

SHRI A. BALA PAJANOR: That is the matter I wanted to get clarified. After all, it is in a good spirit, in a sportive spirit, I said it is a musical chair. I wish it may come round also like that.

MR. CHAIRMAN: That stage will apply to those who do not get any chair.

SHRI A BALA PAJANOR: No. I may go this way or that way.

SHRI HARI VISHNU KAMATH: Mr. Bala Panjanor, it is more likely that you may have music without the chair.

16.06 hrs.

LOKPAL BILL—Contd.

SHRI HARI VISHNU KAMATH: Mr. Chairman, I was talking about the competent authority. The competent authority, Sir, is an original idea generated by the fertile brain of the Joint Committee, collective brain of the Joint Committee, but I do not know whether it will not add to the cumbrousness of the entire procedure and process of the entire institution, make for dilatory procedure. That means, in a way it will also make people think that we do not trust the discretion and judgment of the Ombudsman or the Lokpal himself. But if the competent authority should be there, has to be there, then the various authorities prescribed in the Bill—I am sure you will also agree with me, Mr. Chairman, not when you are there up above, but down below here—that some of them are preposterous, to use a very mild word. I do not know how, the Prime Minister can be the competent authority in his own case, the Deputy Speaker to be the competent authority in the case of the Speaker etc., it is very strange. We tried our best, some of us, to reverse it in the Joint Committee, but the majority did not agree

with this view that the Prime Minister should not be the competent authority in his own case, that the Deputy Speaker should not be the competent authority in the case of the Speaker etc. If at all there should be a competent authority, I personally think that in the case of the Prime Minister the competent authority should be the President, but unfortunately there is here a snag, a difficulty imposed upon us by the Constitution. Under the Constitution, the President is obliged to act on the advice of the Council of Ministers. So, I have suggested that the President in this particular case should act in his individual judgment, but for that purpose the Constitution may have to be amended. I do not know whether it is necessary, but if necessary it should be amended because the ARC in its first report, of which I spoke earlier, clearly states that at some stage the Constitution may have to be amended. They say in Para 37, and I quote:

“The Constitutional amendment and any consequential modification of the relevant statute can follow.”

So that, if necessary, a constitutional amendment may be brought in to enable the President to act in his individual judgment in this matter.

Or, the Vice-President should be the competent authority, because the Vice-President is not obliged to act on the advice of the Council of Ministers. There is no such obligation on the Vice-President, and in the Warrant of Precedence he stands higher than the Prime Minister, and therefore he should be the competent authority in the case of the Prime Minister. In the case of Members of Parliament, I suppose it is the Speaker. We can go into further details when the clauses are taken up.

There are two other features of the Bill as it has emerged from the Joint Committee to which I wish to refer. On the others I reserve my further

observations for the second reading. The ARC report was very positive that so far as the Secretaries to the Government are concerned, they should be brought within the ambit of the Lokpal Bill, and this is the argument given by the ARC

"A word may be said about our decision to include Secretaries' actions along with those of Ministers in the jurisdiction of the Lokpal. We have taken this decision because we feel that at the level at which Ministers and Secretaries function — I may use the phrase that they are often hand-in-glove with each other —

" it might often be difficult to decide where the role of one functionary ends and that of the other begins. The line of demarcation between the responsibilities and influence of the Minister and the Secretary is thin, in any case much depends on their personal equation and personality and it is most likely that in many a case the determination of responsibilities of both of them would be involved "

The present Home Minister is fortunate in one respect. He has been Secretary to many of the Ministries of the Government of India in his long career as a civil servant, and he had occupied that position in vital, key Ministries—the Defence Ministry

and also the Finance Ministry. You know certain episodes occurred when he was Secretary during those years in the Finance Ministry as well as the Defence Ministry. I suppose the first jeep scandal — not the latest scandal—of free India came to light when the present Home Minister was Defence Secretary. The Mundhra Episode also came to light when he was the Finance Secretary. He knows more about these things than I can presume to, and I should like him to consider this matter as to whether the Secretaries to Government—hand-in-glove as they are—should also not be

brought within the ambit of the Lokpal. This may be considered and he may himself bring forward an amendment so that the scope of the Bill will be enlarged. I think that without that, this Bill may defeat the purpose which it is supposed to serve.

One last word and I have done for the present. Later on, I may take up other matters. It has been suggested that the Members of Parliament should be excluded from the jurisdiction of the Lokpal. As a matter of fact, the ARC Report did not recommend the inclusion of the MPs or the Members of the State Legislatures within the ambit of the Lokpal and the Lok Ayuktas. But the Joint Committee has decided to include the Members of Parliament within the jurisdiction of the Lokpal. Now having incorporated the Members of Parliament in the provisions of the Bill, it would not be proper, to say the least for us as Members of Parliament to get it deleted because that will create an adverse psychological impact upon the people. If it had not been there, it would have been all right, but now that it is there it would be unfortunate if we oppose it without suggesting an alternative machinery for any complaints against the Members of Parliament. If we suggest an alternative machinery, that would be all right. But if we have a blanket opposition to the proposal, in view of the fact that two Members of Parliament have in the past been arraigned in the House as well as outside—one in 1951 and another in the seventies (*Interruptions*). My hon. friend, Mr. Somnath Chatterjee says that many more should have been done. I do not wish to say anything upon that. I have not been in the Lok Sabha for ten years. I am not as knowledgeable as he is about these matters. So, I would suggest that it would be impolitic and unwise to oppose this provision for enquiries into the complaints against the MPs unless we can suggest and devise an effective alternative machinery for going into the complaints against them.

SHRI CHITTA BASU (Barasat):
You can have Special Courts.

SHRI HARI VISHNU KAMATH:
You can suggest an amendment.

Finally one word. Many years ago, when the first report of the British Parliamentary Commissioner of Administration came in 1967 or so, he asked for more powers for the Ombudsman and that is what we would like to have for Lokpal. As a matter of fact, the powers that are to be conferred upon him will not be adequate for achieving the purpose which we have set before us in this Bill. The *Manchester Guardian* commenting upon that report had said—I remember, I happened to be in London at that time. I read that Editorial. It is an important report that has come and unless more powers are conferred upon the Ombudsman, he will no longer be an Ombudsman, the Ombudsman will become an Ombudsmouse." Regarding the Lokpal we cannot use the same phrase; we cannot use the word "mouse", it does not fit in.

With these words, I do hope, what I have said at this stage will commend itself to the Minister of Home Affairs and to my hon. friends, right, left and centre, so that necessary amendments will be made in this Bill, so that it will really become a Lokpal Bill, and create not a mere apologia an anemic substitute for a Lokpal. We want a vigorous, buoyant and vibrant Lokpal in this country because there are many problems, and abuses of authority are rampant. I am sorry to say that even after the Janata Party came to power, these things have not abated. I realise very well that corruption and these other things cannot be eradicated. But it should be minimised. The Lokpal cannot eradicate it but, I am sure, he will at least minimise it. We should give proper powers to this Authority and not depend too much on other authorities.

SHRI CHITTA BASU (Barasat):
Mr. Chairman, Sir, I rise to generally welcome the Bill because of the fact that this is an attempt to institute

an office of the Lokpal, in the name of Lokpal, to go into the charges of corruption against political and public men. While I welcome the Bill, I have got certain reservations particularly because the Bill does not go the way I wanted to go, because the Bill has got certain deficiencies and because the Bill cannot claim itself to be an effective instrument to eradicate corruption from public life in our country today.

Of course, it has been mentioned by our esteemed friend, Mr. Kamath, that the Lokpal Bill cannot eradicate corruption to the fullest measure. But an attempt to have an institution which can really play an effective role might combat corruption. According to me, at the present stage of development of our country and society, it is an insignificant step particularly in view of the fact that in the last 32 years, there has been no effective effort in this direction. So, I welcome this Bill only to that extent, not beyond that, not more than that.

