

MR. SPEAKER: I must be in the full know of it. Kindly keep waiting.

SHRI S. M. BANERJEE: Sir, the draft agreement of 14th March which was given to the doctors is not being accepted now by the Government. I want the Minister to make a statement.

SHRI JYOTIRMOY BOSU (Diamond Harbour): The Minister should make a statement on that point.

MR. SPEAKER: I have received your notices. If there is anything I will see.

Shri Raghu Ramaiah.

14.21 hrs.

BUSINESS ADVISORY COMMITTEE
FORTIETH REPORT

THE MINISTER OF PARLIAMEN-
TARY AFFAIRS (SHRI K. RAGHU
RAMAIAH): I move:

"That this House do agree with the Fortieth Report of the Business Advisory Committee presented to the House on the 29th March, 1974."

MR. SPEAKER: The question is:

"That this House do agree with the Fortieth Report of the Business Advisory Committee presented to the House on the 29th March, 1974."

The motion was adopted.

14.22 hrs.

Contd.

DEMAND FOR GRANTS, 1974-75—
MINISTRY OF LAW, JUSTICE AND
COMPANY AFFAIRS

MR. SPEAKER: Now, we will take up the discussion and voting on the Demands for Grants under the control of the Ministry of Law, Justice and Company Affairs. The Demands Nos. are 68 and 69 and the time allotted is five hours.

DEMAND No. 68—MINISTRY OF LAW,
JUSTICE AND COMPANY AFFAIRS

MR. SPEAKER: Motion moved:

"That a sum not exceeding Rs. 6,04,32,000 on Revenue Account be granted to the President to complete the sum necessary to defray the charges which will come in course of payment during the year ending the 31st day of March, 1975 in respect of 'Ministry of Law, Justice and Company Affairs'."

DEMAND No. 69—ADMINISTRATION OF
JUSTICE

MR. SPEAKER: Motion moved:

"That a sum not exceeding Rs. 19,04,000 on Revenue Account be granted to the President, to complete the sum necessary to defray the charges which will come in course of payment during the year ending the 31st day of March, 1975, in respect of Administration of Justice."

Hon. Members who are present and want to move their cut motions, may please do so.

SHRI R. V. BADE (Khargone): I beg to move:

"That the demand under the head Ministry of Law, Justice and Company Affairs be reduced by Rs. 100."

[Failure to change the election system (12)].

"That the demand under the head Ministry of Law, Justice and Company Affairs be reduced by Rs. 100."

[Delay in fixing the franchise age at 18 years (13)].

"That the demand under the head Ministry of Law, Justice and Company Affairs be reduced by Rs. 100."

[Undue delay in making available Hindi translation of several laws(14)].

*Moved with the recommendation of the President.

[Shri R. V. Bade]

"That the demand under the head Ministry of Law, Justice and Company Affairs be reduced by Rs. 100."

[Delay in encouraging the use of Hindi in courts (15)].

"That the demand under the Head Ministry of Law, Justice and Company Affairs be reduced by Rs. 100."

[Failure to simplify election procedure (16)].

"That the demand under the Head Ministry of Law, Justice and Company Affairs be reduced by Rs. 100."

[Failure to provide justice to the poor people free of cost (17)].

"That the demand under the Head Ministry of Law, Justice and Company Affairs be reduced by Rs. 100."

[Failure to improve the situation arising out of 'justice delayed justice denied' due to the tendency of not disposing the increasing number of court cases expeditiously. (18)].

"That the demand under the Head Ministry of Law, Justice and Company Affairs be reduced by Rs. 100."

[Failure to convert the departmental labour courts into full fledged courts (19)].

"That the demand under the Head Ministry of Law, Justice and Company Affairs be reduced by Rs. 100."

[Difficulty in getting justice due to court fees and increasing stamp duty (20)].

"That the demand under the Head Ministry of Law, Justice and Company Affairs be reduced by Rs. 100."

[Failure in making available authorised copy of the Constitution of India in Hindi (21)].

"That the demand under the Head Ministry of Law, Justice and Company Affairs be reduced by Rs. 100."

[Failure to take any action so far on the joint committee report on Amendments to Election Laws (22)].

"That the demand under the Head Ministry of Law, Justice and Company Affairs be reduced by Rs. 100."

[Failure to reconsider the issue of reducing the voting age (23)].

SHRI D. K. PANDA (Bhanjanagar):
I beg to move:

"That the demand under the Head Ministry of Law, Justice and Company Affairs be reduced by Rs. 100."

[Need to democratise the Indian Law Institute and make it free from C.I.A. influence. (24)].

"That the demand under the Head Ministry of Law, Justice and Company Affairs be reduced by Rs. 100."

[Need to create a forum for mutual exchange of views and experience with socialist countries like U.S.S.R. and G.D.R. in the matter of their system of law and justice. (25)].

