my part to persuade the Government to accept the very principle of the Bill.

So, I commend the Bill to the House for consideration.

16.00 hrs.

MR. DEPUTY-SPEAKER: I think, the hon. Member may withdraw the Bill also.

THE MINISTER OF HOME AFFAIRS (SHRI CHARAN SINGH): I add my voice to your suggestion, Mr. Deputy-Speaker, to the hon. Mover to withdraw the Bill. The Bill introduced by the Government is very comprehensive and takes note of all possibilities. When Mr. Deo goes through it, he will agree with me that it is a superior draft. So, while I congratulate him or—shall I say—thank him also for the trouble he has taken in introducing this Bill and making his speech, I will again request him to withdraw it.

SHRI P. K. DEO: Our past experience has been very bitter. The previous Government introduced the Bill, and for ten years it never came up for consideration. My fear is that, though the Bill has been introduced, it does not mean that it will be passed. But after the assurance of the Home Minister and also the assurance of the Minister of Parliamentary Affairs today that this Bill will be passed next week, I would withdraw it. I most respectfully submit that it should be passed expeditiously; it should not be referred to any Joint Select Committee; there should be no dilly-dallying. As a matter of fact, it should be on the Statute Book in this Session. Since I have been fully assured by the Home Minister, I beg leave of the House to withdraw my Bill.

SHRI HARI VISHNU KAMATH (Hoshangabad): He cannot bind down the House not to accept any motion for reference to a Joint Committee.

MR. DEPUTY-SPEAKER: He can have his own opinion.

The question is:

"That leave be granted to withdraw the Bill to make provision for the appointment and functions of an authority named the Lokpal for the investigation of administrative acts in certain cases and for matters connected therewith."

The motion was adopted.

SHRI P. K. DEO: Sir, I withdraw the Bill.

16.05 hrs.

[SHRI SONU SINGH PATIL IN THE CHAIR]

CONSTITUTION (AMENDMENT) BILL

(Amendment of article 352) by
Shri H. V. Kamath

SHRI HARI VISHNU KAMATH (Hoshangabad): Mr. Chairman, Sir, last Friday, a week ago, this House adopted a Resolution which had been moved by me on the 24th of June. That Resolution, *inter alia*, referred to the Emergency Proclamation and the various consequences that followed in the wake of the proclamation of the Emergency, and this House, at the initiative of the Home Minister, adopted that Resolution without any amendment, with a change of even a comma or a semi-colon or a word or a syllable. I should not blow my own trumpet, but I would like to say that, in that respect, this House made history because in the last 30 years I have found that only nine Resolutions have been adopted by the House without any amendment. In the last 30 years nine Resolutions have been adopted, and mine was the ninth Resolution to be adopted without