There has been an attempt on the part of the Janata Party to introduce the Bill and to refer it to the Joint Committee to establish an institution which would go into the charges of corruption against public men. But there are many snags in it. The Joint Committee in its wisdom has made certain changes. I do not doubt their *bona fides* or integrity as members of the Joint Committee. Why I am constrained to make this general observation is that the Joint Committee in its wisdom has reduced or rather lessened some of the effectiveness of the original Bill. The Bill envisages an office of the Lokpal who is to take certain action against public men on charges of misconduct. There are two crucial aspects, namely, the definition of "public men" and the definition of "misconduct". In these two crucial aspects, I find, there has been substantial departure made from the recommendations of the ARC. I do not want to go into the details because it has been adequately dealt with by my esteemed friend, Mr. Kamath. It is also found that there has

been some departure from the original Bill itself in the matter of defining public men and in the matter of defining mis-conduct. I would only draw your attention to the Joint Committee's Report regarding Clause 3. It says that the Committee notes the definition of mis-conduct proposed in the Clause is too wide and is therefore liable to be amenable to different interpretations. That is the crucial point, of what constitutes "mis-conduct". I think there are many sound case laws, during these 30 years, which were created by several Commissions appointed under the Commissions of Inquiry Act, 1954; and, at this stage, I am tempted to go into certain observations made by the Das Commission in connection with Kairon's case, wherein the Commission mentioned about mis-conduct, corruption, etc. It says :

"Mis-conduct on the part of a public man shall cover not only corruption of the kind made punishable by the Prevention of Corruption Act, 1947, but extends to corruption in its ordinary etymological meaning, signifying rotten, putrid or impure act or conduct."

So, if the object of the Government is to combat corruption, to fight corruption, to create a congenial atmosphere of clean administration, of a clean life of public men, then this concept of mis-conduct should be widened. My grouse against the Joint Select Committee is that instead of expanding the scope of the Bill, it tends to restrict the operation of the Bill, to restrict the area of operation of the Bill, restrict the operation of the Bill or the Act itself.

Therefore, my first point is that this definition of mis-conduct should be sufficiently wide to cover all aspects of corruption, particularly violation of norms which ought to be followed by a class of public men, to which class they are attached. That is the important and crucial thing. Suppose a Member of the Council of Ministers has certain norms to follow, if he does not follow a particular

norm, certainly it constitutes an act of mis-conduct. Similarly, a Member of Parliament is supposed to have certain norms of conduct: if a Member of Parliament does not behave in accordance with those norms of conduct, the Member of Parliament is liable to be charged with mis-conduct.

Therefore, if we have a social view of the problem instead of having a partisan view of the problem, then the definition of 'mis-conduct' has the greatest significance. My grouse against the Joint Select Committee is that, instead of having a social view of the problem, they have been guided by the consideration of a partisan outlook. This means they did not understand that implication of corruption in our life and the impediments in the way of establishing a clean political life and a clean administration.

A point may be raised that the norms cannot generally be incorporated in the Act. Here I would only like to mention certain Acts which mention the norms in the Acts themselves. Section 45 of the Army Act of 1950 makes it an offence for any officer, Junior Commissioned Officer or Warrant Officer, to behave in a manner unbecoming of his position and the character expected of him. In the Advocates Act also it is said that a particular advocate can be punished or censured if his behaviour is not in accordance with the norms of the profession he belongs to.

Therefore, I do not understand why the Joint Committee disagreed with the idea of having a particular norm to be followed by a public man, including Members of Parliament. Therefore, my feeling is, as I have already mentioned, the Joint Committee did not take a social view of the problem but it rather took a partisan view of the problem. That is the basic weakness of the Bill.

Coming to the second area, that is, 'public man', I would only join my voice with what has already been mentioned by many hon. friends.

[Shri Chitta Basu]

Bureaucrats are willing partners in corruption. The hon. Minister knows the mechanism, how a civil servant helps or abets in the practice of corruption at the South Block or North Block level. He should share his experience with us, and should try to plug the loopholes.

Then I come to 'Competent authority'. Again there has been some restriction here. A particular attitude has been taken towards Members of Parliament and Legislature. Dealing with the misconduct of the legislators is different from that of the ordinary citizens. This has already created an impression among the people that the Members of Parliament and Legislature are always prone to protect themselves; while they accuse the people outside, Members of Parliament and Legislature are prone to protect themselves under a protective umbrella. Therefore, this is another deficiency. By this, we do not set an example, we do not enthuse the people of our country that the Members of Parliament also have a certain responsibility to create a climate for combating corruption.

Then, the Prime Minister is going to be the competent authority in his own case. So far as the Chief Ministers are concerned, under certain conditions, they should also be brought under the purview of this legislation. This has been proved necessary particularly after the Grover Commission's report. The Grover Commission submitted a report. The Government of the day under the law, cannot but remit it to the same Government, to the same Chief Minister, to take necessary follow-up action. That means, there will be no follow-up action of the Grover Commission's report. This is absurd. Therefore, there should be some mechanism provided in this Bill to bring in the Chief Ministers under the purview of this legislation.

Regarding implementation of this Bill, I have got an apprehension which I would bring to the notice of the House. My apprehension is that this will ever remain a non-starter because it is so restrictive, the mechanism is so complicated, that it will remain a non-starter. Therefore, at this stage, I also want to be assured that it shall not remain a non-starter but it will become a starter.

श्री कंवरलाल गुप्त (दिल्ली सदर)
सभापति जी, मैं माननीय गृह मंत्री जी को बधाई देना चाहता हूँ कि जो विधेयक 12 साल से अभी तक सदन के सामने नहीं आया था, कोल्ड-स्टोरेज में रखा हुआ था, उसे जनता पार्टी पहली बार यहाँ लायी। मुझे मालूम है, हमारे इधर के साथी कई बार जनता पार्टी को दोषी ठहराते थे कि आप जान-बूझकर लोकपाल बिल नहीं ला रहे हैं। वह तो कभी इस बिल को लायेही नहीं, लेकिन आज उनकी उस बात की हालोनेस, कि जनता पार्टी लोकपाल बिल नहीं लाना चाहती, जनता के सामने आ गई और आज यह बिल इस सदन में डिस्कस हो रहा है। जनता पार्टी के मंत्री इस बिल को लाये हैं, मैं उसके लिये उन्हें पूर्णतया बधाई देना चाहता हूँ।

पहले केवल लोकपाल की बात की गई थी। लोकपाल बिल भी आया, इन्ट्रोड्यूस भी हुआ, लेकिन वह सरकार उसको पारित करना नहीं चाहती थी। जनता पार्टी इसको पारित करने के लिये सदन में लाई है। जनता पार्टी जो कहती है, वही करती है। पहले की सरकार जो कहती थी, वह करती कुछ और थी और सोचती कुछ और थी।

सबसे बड़ी बात इस बिल में यह है कि प्रधान मंत्री को भी इसमें शामिल किया गया है। पहली सरकार जो बिल लायी थी उसमें प्रधान मंत्री शामिल नहीं थे, प्रधान मंत्री को उन्होंने अलग रख दिया था कि प्रधान मंत्री अगर कोई मिस-कंडक्ट करता है या करणन करता है या करती है तो वह लोकपाल के पास नहीं जायेगा, यानी प्रधान मंत्री में वह दूसरे मंत्रियों में और संसद-सदस्यों में भेदभाव किया गया था। जनता पार्टी के प्रधान मंत्री ने पहली बार यह बात बतायी कि कानून के सामने चाहे प्रधान मंत्री हो, चाहे मंत्री हो या कोई भी संसद-सदस्य हो, अगर कोई कानून को तोड़ेगा मिस-कंडक्ट करेगा, करणन करेगा तो लोकपाल के सामने उसकी बात रखी जायेगी और सजा दी जायेगी। यह नहीं हो सकता कि अगर कोई प्रधान मंत्री है और वह करणन करता है तो उसको तो सजा न दी जाये और जो दूसरे मंत्री हैं, उनको सजा दी जाये। इन दोनों का भेदभाव जनता प

ने हटाया, उसके लिये भी मैं मन्त्री मण्डल को बर्धाई देना चाहता हूँ। गृह-मंत्री भी सरकार के न्यायन्त्री ही हैं, इसलिये मैं गृह-मंत्री और सरकार दोनों को ही बर्धाई देना चाहता हूँ।