"That the demand under the Head Ministry of Law, Justice and Company Affairs be reduced by Rs. 100."

[Need to make comprehensive legislation for elimination of basic sources of economic offences by the larger houses, hoarders and black marketeers. (26)].

"That the demand under the Head Ministry of Law, Justice and Company Affairs be reduced by Rs. 100."

[Need to reduce the voting age from 21 years to 18 years. (27)].

"That the demand under the Head Ministry of Law, Justice and Company Affairs be reduced by Rs. 100."

[Need to translate the Central Acts and Rules in regional languages including Oriya language by the end of 1974 and popularise them among the common man. (28)].

"That the demand under the Head Ministry of Law, Justice and Company Affairs be reduced by Rs. 100."

[Need for radical re-orientation of administration of justice in the country to ensure cheap and speedy justice to the common man. (29)].

"That the demand under the Head Ministry of Law, Justice and Company Affairs be reduced by Rs. 100."

[Need to immediately introduce socialistic judicial reforms. (30)].

"That the demand under the Head Ministry of Law, Justice and Company Affairs be reduced by Rs. 100."

[Failure to implement comprehensive legislative scheme for legal aid to the poor. (31)].

"That the demand under the Head Ministry of Law, Justice and Company Affairs be reduced by Rs. 100."

[Urgent need to provide legal aid to the Scheduled Castes and Scheduled Tribes in all respects specially in their efforts to recover their lands which are illegally taken by landlords. (32)].

"That the demand under the Head Ministry of Law, Justice and Company Affairs be reduced by Rs. 100."

[Urgent need to provide free legal services in cases arising out of implementation of Land Reforms Acts. (33)].

"That the demand under the Head Ministry of Law, Justice and Company Affairs be reduced by Rs. 100."

[Need to provide free legal services to landless who have encroached upon Government fallow land to defend their right over such land against eviction orders. (34)].

"That the demand under the Head Ministry of Law, Justice and Company Affairs be reduced by Rs. 100."

[Need to hold Supreme Court in circuit at Cuttack in Orissa. (35)].

"That the demand under the Head Ministry of Law, Justice and Company Affairs be reduced by Rs. 100."

[Need to fix specific criterion for appointment of High Court Judges. (36)].

"That the demand under the Head Ministry of Law, Justice and Company Affairs be reduced by Rs. 100."

[Need to improve the existing law for appointment of Judges of the High Courts. (37)].

"That the demand under the Head Ministry of Law, Justice and Company Affairs be reduced by Rs. 100."

[Need to ensure that no person of a State is appointed as Judge of the High Court of the same State. (38)].

"That the demand under the Head Ministry of Law, Justice and Company Affairs be reduced by Rs. 100."

[Failure to give correct legal guidance for nationalisation of sugar industry. (39)].

"That the demand under the Head Ministry of Law, Justice and Company Affairs be reduced by Rs. 100."

[Need to take follow up action after enactment of the Constitution (Twenty-fifth Amendment) Act, in framing different laws to reduce concentration of wealth in the hands of few monopolists. (40)].

"That the demand under the Head Ministry of Law, Justice and Company Affairs be reduced by Rs. 100."

[Need to make effective legislation for nationalisation of monopoly industrial houses. (41)].

SHRI SHIVNATH SINGH (Jhunjhunu): I beg to move:

"That the demand under the Head Ministry of Law, Justice and Company Affairs be reduced by Rs. 100."

[Need to have a High Court Bench at Jaipur in Rajasthan (42)].

"That the demand under the Head Ministry of Law, Justice and Company Affairs be reduced by Rs. 100."

[Failure in providing a system of administration of justice free from corruption and within the reach of a poor man. (43)].

SHRI RAMAVATAR SHASTRI
(Patna): I beg to move:

"That the demand under the Head Ministry of Law, Justice and Company Affairs be reduced to Re. 1."

[Failure to reduce the voting age from 21 years to 18 years. (44)].

"That the demand under the Head Ministry of Law, Justice and Company Affairs be reduced to Re. 1."

[Failure to make improvements in the election law. (45)].

"That the demand under the Head Ministry of Law, Justice and Company Affairs be reduced to Re. 1."

[Failure in giving free legal aid to poor people. (46)].

"That the demand under the Head Ministry of Law, Justice and Company Affairs be reduced to Re. 1."

[Failure in fixing uniform legal fees for the Advocates in the country. (47)].

"That the demand under the Head Ministry of Law, Justice and Company Affairs be reduced to Re. 1."

[Need to ban communal, disruptive, caste-based and separatist propoganda during the elections. (48)].

"That the demand under the Head Ministry of Law, Justice and Company Affairs be reduced to Re. 1."