इसमें चीफ मिनिस्टर्स को भी इन्क्लूड किया है। मुझे मालूम है कि कई लोगों को इस बात का एतराज होगा कि चीफ मिनिस्टर को इसमें दाखिल करने से हमारे अधिकार का हानन किया गया। लेकिन अगर हम पिछले 30 साल की हिस्ट्री देखें तो आखीर में यह कानूनी बात भी साबित हो गई कि केन्द्रीय सरकार चीफ मिनिस्टर को इन्क्वायरी करा सकती है, सुप्रीम कोर्ट की रूलिंग भी आ गई, अटार्नी जनरल की रूलिंग भी है और इसके अतिरिक्त 30 साल का जो चीफ मिनिस्टर्स का इतिहास है वह उठाकर देख लें। कैरों को देखें, बंसीलाल को देखें, देवराज अंस को देखें, कितने ही मुख्यमंत्री हैं जिनके खिलाफ करप्शन के कमीशन बनाये गये और आखिर में यह सिद्ध हुआ कि चीफ मिनिस्टर्स कई मामलों में करप्शन के शिकार हैं। इसलिये यह जरूरी था कि केन्द्रीय सरकार चीफ मिनिस्टर्स को इस लोकपाल बिल के अधीन लाती और यह ठीक लाया गया है। किसी राज्य सरकार का अधिकार केन्द्र में आये, यह कोई इस भावना से नहीं किया गया है बल्कि स्वच्छ प्रशासन हो, क्लीन एडमिनिस्ट्रेशन हो और बेईमानी न हो, इस चीज के लिये यह जरूरी था कि चीफ मिनिस्टर्स भी इसमें आये और मैं समझता हूँ कि यह एक बहुत अच्छा काम है और राइट डायरेक्शन में यह कदम है। उसको इसी स्पिरिट में लिया जाना चाहिए। यह नहीं सोचना चाहिए कि उन्हें करप्शन करने दी जाए। अगर कैरों साहब, बंसी लाल और देवराज अंस के खिलाफ कमीशन न बिठाये जाते, तो क्या वे खुद अपने ऊपर कमीशन बिठाते?—कभी नहीं बिठाते। अगर माननीय सदस्य चाहते हैं कि राज्य सरकारों में भी करप्शन हटे, तो चीफ मिनिस्टर को इसमें शामिल करना चाहिए।

लेकिन इस बिल का एक लिमिटेड परपज है। मैं इसको बहुत ज्यादा महत्व नहीं देता हूँ। जैसा कि कहा गया है, हमारे देश में ऐसे 75 मानोपली हाउसिज हैं, जिनके पास दस करोड़ रुपये से ज्यादा है। अगर ईमानदारी से एसेसमेंट हो और ठीक तरीके से एनक्वायरी कराई जाये, तो ऐसे पालिटिशन्ज 75 से ज्यादा निकलेंगे, जिनके पास करोड़ों रुपये हैं।

एक माननीय सदस्य : वे उधर बैठते हैं।

श्री कंबर लाल गुप्त : मैं उधर या उधर की नहीं कहता हूँ। मेरी निगाह में कोई भी पार्टी इससे छूटी हुई नहीं है। मैं यह नहीं कहना चाहता हूँ कि एक पार्टी अच्छी है और दूसरी खराब है—डिग्री का फर्क हो सकता है। लेकिन

आज जनता के सामने पालिटोशन्ज का इमेज अच्छा नहीं है, जिस तरह का होना चाहिए, वह नहीं है। यह प्रिज्यूम किया जाता है कि वह तो करप्ट होगा ही। पिछले तीस साल में हमारा आचरण इसी तरह का रहा है।

करप्शन की समस्या केवल कानून बनाने से हल नहीं होगी। जब पोलिटिकल पार्टियां यह जानते हुए कि कोई आदमी करप्ट है, उसको टिकट देती हैं, उस को मंत्री और मुख्य मंत्री बनाती हैं, उसको और पद देती हैं, तो फिर करप्शन का विरोध किस तरह होगा? जब तक जनता में करप्शन के प्रति हेड्रिड की भावना पैदा नहीं होती है, इस बारे में पब्लिक को एजुकेट नहीं किया जाता है, तब तक ऐसे बिलों से काम नहीं चलने वाला है। इस बिल का एक सीमित उद्देश्य है कि अगर कोई व्यक्ति शिकायत ले कर लोकपाल के सामने जायेगा, तो उसकी एनक्वायरी की जायेगी।

मेरी मांग है कि लोकपाल की प्रोसीड्ग्ज पब्लिक होनी चाहिए। शाह कमीशन का क्या हुआ। इन्दिरा जी के खिलाफ दो साल तक कार्यवाही चलती रही। उसके बाद मुकदमा कहां से शुरू हुआ?—मैजिस्ट्रेट से। इसमें काफ़ी देर हो गई। अगर लोकपाल की रीकमेंडेशन में कोई दोषी पाया गया, तो पहले पुलिस के यहां कम्प्लेंट दायर होगी और फिर मैजिस्ट्रेट के यहां केस चलेगा। उसमें और भी देर होगी। पब्लिकमैन को सब से बड़ी सजा इसी तरह दी जा सकती है कि लोकपाल के सामने उसकी पब्लिक हीरारिंग हो, बाकि उसका सही रंग-रूप जनता के सामने आये। इसलिए गृह मंत्री से मेरी पहली मांग यह है कि जो भी कार्यवाही हो, वह पब्लिक होनी चाहिए, इन कैमरा नहीं होनी चाहिए।

इसमें पालियामेंट के मेम्बरों को रखा जाये या नहीं, यह विवाद की बात हो सकती है। इसमें ईमानदाराना दो राये हो सकती हैं। मैं नहीं समझता कि पालियामेंट के मेम्बरों को कोई अधिकार प्राप्त है। उन्हें इस बिल में शामिल किया गया है, लेकिन उन्हें काफ़ी प्रोटेक्शन दी गई है। मिसकन्डक्ट की डेफिनीशन पालियामेंट के मेम्बरों के लिए अलग है और मंत्रियों के लिए अलग है। श्री चित्त बसु ने कहा कि मिसकन्डक्ट और करप्शन की डेफिनीशन और वाइडन होनी चाहिए। मेरे ब्याल में ऐसा नहीं करना चाहिए। अगर इसको ज्यादा वाइडन किया जायेगा, तो कोई मंत्री फाइल पर हस्ताक्षर नहीं करेगा और उसका इनिशिएटिव खत्म हो जायेगा। ऐसा भी हम नहीं करना चाहिए कि सारे देश में और सारी दुनिया में ऐसा वातावरण हो जाए कि हिन्दुस्तान में सारे ही करप्ट हैं। साथ ही उनका इनिशिएटिव भी समाप्त नहीं होना चाहिए। इसलिए जो परिभाषा मिसकन्डक्ट की मिनिस्टर्स के लिए है वह ठीक है और पालियामेंट के मेम्बरों

[श्री कंवय लाल गुप्त]

के लिए है वह ठीक है और पार्लमेंट के मेम्बरों के लिए है वह भी ठीक है पार्लमेंट के पास जो शिकायत जायेगी वह स्पीकर या प्राइम मिनिस्टर के पास जायेगी और उसके बाद लोकपाल के पास जायेगी। अगर कोई दोषी पाया जायेगा तो कार्यवाही की जायेगी। मैं समझता हूँ उसके लिए काफी सेफगार्ड्स हैं और उसका भी मैं समर्थन करता हूँ।

इस बिल में एक चीज का अभाव है। जैसी कि ए आर सी की रिपोर्ट है और जैसा कि कामत साहब ने भी कहा है कि पब्लिक ग्रीवांसेज के लिए आपने क्या कार्यवाही की है? ठीक है, आज आप मिनिस्टर के खिलाफ कार्यवाही कीजिए, मेम्बर पार्लमेंट के खिलाफ कार्यवाही कीजिए लेकिन आज जनता पिस रही है, सरकार ने इतने कानून बना दिए हैं, आज मंत्री, सेक्रेटरीज और दूसरे आफिसर्स को चिट्ठियाँ लोग लिखते हैं लेकिन उनका कोई जवाब नहीं आता है। लोग शिकायतें कहते हैं लेकिन उनको दवा लिया जाता है। आखिरकार इनका क्या इलाज है? जो पब्लिक ग्रीवांसेज हैं उनका क्या इलाज है? जैसे जैसे समय बीतता है, जनता की गरदन पर सरकारी पंजा ज्यादा मजबूत होता जाता है। इसलिए पब्लिक ग्रीवांसेज को दूर करने के लिए जब तक कोई इंस्टीट्यूशन नहीं होगा तब तक काम चलने वाला नहीं है। आप ए आर सी की रिपोर्ट देखें—मोराजी भाई स्वयं उसके अध्यक्ष थे—उन्होंने स्वयं कहा है कि पब्लिक ग्रीवांसेज को दूर करने के लिए कोई अलग इंस्टीट्यूशन होना चाहिए। मैं गृह मंत्री जी से पूछना चाहता हूँ कि पब्लिक ग्रीवांसेज के सम्बन्ध में, सरकारी ढांचा जो इतना टेढ़ा-मेढ़ा है, कोई आदमी कौन सा दरवाजा नाक करे? मेरे पास परसों ही एक केस आया जिसमें किसी लड़की को जला दिया गया था। वे लोग एक दरवाजे से दूसरे दरवाजे घूमते रहे। वे मंत्री जी के यहाँ गए तो मंत्री जी के पी ए ने भी उनको धक्का दे दिया। आखिर ऐसे लोग कहाँ जायें? जब तक ऐसी ग्रीवांसेज दूर करने के लिए कुछ नहीं होता है तब तक मैं समझता हूँ यह काम अधूरा रहेगा। मैं मान सकता हूँ कि इस बिल के जरिए से यह काम नहीं हो सकता है लेकिन कम से कम आगे कोई बिल लाने का आप अथॉरिटी हैं और बतायें पब्लिक ग्रीवांसेज को दूर करने के लिए भी कुछ किया जायेगा।