[Failure to introduce the system of proportional representation in all elections. (49)].

"That the demand under the Head Ministry of Law, Justice and Company Affairs be reduced to Re. 1."

[Failure to provide protection to the Harijans and those belonging to other backward classes at the time of casting their votes. (50)].

"That the demand under the Head Ministry of Law, Justice and Company Affairs be reduced to Re 1."

[Failure to check the forcible occupation of polling stations and running away with ballot boxes. (51)].

"That the demand under the Head Ministry of Law, Justice and Company Affairs be reduced to Re. 1."

[Forcible occupation of dozens of booths by the ruling party in the Madhubani by-election and use of other corrupt practices. (52)].

"That the demand under the Head Ministry of Law, Justice and Company Affairs be reduced to Re. 1."

[Need to set up separate booths for Harijans and for women at every place. (53)].

"That the demand under the Head Ministry of Law, Justice and Company Affairs be reduced to Re. 1."

[Increase of corruption in courts. (54)].

"That the demand under the Head Ministry of Law, Justice and Company Affairs be reduced to Re. 1."

[Excessive costs of litigation. (55)].

"That the demand under the Head Ministry of Law, Justice and Company Affairs be reduced to Re. 1."

[Detention of people in jails for years without trial. (56)].

"That the demand under the Head Ministry of Law, Justice and Company Affairs be reduced to Re. 1."

[Unnecessary delays in providing justice. (57)].

"That the demand under the Head Ministry of Law, Justice and Company Affairs be reduced to Re. 1."

[Failure to keep a check on monopoly companies. (58)].

"That the demand under the Head Ministry of Law, Justice and Company Affairs be reduced to Re. 1."

[Allowing monopolists to exploit the people freely. (59)].

"That the demand under the Head Ministry of Law, Justice and Company Affairs be reduced to Re. 1."

[Open violation of M.R.T.P. Act by the monopolists and ineffectiveness of the Government. (60)].

"That the demand under the Head Ministry of Law, Justice and Company Affairs be reduced to Re. 1."

[Need to bring to an end the policy of registering bogus companies. (61)].

MR. SPEAKER: The cut motions are also before the House. Shri Somnath Chatterjee to initiate the discussion.

SHRI SOMNATH CHATTERJEE (Burdwan): I rise to oppose the Demands for Grants of this Ministry.

The way the President of India has functioning has been exposed fully to-day during the discussion we just now had.

The way the President of India has been advised to side-track the constitutional provisions of this country and thereby inflict a blow to the very system of parliamentary democracy in this country shows that this Ministry is not able to justify the powers that have been given to it.

14.24 hrs.

MR. DEPUTY SPEAKER in the Chair.

I was going through the annual report for 1973-74 of this Ministry and I found it to be as drab and dull a reading as has been the functioning of this Ministry during the year.

The performance of this Ministry has been singularly unmeritorious during the past year. It has substantially shaken the public confidence in the judicial system in this country and

in the administration of justice by several appointments to the Bench whose *bona fides* are questioned, by its failure to bring about the much-needed legal reforms in the country and to stop the mal-functioning in the judicial system, to reduce the number of arrears of litigation and to bring down the cost of litigation in this country, by its failure and its apathetic attitude towards providing legal aid to the poor and for its inept handling of the Department of Justice and the Department of Legal Affairs, and to crown it all, I charge this Department is now presiding over the disintegration of the system of parliamentary democracy in the country by subverting the very electoral processes and the electoral system in this country which have now become corrupt. I charge that under this Ministry which is in the overall control and is looking after the election laws of the country, and in the absence of adequate laws, the office of the Chief Election Commissioner has become the office of the Chief Supervisor for Rigging Elections. This is what is happening. The recent elections in UP, Orissa and Bihar have followed the same pattern that was followed in West Bengal in 1972 when under the Government auspices the Election Commissioner had conducted the elections and I say it was a party to the way the election was conducted there as was wished by the intended beneficiaries.

The attitude of the Election Commission is: speak no evil, hear no evil or see no evil. By taking up this particular pose, the Election Commission is conniving at the biggest evil which is overtaking this country, namely, polluting the very system of electoral processes in this country. The ruling party is achieving its objective by corrupting the electoral processes in this country with the help of a pliant head of this Election Commission. A very important question. I feel, arises as to what should the Election Commission do when responsible persons make serious charges about the way the elections are held. We are fed up with the stereotyped

answers given by the Election Commission that they cannot do anything in the matter. Whenever complaints are made, they say, go to the Court. We cannot do anything. I submit, that is not the proper attitude for the Election Commission to take. It has its duties to perform. We have some knowledge of the Election Law in this country. How time consuming the process is, Sir! In view of the nature of the allegations and complaints, what will be the wide ambit of the enquiry? What will be the practical difficulties, one has to overcome, before the election petition can be heard and disposed of?