जहाँ तक सेक्रेटरीज का सवाल है, सेलेक्ट कमेटी ने सरकार से प्रार्थना की है कि वह अलग से बिल लाये जिसमें सेक्रेटरीज, स्पेशल सेक्रेटरीज और एडिशनल सेक्रेटरीज शामिल किए जायें। मैं कामत साहब से इस बात में सहमत हूँ कि मंत्री और सेक्रेटरीज के बीच का रिश्ता इतना चारिक है जिसमें यह कहना मुश्किल है कि किसने क्या किया। आशा थी कि सरकार इसमें कुछ करेगी। ज्यादा समय मैं नहीं लेना चाहता

मैं चाहता हूँ कि जनता की ग्रीवांसेज को दूर करने की तरफ मंत्री जी जरूर ध्यान दें।

सभापति महोदय, यह लोकपाल बिल जो लाया गया है, यह दुनिया के इतिहास में अन-परेलैल्ड है। किसी भी देश ने ऐसा बिल नहीं बनाया है। खास तौर से 50 लाख या 1 करोड़ की आबादी वाले जो देश हैं जहाँ लिमिटेड स्कोप है वहाँ भी इस तरह का व्यापक बिल नहीं बनाया गया है। इसके लिए मैं जनता पार्टी तथा जनता सरकार को बधाई देता हूँ और आशा करता हूँ कि मेरे जो दो तीन मुझाब हैं उन पर मंत्री जी विचार करेंगे और इस सदन को विश्वास दिलायेंगे कि इस तरह का एक व्यापक विधेयक सदन के सामने लाया जायेगा।

SHRI P. K. DEO (Kalahandi):
Mr. Chairman, Sir, I am the happiest person today because I see that a legislative measure over which I have been striving for the last more than twenty years is going to see the light of the day. At least it has come to consideration stage and I hope that it will be passed and it will find a place in our statute-book.

Sir, in this regard I would like to congratulate Shri Morarji Desai, our Prime Minister, who happened to be the Chairman of the Administrative Reforms Commission and Shri H. M. Patel, the Home Minister, who has the Swatantra background. I mention 'Swatantra background' because it was the Swatantra Party that propagated the idea of having an institution like the Lok Pal since the year 1960. This was done at the inspiration of no less a person than Shri Rajaji, the relentless crusader against corruption. He drafted the party's statement which was adopted on the 19th of March, 1960. That paragraph says:

"The Party is of the view that, while efficiency of administration is necessary, its integrity is the very essence of good Government. It will therefore endeavour to set up a supreme authority to whom an appeal can be made by individuals who suffer injustice as a result of administrative action such as cannot be remedied otherwise. There

is necessity for such an authority, where Party government prevails. There is precedent for it in the countries of Scandinavia where the Ombudsman is a non-Party man elected by Parliament and invested with wide powers of investigation and access to official papers. He is an officers of very high status and acts on the complaint of any citizen who has a grievance and seeks justice."

Sir, in 1966 the Administrative Reforms Commission was set up at the initiative of our then Prime Minister, Shri Lal Bahadur Shastri. Shri H. V. Kamath happened to be a Member there. He has related the entire history and how they gave this recommendation first priority for the setting up of an institution like the Ombudsman in this country.

Sir, as is the usual case, when confronted with inconvenient recommendations, the Government at that time dragged its feet. Perhaps in the context of the Permit-Licence-Quota raj at that time, they were reluctant to implement this measure, which is quite understandable. It was kept in cold storage. I thought it to be my Parliamentary duty—and it was under the compulsion of my conscience—that I should bring an identical non-official Bill and I brought it and it got priority, it was classified in 'A' category and it came up for discussion. You will be surprised to know that at that time the Government did not advise the President to give his recommendation for its consideration in the Lok Sabha as it involved financial commitment. Though it is an usual practice that *suo motu* such recommendations should come from the President, this was denied to me. At the same time, I thought that this Bill should not be scotched at that stage and I moved the motion for eliciting public opinion and it came up for discussion in this House and I was surprised that the leader of the Opposition—who has been declared just now—Shri Y. B. Chavan, who has now been elevated to the status of the leader of the

Opposition, happened to be the Home Minister at that time and he strongly opposed this very Bill. At that time, it was to be taken up for discussion, elicit public opinion and was pressed for vote. On the 1st December, 1967, it was pressed to vote and for the first time, in the history of this Lok Sabha the Government was defeated on a substantive motion of a Private Member. The Government lost by 48 to 46 votes and my motion was carried and it was circulated for eliciting public opinion; favourable opinion came from all over India. Those high priests who talk of eradicating corruption, once they go to the ivory tower, once they become Ministers, become blind to the realities. They become *वृन्तः* they become blind their own sons and sons-in-law and their own relations are to make hey while the Sun shines. So, we expect that these Ministers who preside over the destiny of this nation when elevated to that position should be like Caesar's wife. They should be free from corruption and set such moral standard that would inspire confidence in public men. But, Sir, our misfortune in this country is very unpalatable; the experience is very said. So many Commissions have been instituted. They have pointed their fingers at the guilty men, but they now adorn the helm of the affairs they are now in power and position and unless the various recommendation of the Commissions of Inquiry are followed up, unless follow-up actions are taken it is no use to have Commissions of Inquiry, to have those reports to be kept in the cold-storage of the archives of the Government of India. So, I must respectfully submit that when the Commissions of Inquiry give their report, there should be usual follow-up action. Otherwise any recommendation of the Lokpal will be completely redundant because under this legislation, he has to make a certain recommendation as to whether there is a *prima facie* case against that particular person and that report has to be submitted to the Parliament, and ultimately the Parliament has to

[Shri P. K. Deo]

decide what action the Parliament is going to take, whether prosecutions are to be instituted or whether it should be further investigated, etc. But I find that if the attitude of the Government would be like the various commissions of Inquiry, this institution will have absolutely no significance. Now, two points have been highlighted by the Administrative Reforms Commission, that is, regarding complaints and grievances, complaints against various administrative measures or against individuals and grievances of the public men. This Bill, as it has emerged from the Joint Committee, lacks in remedy so far as the grievances of the public men are concerned. I do not want to complicate this matter at this stage because I want that this should immediately be passed and should find a place in the Statute Book of this country and the institution of Lokpal should start functioning in right earnest and as we see it working, we may bring necessary amendments to improve the Bill. I am sure, the Home Minister will give a serious thought so far as finding a remedy for grievances of the public men is concerned.

17 hrs.

I entirely associate myself with the sentiments expressed by most of the hon. Members that it would be wrong to exclude the Secretaries and bureaucrats from the purview of this Bill as they are a part of the administrative machinery and are supposed to give advice and aid the Minister in arriving at a decision. That is why, most rightly the Administrative Reforms Commission recommended that they should be included in this. If you do not want to include the Secretaries, why in the Special Courts, you are trying to hunt after the ghost of Mr. R. K. Dhawan, Mr. Bhinder and others. They are also bureaucrats. I would, therefore, urge that so far as administrative matters are concerned, the Secretaries should equally be responsible like the Ministers.

As regards the Members of Parliament, I have nothing to say. This was a new thing which was initiated by Shri Charan Singh, who happened to be the Home Minister when this Bill went to the Joint Committee for scrutiny. The reply that he gave to my non-official Lokpal Bill in this Lok Sabha goes to prove that he was very particular to include the Members of Parliament. I do not know what administrative power or executive authority the Members of Parliament exercise. Hardly they exercise any executive authority except endorsing a passport or giving a caste certificate or making some recommendations. Besides that, they usually function in the House and take part in the various legislative measures. The most important thing to which the Members of Parliament or legislature are susceptible is the political corruption, when there is political horse trading, when the legislators become a purchasable commodity, when they change their loyalties and change their parties. We see this horse trading very often in the various State assemblies; that game has now started here. However, in the Janata platform, we find that there has been mutual recrimination between various leaders; it is most disheartening. At least, political honesty should be observed by the Members of Parliament or the Members of the legislatures. If we lack in character, lack in morality, we have got no right to continue to be legislators either in the Parliament or in the Assemblies. For that, the only remedy would be a political remedy. If they go on changing sides, they should automatically lose their MP-ship or MLA-ship. For that, if necessary, the electoral laws have to be amended.

Coming to collection of funds, my observation will be incomplete unless I read a few lines from President Sanjiva Reddy's remarks while addressing the 52nd annual session of FICCI in New Delhi on 31-3-1979. It says here:

"Mr. Reddy made a blistering attack on politicians who, he said,

collected black money for their parties and business men who wanted to be in their good books. These two groups worked in collusion and created chaos. He said individuals had started collecting funds now and it was not known to the party president 'who collected and how much. This permits vested interests to have a stranglehold over administration.' "

So, taking all these various aspects into consideration, I most respectfully submit that my friend Shri H. M. Patel should see that this Bill, when it is passed, is made fool-proof and that the various suggestions made by Members should be incorporated at the stage of clause-by-clause consideration.

SHRI JAGANNATH RAO (Berrampur): Mr. Chairman, Sir, I am afraid this Bill does not go far enough to root out corruption, either in high places or in public life.

When Chaudhuri Saheb was the Home Minister and introduced this Bill, I had high hopes that the Bill would be effective in achieving its objectives. But the Bill as it has come out of the Joint Select Committee, has been completely watered down. I think the objective which was there when it was introduced in this House, will not be achieved.

I also agree that corruption cannot be checked or eradicated mainly by passing laws. It is a code of conduct which every public man has to observe. We have to build up a code of public morality and political ethics. Every political party has a responsibility in this respect. It is not merely to be left to the Government to pass a law, to check corruption. We can check a few cases, but corruption will remain.

This Bill applies only to Ministers and Members of Parliament. It is well known that Ministers act on the advice of the Secretary or the Joint Secretary. There is no point in excluding them from the purview of this Bill. Without officers, Ministers cannot do anything. The former are a

part and parcel of the machinery and it is not proper to exclude them. Therefore, an amendment should be introduced, bringing in Secretaries and the officers concerned—if not in this session, but it can wait till the next session.

The most important thing is redressal of public grievances. Every public man speaks of the common man. The common man is over-diagnosed but he is under-treated. When we pass a law, we forget the common man. Is there a provision in this Bill to attend to public grievances? Do you know how much the local officers harass the people in villages? It is necessary that our statements are taken by the people as honest or *bona fides* ones. So, I would request the Home Minister to make a provision, by an amendment in this very Bill, to give powers to the Lokpal to hear public grievances and give them instant redress. That is highly necessary. Then I come to the question of a competent authority. According to me, there is no need for a competent authority. The Lokpal is a highly paid officer, a man of integrity. When he is discharging certain duties, he should be clothed with all the powers even of a High Court Judge. He should have all the powers of a court—a criminal court or a civil court. It is not merely to go into the question whether there is a *prima facie* case against a Minister or a legislator. For that, why should there be such a highly paid officer? He should have all the powers himself to pass a sentence which he thinks fit. Under the proposed Bill, the competent authority will receive the report. He is given three months' time. He will examine the report and take such action as he thinks fit. This report is being reviewed by a competent authority. Here I do not agree. The scheme itself is not sound. Therefore, you omit the clause of a competent authority and cloth, the Lokpal with all the powers required so that he can go into the question and pass sentence.

[Shri Jagannath Rao]

Secondly, the Bill has no teeth in it. What is the punishment that the Lokpal can give? He cannot give any punishments under the Bill as it stands today. He only reports. Then for what purpose all this paraphernalia of Lokpal is there? You also give him the machinery to enforce his own orders. If he passes a sentence against a person for an offence proved before him, he should have the right to pass a sentence and see that it is executed by his own machinery. That will serve the purpose of the Bill. Otherwise, simply getting a report and passing it on to the competent authority will lead us nowhere. If the competent authority clause is to be retained in respect of the Prime Minister, then as suggested by my friends, it should be the President or the Vice-President, but not the Speaker, much less the Prime Minister himself. He cannot be a judge of his own case. I do not know how this amendment was introduced by the Government where the Prime Minister will be a party to it, will be a judge in his own case. Therefore, if this competent authority clause is to be retained, I would suggest that in respect of the Prime Minister, it should be the President or the Vice-President. The President would not be acting under the Constitution. Only in that case, he is bound by the advice of the Council of Ministers. It is not coming within the purview of the Constitution; it is outside the Constitution. As a first citizen of the country; he can exercise his discretion.

In respect of the Members of Parliament, this should also be there. We are all public men. We are open to criticism. Therefore, we should also subject ourselves to the scrutiny. If a complaint is made against anyone of us, if anyone of us has committed any misconduct, then certainly we should be punished. We should not feel shy about it. To say that a separate forum should be created for us is not correct. I do not agree be-

cause we are creating an institution for this purpose. Therefore, that institution should have the jurisdiction to try such MPs, who are guilty of misconduct. Therefore, any argument in respect of this would not appeal to me and I would not be a party to it.

When a question of misconduct is considered either in respect of a Minister or a legislator, the same norm should be applied. In respect of misconduct, we have given certain conditions for a Minister, but for a legislator, we have given a separate standard. This, according to me, would not be correct. A legislator would have a narrow scope to come under misconduct while the Minister will have a wider scope to commit misconduct. He may be guilty of several cases of misconduct whereas a legislator may be guilty of one case or two cases. If there is any misconduct, the same norm should be applied in both the cases.

As I said, this Bill has no teeth in it. What is the remedy? What is the punishment that the Lokpal should inflict. Suppose a Minister is found to be guilty of misconduct. He has no power to impose any punishment. At least the Bill should contain a clause which empowers the Lokpal to disqualify a Minister or a legislator for his misconduct for a period of six years for standing in election. That should be there that is not there. In the case of a criminal offence, the criminal court should take care of it. In the case of Mr. Tulmohan Ram, MP, the criminal prosecution was launched. Against Mudgal, the Committee of the House had decided that his conduct was unworthy of a Member of Parliament. Therefore, he was expelled from the membership of the Lok Sabha for the rest of the term of the Lok Sabha. Therefore, when we want to judge others, we should also judge ourselves by the same standard. That is why this Bill should give that power to the

Lokpal to at least disqualify a person who is found guilty of misconduct from standing for election for a period of six years, as you find under the Representation of people Act when the offence of corrupt practice is proved. Several commissions of enquiry have been appointed against ministers and Chief Ministers. What happened? They have come back with a bang; nothing has happened. From past experience we should learn and then pass the law. It should be effective so that we can achieve the purpose for which the law is enacted. The Bill as it is will be ineffective and will not serve the purpose. So it should be amended to remove the lacunae so that the Bill could be improved and it could take care of the situation it should invest Lokpal with the powers of the criminal court and the civil court. The Supreme Court has said that the commission of enquiry is not a court. So also Lokpal will not be a court though he is given some powers under the code of civil procedure for production of documents which is not sufficient. Therefore, you should give him powers if you mean business; if you intend to do what you want to do. Create a Lokpal and give him all the powers necessary so that he can be effective and discharge his functions and achieve the objective for which this Bill was introduced. Otherwise, it will only be a farce and the purpose will not be served. Corruption will continue; nobody can eradicate corruption. Gulzarilal Nanda was the Home Minister in the sixties; he used to proclaim from housetops that he would eradicate corruption from public life; otherwise he would go. He went corruption remained. When Chaudhary Saheb came speaking on the demands of the Home Ministry—I was in the Congress then—I repeated this. Kamath used to say jocularly that Nandaji had become the clearing house of all corruption in the country. He could not clear corruption; he cleared himself. This is a good step taken by the government to eradicate corruption. The real cause of corruption is the costly expenditure on election. Elections should be made less

expensive and government should bear a major part of the election expenses incurred by the political parties so that the greed or incentive to collect money by political parties for the purpose of elections would not be there. That would be a major step that would prevent corruption in public life. I also appeal to all political parties to come together and evolve a code of conduct of political ethics and public morality. If everyone dedicates himself to lead a clean life as a public man, certainly corruption would be eradicated. I appeal to the Home Minister to consider these points and come forward with necessary amendments to this very Bill, and not say that they would bring another amending Bill at a future date; God knows when the future Bill will come. It should be done in this Bill itself.

MR. CHAIRMAN: Before I call on the next Member to speak, I should inform the House that the time allotted for this Bill is upto 5.50. A number of Members want to speak.

SOME HON. MEMBERS: Time should be extended by two hours.

SHRI C. N. VISVANATHAN (Tirupattur): Extension by two hours is a reasonable time.

MR. CHAIRMAN: I think the sense of the House is, for discussion of this Bill, two hours time will be extended at the consideration stage. Of course, it will depend upon the business when it finds time to-morrow or the day after. Extension will be for two hours for general consideration including the reply of the hon. Minister.