We know, for years and years the elections petitions are pending. Apart from the Courts of Law, the Election Commission has its duty to perform. It has to superintend and supervise holding of elections. It has to submit its report to Parliament. When complaints are made to the Election Commission, what they do is a ritual only, they give the same reply, you go to a court. I would like to mention of one incident which happened in 1972. In 1972 in West Bengal, before results were declared. I made a complaint to the Election Commission or rather to the Chief Election Commissioner, about the conduct of the District Magistrate of Burdwan with reference to the holding of the election, and how the irregularity was done. Do you know what was done? The same request of mine was sent to the District Magistrate, the same person against whom I made the complaint, to make enquiry and report. That is to say, the person against whom I had made charges was constituted to make an enquiry and decide whether he was guilty or not. Can you imagine a more illogical and ridiculous thing? This is the way the Election Commission functions. I wrote back to the Election Commission, saying, if you are impotent, then tell us so. If you have no machinery to hold an enquiry say so. What is the use of sending it to the District Magistrate, against whom I have made charges? You are to supervise the work of elections. Therefore what we feel is this. I

demand this of this Government. It is very necessary that very wide-ranging electoral reform has to be made, both in letter and in spirit. Electoral laws have to be enforced. One very important issue now arises. The Constitution says that the Election Commission should be a multi-member body. Please see Article 324 of the Constitution. It says:

The Election Commission shall consist of the Chief Election Commissioner and such number of other Election Commissioners if any as the President may from time to time fix and the appointment of the Chief Election Commissioner and other Election Commissioners shall, subject to the provisions of any law made in that behalf by Parliament, be made by the President.

Since the promulgation of the Constitution we have had only single-member body. Sir, you may recall that Parliament had appointed a Joint Committee to go into the amendments to the Election Law. Mr. Jagannath Rao was the Chairman and the hon. Law Minister was a Member of that Committee. That Committee recommended that Election Commission should be a multi-member body. They said:

"The elections have therefore become a continuing process entailing enormous work on the Election Commission. The immensity of the task of the Election Commission and the complexities of the duties it is called upon to discharge are too obvious and do not require any elaboration. It is too great a burden for a single person to exercise supervision, direction and control over elections effectively and consequently he is likely to be exposed and vulnerable to charges of arbitrariness and partiality. The Committee therefore recommend that the Election Commission should be a multi-member body as envisaged in Art. 324(2) of the Constitution: While the decision about the exact number of Election Commissioners necessary to assist the Chief Election Commissioner in the performance of his duties may be left to

Government to determine, the Committee considered that an enlarged Commission will be able to discharge more effectively the responsibilities relating to elections and in exercise of its quasi-judicial functions, a broad based Commission is likely to reach generally acceptable decisions and command respect."

I would like to know from the hon. Minister one thing. Although he was a willing party to this recommendation—unanimous recommendation—of this Committee in which all parties were represented—and although the report was submitted in 1972, till now, no attempt has been made to change the law to constitute the Election Commission as a multi-member body. Why has the Government changed this attitude and why has the Law Minister, as a party to this recommendation, changed his mind with regard to the recommendation that has been made unanimously by the Committee? Of course, we have our suspicion and that suspicion is that the Chief Election Commissioner being a single Member of the Election Commission is much more readily amenable to influence and desire of the ruling party.

Another thing that is corroding the vitals of this country is the system of appointments made not only of the retired judges in this country but also of the retired Chief Election Commissioners. The Chief Election Commissioner who has such important duties to perform in this country is being given appointments after retirement. These persons know that they will have to keep the government happy and pleased, so that they will be provided with the appointments even after the age of sixty-five. This is a pernicious system that is being followed. Why should a retired man be appointed to such posts? Why should a retired judge be appointed to the Law Commission of India? It is not a question of personality—I have no personal grudge against the gentleman concerned. I am only concerned with the question of principle involved. The officers like the Auditor General of India, according to our

Constitution, are debarred for re-appointment. And appointment of a retired judge to the Law Commission is also one such thing. He should be above suspicion and above allurements. I have been trying to raise the question about the re-appointment of judges. The hon. Law Minister knows that this did not find favour with Government. This is one of the posts which should be beyond this sort of allurements. The same has been given to the incumbent. I therefore submit that these are vital aspects. Electoral law reforms are necessary. There must be laws introduced reducing the voting age. The same has been unanimously recommended by the Joint Committee of the Government. They also recommended that there must be stringent laws from preventing the misuse of Government machinery during elections. Initiation and execution of public welfare projects which we see in the neighbouring states in this country till recently also should be prevented during elections. These are matters to be looked into and decided upon immediately. I say that this ministry has failed to bring about the necessary law reforms in the Election Law in the country.

This is the very basis of a proper functioning of our democratic system.

I now come to the Ministry of Law—Department of Company Affairs. This Department has been entrusted with the work of two very important statutes, namely the Companies Act, 1956 and the M.R.T.P. Act. By its inaction and failures, the Ministry has failed to stop the glaring instances of mismanagement. One instance I can give you. That is about the Metro Cinema. I raised this question while discussing the Demands for grants for the Information and Broadcasting Ministry. I am not going into it again. But, so far as Metro Cinema is concerned, it is an American concern run in this country. It had been said on the floor of the House that its shares had been controlled clandestinely in a shady manner contrary to the various laws operating in this country. It was also

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admitted by the Minister for Information and Broadcasting on the floor of the House that this was a shady deal. And while replying to the debate he said that this required to be looked into. An Indian has brought that under his control which was a foreign company once and the Minister of State for instance, Shri K. R. Ganesh also said that the matter had been referred to the Company Law Board.

I would like to know what has the Company Law Board done from 1972 onwards they came to know of these serious violations of important provisions of the law in this country. Nothing has been done. On the other hand, the Government of India was made a party to the litigation that was filed in the Calcutta High Court by the employees of the Metro Cinema. The Government lawyer appeared before the Court and said that he would not participate in this litigation. Although the court asked him 'What is the attitude of Government because it has come out in the papers that Government want to take it over, and the Finance Minister had himself said in Parliament that there were violations of the laws of this country?', the Government lawyer solemnly told the court that 'We are not going to participate in this; we have wrongly been made a party'. I would like to know from the hon. Minister what advice was given by his Ministry in the case of Metro Cinema in regard to which the other Departments of Government were so keen that this type of illegality should not be perpetrated. I would like to know why the Law Ministry and the Company Law Board and the Department of Company Affairs were sleeping over the matter although they were made fully aware of it and why they kept themselves aloof from these legal proceedings. I say that this attitude of aloofness was nothing but conniving at the illegal activities of these international smugglers. They have been described as such on the floor of the House by the Government themselves. These

international smugglers were helped and connived at when this Ministry failed to attend to this case, and appear in that case and support the case of the workers.

Under the Companies Act itself there are various provisions to find out information even with regard to foreign companies. I would like to know whether Government got the relevant particulars from the Metro Theatre which is a foreign company, by applying the provisions of Part XI of the Companies Act. Did they do so? If so, what did they find? If they had found anything wrong, what steps had they taken from the point of view of the Company Law Board or the Companies Act? I would request the hon. Minister to deal with this matter and not to sidetrack it as is often the case.

So far as this Department is concerned, there are two main demands which we have been making, namely that law should be promulgated to allow participation of workers in the management of the corporate bodies, and secondly that workers' participation should be there in the form of ownership of equity shares. In both these aspects there has been singular failure on the part of Ministry to formulate legislation so that the workers could get some say in the management statutorily and also have participation in the ownership of equity shares. In both these respects, Government have totally failed.

The Company Affairs Department and the Company Law Department have very important powers and very important functions also to discharge. There is a power that they ought to see that there is no concentration of wealth or the growth of economic power in monopoly concerns and foreign companies. But the Department has singularly failed in this objective also. So far as Firestones, India Tobaccos Hindustan Lever, Union Carbides, ICI, Pzifers and Colgate are concerned, we have had discussions in the House, and they provide glaring examples of how with the

help of the Companies Act and the Company Law Board and the inactivity on the part of this Ministry they are going on enlarging their resources, power and domain.

Section 408 enables the Government to appoint directors on companies which are being mismanaged. During 1973-74, only in the case of nine companies this power was exercised. But the important thing is that selection has been made of persons to represent the Government in the Board in such a way that the entire object of appointing Government directors on the board is being frustrated. I know of a concern in Calcutta, which I have already brought to the notice of the hon. Minister, where I am told that two directors were appointed who were not on speaking terms and who were not cooperating with each other. Such selections only display a bureaucratic attitude and no real objective is being achieved thereby. The whole purpose of appointing Government directors is a very salutary one, in the Companies Act, namely to prevent mismanagement. But that has become a dead letter. I am told that although it has been exercised in a very few cases, in many of those cases one or other of the Government directors is siding with the management which is already discredited.

This is the way this department is functioning. Under s. 410, there is a provision to appoint an advisory committee to advise Government and the Company Law Board as to the functioning of the Companies Act. I find from the report that the committee was appointed on 1st May 1972, but up till 31st March or up to the time of the preparation of the report, it has sat only once. A committee appointed on 1st May 1972 to give advice on the Companies Act has met only once in the last two years. This is the way they are advising Government. This is an important provision, because this advisory committee can advise Government. I do not know its constitution. But it is almost moribund; it is not functioning.