I propose that hon. members should be brief and should not go beyond ten minutes in any case. Only in that case I can accommodate most of the members. I cannot say that all of them will be accommodated.

Is it the pleasure of the House to extend the time for two hours?

SOME HON. MEMBERS: Yes.

MR. CHAIRMAN: The time is extended by two hours.

SHRI GEV M. AVARI (Nagpur): This Bill is engaging the attention of the whole country because it touches a every sensitive area—corruption in public life. All the members have said many things. But one thing remains pertinent, earlier in the Administrative Reforms Commission when Shri Desai was the Chairman it was said it would be nice to have Lok Pal to go into the conduct of any person at higher levels. But now when this Bill has come, this time very sweet sounding to ear but in meaning very sharp words have been added "political high level" only. When this is so a doubt comes to our mind, why only political high level, why not official and other high level also. Therefore, this demand has been made by many members that officials should not be left out from the purview of this Bill because otherwise we will have many of our doubts. We know in democracy officials and persons at political levels go together. We know in democracy people are sovereign. In the set up of political democracy which we have today, I think officials are having more of a say, and especially when the present Janata Government is finding itself shaky, when the Government is not very strong, is not very assertive, the officials rule the country. We find to-day that is after 1977 the officials are almost ruling every where. Many times we find Ministers saying "I cannot do anything because the officer or Secretary says it cannot be done." He puts it in the Minister's head. Minister is very busy. Therefore, it cannot be done. The officials have been left out of the purview of the Bill I have not been able to know the logic behind it. Why do you want to leave the officers? Do you consider bureaucracy as not being a part of democracy. Do you consider that bureaucracy is not at all a high level? What is the reason behind it that you are leaving them? The first thing is that officials must be included in it and suitable words added with the word 'political' which has been brought in. That must be changed.

Corruption is at high level, whether it be very high officials or Military Generals. We know to day that in many of the democratic countries are run by Military Generals. Do you think that no General can rule India at all? In the political instable situation that is arising to day any General can do that harm to day. Therefore, even people of military service, civil service, foreign service, all of them should be added to this. That is our first demand.

Secondly, you have added Members of Parliament. Of course, the whole House has strongly put its opinion that Members of Parliament should not be added to it, firstly because the Members of Parliament have no executive power. Today we find that the Members of Parliament, Members of Legislative Assemblies, Members of Municipal Corporation, all these people are almost acting as a shock absorber. They have to go to the public. If anything goes wrong or anything wrong is done by the Government or the Minister, public is angry. Who gets beating? It is the Members of Parliament of the ruling party, it is the Members of Parliament or the Members of Legislative Assembly who get beating. It is the Member who absorbs shock. And then again you bring him under his purview and say that the conduct of M. P. should be gone into by the Lok pal. I think that is very unfair. If at all Members of Parliament behave badly or if at all Members of Parliament have any misconduct, if at all Members of Parliament indulge in corruption, there are other avenues to punish him. The best part of it would be to set up the House Committee. It could be set up to punish Members of Parliament. Many members have quoted instances when Members of Parliament were severely punished. I think this purview should be taken out. Again I have a doubt because it is bureaucracy at large which is always against the Members of Parliament, against the whole parliamentary democratic struc-

ture, because of late bureaucracy seems to have become more of a vested interest, more than the monopolies and multi nationals.

This is one of the best examples of what the bureaucracy would like to do in the set up of the Indian democracy. This should be sternly dealt with. I request the Home Minister to exclude the Members of Parliament from this.

The third point which I have not been able to understand is this. In this present Government, we do not have Deputy Ministers. But in the Bill I find that a Deputy Minister is supposed to be an ordinary Member of Parliament. If tomorrow the Prime Minister decides to appoint some Deputy Ministers, then the Deputy Ministers do have some powers of patronage. They do negotiate some contracts sometimes. So, I think to make a Deputy Minister equal to an ordinary Member as in the Bill is highly wrong. This should be clarified.

SHRI HARI VISHUN KAMATH: On page 2 of the Bill it is said:

"a member (including a Deputy Minister) of the Council of Ministers for the Union".

So, he is covered.

SHRI GEV M. AVARI: Then I withdraw what I said.

Another matter of importance is the power of awarding punishment. As many members have pointed out, after the Lokpal was found that a person at a high level is corrupt, he does not have the power to award punishment. I do agree that the power of punishment should be given to the Lokpal. Since 1952 when the Commission of Inquiry Act was passed, there have been so many Inquiry Commissions in India and many of the persons who were found guilty have escaped any sort of punishment till today. That is why we say that

the Lokpal should be given the power to inflict punishment. The Home Minister can call together the leaders of the various groups in Parliament so that a solid arrangement can be made in this regard.

Another main point is that while the Prime Minister has been included under the purview of the Lokpal, the Chief Ministers have not been included.

AN HON. MEMBER: They have brought an amendment for including them.

SHRI GEV M. AVARI: These are the major points I wanted to put forth, because these points have been agitating the minds of many hon members. The majority of members who have spoken today have also said the same thing. I am sure the public outside also is eagerly waiting for this Bill. The Janata Government, while putting forth this Bill should be rather objective, because our experience in the past has not been so well. There have always been insinuations. We have also felt that the Janata Government should not bring a Bill with vindictiveness. Always we hear, "Because the previous Government did this, we are doing this!" Let this attitude come to an end and let the Janata Government be objective while bringing forth this Bill.

SHRI B. P. MANDAL (Madhepura): Sir, as pointed out by the hon. member, Shri Kamath, the idea of Lokpal was first mooted by the Administrative Reforms Commission in 1966. In the Lok Sabha, the Lokpal Bill was brought in 1968. I was also a member at that time and I had the privilege of participating in the debate. In 1971 it was brought again. This time the Bill was referred to the Joint Committee, but the Bill as reported by the Joint Committee is full of drawbacks. It has not come up to our expectations. I

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will make some suggestions to reform this Bill.

The entire country has been looking forward to the Lokpal Bill. People are expecting that after this Bill is passed, corruption at every high place will be up-rooted. But this Bill has not been passed so far. I do not understand why only Ministers and Members of Parliament have been included in the purview of the Bill and why the bureaucrats and other high dignitaries like Supreme Court Judges, High Court judges and others have not been included. Can we say that all the Supreme Court judges and High Court judges are above board and they are like Caesar's wife and only we, the Members of Parliament and Ministers of Parliament and Ministers also, are corrupt? It is quite wrong. So, I think, the purview of this Bill should be widened to include in it the Supreme Court judges, the High Court judges and even diplomats who are posted in foreign countries. Nobody should escape from it. They have been spared and Members of Parliament have been included. We all know that we the Members of Parliament have no executive power whatsoever. What we think just and proper, we contribute here. Then what is the idea of bringing the Members of Parliament in its purview when they have got no executive power. When any Member of Parliament in the past like Shri Tulmohan Ram who comes from my district, committed something wrong, he was convicted and sentenced. The ordinary law of the land can take care of the Members of Parliament. Besides that, there is a Privileges Committee here.

What is the duty of a Member of Parliament? Our duty is to contribute here and sit in the Committees. For such a duty, how can we be brought under the purview of Lokpal. Certain constituents come to the Member of Parliament and he recom-

mends certain things. Is it obligatory on the part of the Minister to abide by that recommendation? I find generally that so many recommendations are being sent by the Members of Parliament and Ministers do not take care of them. Ministers take care only of those recommendations in which they themselves are interested. So, instead of bringing the Members of Parliament within the purview of Lokpal, I think the Ministers who accept the recommendations of these Members of Parliament, should be hauled up. So, there is no justification whatsoever in bringing the Members of Parliament within the purview of Lokpal. This will weaken parliamentarians. Parliamentarians should be those who fear none and who favour none. After all, they have got the right to give expression to their views in the Parliament and there they are protected by the Constitution. So, there is no justification in bringing the Members of Parliament within its purview. Instead all dignitaries including the judiciary, the executive and all should be brought within the purview of this Bill.

The Joint Committee suggested that in the case of Prime Minister the competent authority should be the Speaker. And the hon. Minister has brought an amendment saying that the Prime Minister himself should be the competent authority in his own case. I oppose both. For instance, everybody knows that one who is the Prime Minister here, comes from the majority party and the Speaker cannot dare generally—I say this with all respect to the Chair—to go against the wishes of the leader of the majority party if he wants to continue as Speaker. So, this is wrong. And to say that the Prime Minister himself will be the competent authority is more ridiculous. This country had the Prime Minister like Mrs. Indira Gandhi. When we are enacting a legislation, we should not take into account the present Prime Minister or the present person. Anybody like Mrs. Indira Gandhi or

even worse than her may one day become the Prime Minister of this country. So, there is no sense at all in it that the Prime Minister should be the competent authority for his own lapses. I would suggest, as some of the hon. Members suggested, that in the case of the Prime Minister, the President should be the competent authority and while acting as the competent authority, the President should not be guided by the advice of the Council of Ministers. After all, what is the necessity that in every case the President will be guided by their advice? Long ago, when Dr. Rajendra Prasad was the President, this question had cropped up. Dr. Rajendra Prasad had given a press statement that he was quite aware of the powers of the President and he wanted that some judicial experts in this country should discuss it. Then Shri Jawaharlal Nehru had opposed it.