Then the Company Law Board has laid down certain guidelines for sanctioning remuneration for managing directors and wholetime directors.

MR. DEPUTY-SPEAKER: Instead of 13 minutes due, you are about to take 23.

SHRI SOMNATH CHATTERJEE: Another three or four-five minutes. Under the Companies Act the Company Law Board has framed certain guidelines for sanctioning remuneration to managing directors and wholetime directors. In p. 56 of the 17th annual report of the working and administration of the Companies Act, the guidelines have been laid down. Would you believe that this is the general guideline? Salary not to exceed Rs. 60,000 per annum, that is Rs. 5000 per month. Perquisites: Rs. 1,000 apart from the company's contribution towards the provident fund, towards pension scheme etc. Medical benefits gratuity, leave—all these concessions are there and over and above these, Rs. 12,000 is being given to them. This Government has laid down this guideline from the socialistic point of view—to allow Rs. 5000 salary a month and all these perquisites in respect of managerial remuneration for the managing director and whole time directors. This is the sort of salary and these are the types of perquisites indicated in the guideline. Is this our object, that in the higher echelons we shall be allowing such type of salaries and such type of perquisites?

There are many other matters to be dealt with. I will touch only on a few of them due to shortness of time. There is an important provision of special audit. Only in four cases it has been utilised in the last year. There is the provision for cost audit, a very important power, to find out whether there has been proper utilisation of raw materials and resources. Only in 37 cases, it has been utilised. This is how this department is functioning.

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There is a provision for scrutinising sole selling agencies. This is one of the methods by which company managements divert profit. In 1972-73, only in 14 cases was scrutiny initiated and of these only in 3 was it completed. In 11 cases, it is still pending. In one year they cannot complete scrutiny of more than 3 cases of sole selling agency agreements!

As for the public trustee I want to bring to the notice of the hon. Minister that there have been serious complaints about his functioning.

Now I want to advert to one aspect of the functioning of the Department of Justice.

MR. DEPUTY-SPEAKER: You started with that.

SHRI SOMNATH CHATTERJEE: That was about the Law Ministry—the Election Commission and so on.

MR. DEPUTY-SPEAKER: No, no.

SHRI SOMNATH CHATTERJEE: This is very important. Nowadays we find that so far as appointments are concerned, there have been serious criticisms. I am not going into individual appointments. But I would like to know what the criteria for appointment of judges. Is it being done in Shastri Bhavan alone or are the Chief Justices taken into consultation and their views taken as to how the vacancies are to be filled? For the last six months a vacancy in the Supreme Court has not been filled. Why?

So far as retired judges are concerned, I have said—this is a very serious thing—that no retired judges should be given appointments.

So far as the salary conditions of Judges are concerned, there have been serious complaints and grievances in view of the price rise. I do not know the hon. Minister's views in this matter.

There is one particular matter to which I wish to draw the attention of the hon. Minister. A memorandum has been submitted by Diwan Chaman Lal and other lawyers regarding the functioning of the Delhi High Court to the President of India. I find from the copies of their representation that the President has assured a favourable consideration but no decision has been taken for months. That matter should be taken note of.

So far as law reforms are concerned...

MR. DEPUTY-SPEAKER: The hon. Member's time is up.

SHRI SOMNATH CHATTERJEE: I do not know how many speaker are waiting.

MR. DEPUTY-SPEAKER: There are many.

SHRI SOMNATH CHATTERJEE: As you are ringing the bell—you are so impatient....

MR. DEPUTY-SPEAKER: I am not impatient. I have given you ten minutes more.

SHRI SOMNATH CHATTERJEE: There is the question of legal aid. These are matters which should receive the immediate attention of the Government, that is, providing legal aid to the poor. In the new Criminal Procedure Code, some sort of pittance of a provision has been made so far as criminal cases are concerned. In the case of habeas corpus, in the case of dismissal from service, in the case of industrial disputes, there is no provision for legal aid at all. The Government has been promising to bring forward suitable legislation, but nothing is being done. With the recent price rise in every-thing, kindly think of an earning employee who has lost his job or the employees who has to agitate matters before a tribunal before a court of law. The case is taken to the Supreme Court by the Government

even if they win in the lower court. What provision is therefore these employees and the poor people to get their grievances redressed? Therefore, I submit that the Government must immediately take a decision on the question of providing legal aid to the poor people.

SHRI JAGANNATH RAO (Chattrapur): Sir, while I support the Demands of this Ministry, I wish to make a few observations. This is a very important Ministry in the Government of India. Though it does not wield economic power, still, it discharges very important functions. It advises the Government in its functioning and also it deals with the important matter of appointment of judges to the high courts and the Supreme Court, apart from other incidental duties. It is also in charge of the administration of the company law and also the administration of the MRTP Act.

While speaking on this Ministry, I wish to say that it should be brought to the notice of the Government—and I am sure the Government is already aware of it—that the cost of litigation is going up from day to day. The State Governments have been increasing the court-fees rates from year to year and they are treating this court-fees as a source of income, with the result that it has become very difficult for the litigant public to go to court. This is a matter which the Government of India should seriously take up with the State Governments and see that the court-fees should not be used as a taxable item to add to their revenues.

Then there is the question of delay in the disposal of cases. There are serious delays not only in the Supreme Court and the high courts but at different levels with the result that the poor litigant is not able to pursue his claims in a court. Additional judges are being appointed but still the arrears also continue. The number of judges is going up but the arrears also are going up. Therefore, some measures have to be devised by the Gov-

ernment to see that the delays are dispensed with.

About legal aid to the poor, to which Mr. Somath Chatterjee has referred, I would also say that the report of Mr. Justice Krishna Aiyar's Committee has not been processed so far. To think of legal aid to the poor on a voluntary basis can never be a success. In the United Kingdom, the Government have constituted a fund out of which fees are paid to the lawyers in deserving cases, and these cases are scrutinised by a Committee, and when the lawyer wins a particular case, the costs are recovered from the opponent and the amount spent is reimbursed. That is how the fund is being maintained. 80 per cent of the cost incurred by the Government is reimbursed by the opposite party. That is how this scheme can be made to succeed. Let the Government to have a nucleus of a fund, with and also advise the State Governments to have a nucleus of a fund. Then alone this can succeed. Otherwise, this scheme will only remain on paper just as a scheme and the poor litigants will never get any justice.

About the appointment of judges to the High Court and the Supreme Court, there should be no further controversy, because the Government have said that they have accepted the recommendations of the Law Commission where in norms have been laid down. According to those norms appointments are being made. Therefore, any suspicion or doubt which existed at one time in the minds of some people should no longer exist.

There is one aspect which worries me and that is the reappointment of judges to various bodies, commissions, etc., which would impair the impartiality of the judges. At least you should not create suspicion in the minds of the general public that the judges after retirement are hankering after jobs. This should be avoided to the extent possible. The Law Commission and the Official Language Commission have

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become old age homes. In countries like Sweden old people are taken care of by the Government at State expense in old age homes. They live there; they have become unproductive and are not serviceable to the society and, therefore, the Government takes care of them. It is a welfare scheme. Similarly this institution has become a home for the old. All the retired people are there. I have nothing personal against them. Most of them are known to me personally. If a person is considered to be fit at the age of 75 or 80 why should not the Government enhance the age of retirement of the Supreme Court judges to 75 and that of the High Court judges to 70? To give them appointments after retirement in this Commission or that Commission would not speak well of the Independence and impartiality of the judicial system. Some of them have retired not once or twice, but even thrice. They will never retire till the end. Therefor, whatever we do should appear to be just and equitable and it should appeal to the masses of the people. What is the Law Commission doing? The purpose of the Law Commission is to examine the laws in the country and see whether they are in conformity with the Directive Principles of the Constitution and to suggest necessary amendments. The work is slow perhaps because they are old people.

The Official Language Commission is presided over by a retired Chief Justice. The Official Language Commission is to see that Hindi which is the official language in our country according to the 1963 Act progresses. But what is happening? Nothing is being done. There should be Hindi enthusiasts, not retired judicial officers, in this Commission. All the Central laws should be translated into Hindi and also in the regional languages. Unless that is done the legal Maxim "the ignorance of law is no excuse" has no validity. A man should know what the law says. This work should be expedited.

I now come to the Election Commission. My friend Mr. Somnath Chatterjee has referred to the conduct of elections. The general cry of the opposition parties after the election is that the elections are rigged. They cannot succeed in the elections. The Congress gets majority, Congress Governments are formed in various States and also here. In the 1971 elections to the Lok Sabha, the general complaint was that some invisible ink was imported from Soviet Russia and used here in the elections. There is one party system in Russia and everybody will vote for that party. Why should Russia invent the invisible ink? For the benefit of which country? Now they say that the elections are rigged in Orissa and U.P. People have faith in the Congress policies and programmes and they have faith in the leadership of our Prime Minister. That is why people vote for the Congress. To say that the Elections are rigged is, therefore unfair. I do not agree with such criticism, whichever quarter it comes from.

I am not going to deal with the various provisions referred to by my friend in the Company Law, because an amendment Bill is before the House and we can discuss the various provisions when the Bill comes up for discussion. There is also a Bill for amending the Representation of the People's Act. We can go into those details at that time. The Company Law is a regulatory enactment which regulates the functions of the company. There are 36000 companies in the country out of which about 28000 are private limited companies and about 7000 are public limited companies. The report states as follows:

"Basically, the inspections are intended to ensure that the affairs of the companies are being carried on sound business principles and the companies are complying with the regulatory provisions of the Companies Act both in letter and spirit. It has also been the endeavour of this Department to find out during the course of the inspections whe-

ther the management are indulging in practices which are harmful to the interests of the companies concerned or of the public in general."