I think it is not correct to say that the President of India is like the monarch of Great Britain, because the institution of monarchy in Great Britain is hereditary in nature, having no representative character, while the President of India has a representative character, in some respects more representative character than even the Prime Minister. So, there is no harm in giving this power to the President. If there is any constitutional difficulty, the Constitution may be amended. I think there can be no difficulty in the President acting as the competent authority for the Lokpal. There could be a separate proviso in the relevant article of the Constitution to say that while the President is acting as the competent authority, he need not be guided by the advice of the Council of Ministers.

The very idea of competent authority does not appeal to me. What is the necessity of keeping a competent authority? The Lokpal is for eradicating corruption. Why should we shield some officers by creating this competent authority so that the

favourites of the competent authority may escape? I think that the very idea of competent authority is not at all necessary. If the Lokpal thinks that the complaint is *prima facie*, he may take it up and there is no necessity for this competent authority.

When the Lokpal makes certain recommendations, according to the Bill it is for the competent authority to look into the recommendations of the Lokpal and then decide whether some steps should be taken or not. That is wrong. I entirely oppose it. If you are going to establish this institution of Lokpal, then the recommendations of the Lokpal should be mandatory; not that the competent authority should go on considering whether any steps should be taken or not. In case it does not take any step, the only alternative left to the Lokpal is representation to the President. I do not like it. I want that the recommendations of the Lokpal should be mandatory.

In my State of Bihar we have got the institution of Lokayukt for the last ten years. But that institution has not come up to the expectations of the people. Why? Because the enactment was faulty. Shri S. B. Sohony, a retired ICS officer, was appointed as Lokayukt. There were some complaints against some Ministers and the Lokayukt wanted to proceed with them. The Ministers went to the High Court and challenged the appointment of the Lokayukt. Since then, even though there is the institution of Lokayukt, nobody takes care of it. It has become very weak and meek.

SHRI HARI VISHUN KAMATH:
Has he resigned?

SHRI B. P. MANDAL: Another Lokayukt was appointed. If he takes some Ministers to task, his appointment will also be challenged.

The provisions in the present Bill regarding the appointment of the Lokpal are not adequate. Several members have given suggestions in

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 this regard. I have also given some suggestions. I would request the Home Minister to look into the matter in the light of these suggestions and make the necessary changes in the Bill so that the institution of Lokpal would not become ridiculous.

Regarding the appointment of the Lokpal it is mentioned here that the President shall do it in consultation with the Chief Justice, the Speaker and the Chairman of the Rajya Sabha. It means that after consultation the President may or may not agree. Why could it not be, as in the case of a constitutional amendment, by two-thirds majority in both Houses when more than half the total number of members are present? I am not satisfied with the Bill because what we have been seeing in our Lokpal—again I say 'Lokayukt' because there is Lokayukt in my State and that institution has failed. So, I am afraid the Lokpal institution at the Centre may fail just as the Lokayukt institution has failed in Bihar, and in the matter of appointment also there should be 2/3rds majority of both the Houses. It should not only be by consulting the Speaker and the Chairman, because after all, what does consultation mean? The President will consult and may abide by the advice of the Speaker or the Chairman. After all, the President will go according to the advice of the Council of Ministers as has always been done.

SHRI HARI VISHNU KAMATH:
 No concurrence, only consultation.

SHRI B. P. MANDAL: The word is 'consultation'. So, there should be concurrence.

With these words, I would say that I think these are the defects of the Bill and I will request the hon. Home Minister to kindly look into it and revise the Bill so that it may be suitable, it may come to the expectation of the people. It should not only be about corruption among the Ministers and the M. Ps., but it should

include corruption among the Secretaries, high officers and High Court and Supreme Court Judges.

With these words, I conclude.

PROF. P. G. MAVALANKAR (Gandhinagar): Mr. Chairman, Sir, I stand to welcome this Bill and the reason is obvious that all round corruption and less than low standards of public life in politics and utterly selfish and narrow party politicking have all combined and conspired to make a mockery of our democratic politics, and indeed they have brought us all to near collapse of the whole system. The people's credibility not only in politicians and partymen but I am sorry to find, even in the parliamentarians and parliamentary institutions as such, is going down very rapidly and therefore, unless we take very active and concrete steps as early as possible, we will not be able to restore that sense of confidence and credibility among the people for the politicians and the law-makers. Therefore, obviously, Sir, I welcome this Bill and I support it. In fact, such a Bill should have come to this House, to this Parliament, long time back. And it is significant that this Bill never came up for consideration during the entire period of the Fifth Lok Sabha when I had the privilege of being a Member and also had the peculiar privilege of working with the Leader of the House, no less a person than Mrs. Indira Gandhi. You could not expect at that time of the Parliament, throughout the period, anybody doing this in order to eradicate corruption. The system was getting more and more corroded and eroded because of political corruption at the highest level and it is significant that this Bill had never come up in the Fifth Lok Sabha. It has now come up in the Sixth Lok Sabha, and since I have the privilege of being returned to this hon House, I am very glad at this opportunity of welcoming this.

Having said this, I must say at the outset, however, that I really do not

know what exactly I am supporting in terms of concrete proposals of this Bill, I am supporting, of course, the laudable objective behind the Bill, but when I begin to look and look again, by way of study and repeated study, lining and underlining—as students of political science we are used to this kind of habit—the more I read, the more I am confused and perplexed because apart from supporting the laudable objective, I do not know exactly what the Bill is all about. Because my esteemed elder, Shri H. V. Kamath, spoke before me, I cannot say that he stole my words, but I wanted to say the same thing, that this Bill has had a chequered history. The ARC and the previous Bills and the previous discussions not only in Parliament but outside Parliament and in the whole country, those discussions, those Bills, and most notably the recommendations of the ARC, have not been properly and fully taken into account by the present legislation. I hope the hon. Home Minister will explain why they left out many of these points from the original thing, and have reduced the Bill to its present proportions. Therefore, I want to say, not by way of a charge, but by way of criticism, that the original purposes have been considerably diluted, if not mutilated. What has remained now is good in many parts, but is also doubtful in some parts, questionable in some other parts and even improper in the remaining few parts.

It is good that the Janata Government has resurrected this Bill and sent it to the Joint Select Committee. I must congratulate them, have produced such a valuable report. Their deliberations have been worthwhile, although they took more time than they should have; nonetheless, they have produced a good report, notably the Minutes of Dissent. In fact, they are a very valuable, precious part of the Report.

But the point is I do not understand why and how some of the unanimous

proposals and amendments produced by the Joint Select Committee have now been sought to be negated by my esteemed friend the Home Minister. I am not saying that this is irregular in terms of the procedures of the House. The procedures of the House do not say that they cannot negative it, I know that, but I think it is highly improper that Government should now negative by a very simple amendment what the Committee, after long deliberations, have recommended unanimously. After all, the Government had a built-in majority in the Joint Select Committee. All Committees have built-in majorities of the government of the day. Why did they not persuade the colleagues of the ruling party in the Joint Select Committee to do what they want the House to do now? I am only saying that this is not a very healthy and desirable practice.

This institution of the Lokpal is, of course, based, one might say, on the institution of the Ombudsman, but if anyone has the impression that the concept of the Ombudsman and the institution of the Ombudsman have been transformed into the institution of the Lokpal, he would be totally in the wrong. In fact, the Bill before us is far from the original idea and concept of the Ombudsman. I have no time to go into the details of the history the very fascinating history and purpose and the original concept itself of the institution of the Ombudsman. It was way back in 1809 that Sweden had its first Ombudsman and the Swedish example was followed after many, many accedes, almost after the end of the First World War and particularly after the Second World War, when countries became more and more conscious of, and activated by, the idea of a Welfare State and the activities of the States began to increase and expand rapidly, when in the name of the Welfare State, the liberties of the individual were being eroded and corroded. Therefore, the need of the Ombudsman was felt more vigorously, and

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therefore, you have the example of Sweden being followed by Finland, Denmark, Norway, New Zealand, Guyana, and Great Britain in 1967 through its Parliamentary Commissioner.

SHRI HARI VISHNU KAMATH:
Australia.

PROF. P. G. MAVALANKAR: Shri Kamath says Australia, but as far as I know, only parts of it have adopted it. But I do not want to go into those details. My only point is to make it clear that the Lokpal is not be taken as the Indian Ombudsman, because the Lokpal is not exactly the Ombudsman. The Ombudsman's functions have been wider, more comprehensive, because the rights of citizens, and the citizen's inherent right to have legal remedies against autocratic government and increasingly bureaucratic government, are not there in the present Bill. The practice of redressal of grievances is also not found in this Bill. There is no protection for the citizen against administrative and bureaucratic overlordship.

As far back as 1929, in Great Britain, it was the then Chief Justice, Lord Hewart who wrote the book called "*The New Despotism*" and that book has been really the basis in one sense for the institution of Ombudsman in Great Britain. But, none of these things are embodied in this Bill and I wish, therefore, that the Janata Government brings forward another important Bill to come to a nearer parallel of a real Ombudsman that we ought to have because India also is a welfare state and India has taken on this path of a welfare state and, therefore the citizens' rights against the increasing bureaucracy have to be protected with greater vigour and concern.

Now, in the remaining few minutes at my disposal, I want to go quickly through some of the major provisions

of the Bill. My esteemed colleagues, who spoke before me, have said about the competent authorities. I do not want to repeat them. But one point—how can the Prime Minister be his judge in his own case? My friend Mr. Nathwani or someone else, pointed out that it should be the Speaker. But then, you are putting the Speaker in a very embarrassing position. I would have, therefore, thought that in the case of the Prime Minister, it should be the President, but the President unaided by the advice of the Council of Ministers. I do not agree with Mr. Nathwani when he says that the Prime Minister will not sit in that particular meeting when his case is being discussed. It is just like the Directors of companies not participating in the Board meetings when matters involving their interests are being discussed. But then their interests are always passed. When the Prime Minister is there, it is no use giving it to the Council of Ministers. It must be given to an all-party Parliamentary Committee headed by the Speaker. Perhaps, that could be an alternative. I am only suggesting an alternative.

Now, about the Speaker—I do not know why the Bill says that the competent authority for the Speaker should be the Deputy Speaker. In my humble opinion, I feel that the competent authority for the Speaker if at all the speaker is to be brought within its purview, should be no less a person than the Vice-President of India because he is not only the Ex-Officio Chairman of the Council of States, but he is also, under the Constitution, not aided by and advised by the Council of Ministers. But I would go one step further. I want to suggest that the more fundamental point here involved is—I am asking this question aloud—whether we should include the Speaker in this category because after all, the Prime Minister and the Ministers and the Members of Parliament stand in one category and perhaps the office of the Speaker

is unique in more than one sense and I would have, therefore, thought that the Speaker should be kept out of this altogether.

About MPs, many of my colleagues, including my young friend, Mr Avari, have said that the MPs should be excluded. Let me be frank. I am quite clear in my mind that we, as Members of Parliament cannot be excluded because we, as members of Parliament and our relatives—my friend, Mr. Nathwani has brought forward amendments elucidating what those relationships are—are we really having a good image of the Members of Parliament in the eyes of the people? It is no use saying that we do not have executive powers and therefore we cannot be corrupt. Without executive powers, there are many areas and avenues where the Members of Parliament can be corrupt. But if the Members of Parliament are honest and if they have not done anything wrong, then why should we be afraid or nervous about any such thing? Having said that, I would like the Members of Parliament to be brought within its purview, but with a different modality. I am not very happy with what has been suggested in the Bill. But since I cannot propose an alternative, reluctantly, I am accepting the present position of the Bill viz., the Members of Parliament should be included. Having said that, I completely oppose the idea of giving the MPs a special treatment. Even the Joint Select Committee Report says that. I do not know why the Committee had said like that. I am not going into the details. The Report of the Joint Select Committee says in para 29, Clause 14 that in the case of MPs, the enquiries should be held in camera. Why should there be a special treatment for MPs? In fact that would give rise to a doubt in the mind of the people that there is something fishy or something wrong in the state of Denmark!

Therefore, I conclude, by saying that Members of Parliament, if they are pure and honest, and if they are do-

ing the duty of representation as important and valuable bridges between the people on one side and the Government on the other and if they are doing it without any consideration at all, then I do not see why and how they should be worried about their inclusion in this Bill.

Lastly, by way of an important addition, I say, the Lokpal Bill has not produced anything in terms of Secretaries and senior civil servants. I have no time to go into details. But here is the Statement of Objects and Reasons signed by Mr. Charan Singh who was the Home Minister at that time and, I suppose, the present Home Minister, Mr. H. M. Patel, continues to subscribe to the Statement of Objects and Reasons of the original Bill. I want to ask him one thing. There is one single sentence in the Statement of Objects and Reasons:

“Allegations against civil servants will not come within the purview of the Lokpal?”

But, why? The Statement of Objects and Reasons does not give reasons as to why Secretaries and senior civil servants are excluded. Therefore, I want to suggest that Secretaries, senior civil servants, Chairmen of public sector corporations, public sector companies and chief executives should also be included in some form either by an amendment or by an accompanying Bill. I have no time except to say that Mr. Bhupesh Gupta's Minute of Dissent with regard to exclusion of Secretaries and senior civil servants is very telling and is effectively worded. I endorse his views.

As regards the implementation, who will implement the provisions of the Lokpal Bill? There are various Government agencies. Here comes the most questionable part. I want to submit that the competent authorities are not armed with effective teeth and effective tools and because you are not giving them effective teeth and effective tools, the competent authorities will not be able to do

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much even after the Lokpal has given the report to the concerned authorities. Therefore, it will mean that even if you make a good choice of the Lokpal—his image, pay, office and powers are good—my difficulty is that the whole exercise that we are now going into might perhaps end up into some kind of self-deception which is bad enough and what is worse is that it will be cheating and fooling the people of India, telling them, "We have passed the Lokpal Bill and let us go happy and be content."

I hope, the hon. Minister will look into all the points and do something in terms of suggestions that I have made. I am grateful to you, Sir, for the consideration shown to me in giving me a few extra minutes.

18 hrs.

बीबरी बलबीर सिंह (होमियारपुर) :
सभापति महोदय, मैं जनता सरकार को مبارकबाद देता हूँ। हमने लोगो को कहा था कि जब तक राज्य करने वाले ईमानदार नहीं होंगे, तब तक देश ईमानदार नहीं बन सकेगा। तो यह बिल लाया गया है ताकि यह जो साठे 500 के करीब मेम्बरस लोक सभा के हैं और राज्य सभा के मेम्बरस हैं, मिनिस्टर्स हैं, यह सब इस परम्पू में आ जायें, लेकिन इसके साथ जो बड़े-बड़े आफिसर्स हैं और जो बोर्ड के चेयरमैन हैं, पब्लिक प्रण्टरटिकिंग के चेयरमैन हैं,

तो वह क्यों इनमें आवें ? वह कोई नई बात नहीं है। हमें इन्वीस्ट बा बाहर के देशों की सरकार देखने की जरूरत नहीं है कि वहाँ पर 1801 या 1870 में क्या हुआ और किस ने क्या किया ? अगर हम अपने देश का इतिहास देखें, तो पता चलता है कि यहाँ लोकपाल मुकर्रर नहीं किये जाते थे, बल्कि कुछ लोग खुद लोकपाल बनते थे। भगवान् परशुराम एक तरह से लोकपाल थे। जो राजा भ्रष्टाचर करता था, वह उसके खिलाफ एक्शन लेते थे। यही भगवान् कृष्ण ने किया। देश में जहाँ जहाँ कोई राजा भ्रष्टाचारी हुआ, तो वह उसके खिलाफ एक्शन लेते रहे।

हमारी ताबा तारीख में पंजाब में महाराजा रणजीत सिंह का कस है। महाराजा रणजीत सिंह पर कोई इल्जाम लगा और इसके लिए उन्हें भ्रकास तख्त के सामने पेश होना पड़ा। वह भ्रकास तख्त के उस वक्त के हीड ग्रणी, भ्रकाली फूलासिंह के सामने पेश हुए। उस वक्त कोई कानून नहीं था, लेकिन सब से बड़ी बात यही थी कि एक महाराजा ने कोई शसती की है और भ्रकास तख्त पर जो शकल बैठता है, वह उसके खिलाफ एक्शन ले सकता है।

सभापति महोदय : माननीय सदस्य अपना भाषण कल जारी रखें।

18.02 hrs.

The Lok Sabha then adjourned till Eleven of the Clock on Wednesday, July, 11, 1979/Asadha 20, 1901 (Saka)