"The Inspection Reports have revealed several defaults of omissions made by companies in complying and commissions made by companies in complying with the various provisions of the Act. They have also received some malpractices and acts of mismanagement."

During the period April to December 1973, 263 inspections were carried out as compared to 227 in the previous year. The report gloats over the performance of the Inspection Directorate of the Company Law Department. I do not know whether I should be proud of the performance of the Inspection Directorate. A Cadre should be built in the Inspection Directorate to inspect the companies, both public limited companies and private limited companies, and the report should be made public so that people may know how the companies are functioning, whether they are operating on sound business principles and whether they are complying with the regulatory provisions of the Companies Act. These are very important functions which the Department of Company Affairs and it has to discharge and this has not been done so far. The small number of inspections which have been carried out, are not sufficient to justify its very existence.

Then, Sir, another important thing which the Company Law Department has to do, is to scrutinise carefully the inter-corporate investments. This is a clever device used by these large houses to invest in other companies and thus gain control over those companies. They have to be very careful and cautious in scrutinising and giving sanction.

Then, Sir, there is also another aspect. This Department should safeguard the interests of the minority shareholders also.

This Department should be a full-fledged department and they should

appoint as many officers as are required, so that they are able to function effectively and see that companies work on sound business principles.

Then, Sir, I would like to refer to the MRTP Act which was passed in 1969 and which came into effect on 1st April 1970 to check the growth of monopolies. Has this become an effective instrument in checking the growth of monopolies? Actually, monopolies are being regulated. When an application is made under Section 21, for expansion of the existing capacity, or under Section 22 for starting a new industry or a new business, the Central Government may, if it thinks necessary, refer the application to the commission. The opinion of the Commission is only advisory and it is not mandatory. Sir, in discharging all these functions, the Commission is guided by the principles laid down in Section 28. If these principles are to be followed nothing can come out of the Commission. With your permission, I would like to quote Section 28;

"In exercising its powers under Part A or Part B of this Chapter, the Central Government or, as the case may be, the Commission shall take into account all matters which appear in the particular circumstances to be relevant and, among other things, regard shall be had to the need consistently with the general economic position of the country—

- (a) to achieve the production, supply and distribution by most efficient and economical makes of goods.....

Then, there are two other conditions which have been laid down.

- (e) to encourage new enterprises as a counter-vailing force to the concentration of economic power to the common detriment;
- (f) to regulate the control of the material resources of the community to subserve the common good.

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These are not given importance. But it is the production, supply and distribution, which is being given importance. Permission is being given, either in respect of expansion or existing capacity or in respect of starting a new undertaking. Sir, the Commission should be used as an effective instrument to check the growth and not regulate the growth of these companies.

Then, I would like to refer to Section 31, which deals with Monopolistic Trade Practices. Here also, Government may refer any case to the Commission. It says:

"Where it appears to the Central Government that one or more monopolistic undertakings are indulging in any monopolistic practice.... that Government may refer the matter to the commission for an inquiry."

15 hrs.

So, Government has the power to refer or not any case to the commission. It is not cognizable by the Commission. Unless Government refers it, the Commission cannot go into it. Section 10 dealing with the jurisdiction of the Commission says that the Commission may inquire into any restrictive trade practice upon its own knowledge or information but in the case of a monopolistic trade practice, only upon a reference made to it by the Central Government and not upon its own knowledge or information. So, section 10 has to be amended so as to give the Commission the same jurisdiction to act on receipt of information. The strength of the commission should be increased so that they can function effectively. I have seen some recent cases where out of the three members, 2 are of one view and the third is of another view. Only in one case, the Government accepted the minority view. If you want to use this Act as an effective instrument to check monopolies, section 10 should be amended

Section 37 deals with restrictive trade practices. It is rather unfortunate that

the Commission has not been able to go into restrictive trade agreements and come to a decision. The Commission exists for checking these restrictive trade practices. Cases are not being referred to them by the Government and they are not doing anything. About the criteria for Government to refer any case to the Commission, nothing is laid down under the Act. If the Government likes, it may refer a case to the Commission for enquiry; otherwise not. Section 37 should be used more rigorously and all these agreements should be scrutinised.

Section 27 also can be used to check the growth of monopolies. It is open to the Central Government to call upon any monopolistic house to shed its shareholdings in certain companies. This has not been done so far. Either you should prefer a medium entrepreneur coming in for the first time so that in course of time there can be a counter-vailing force against larger houses or if you think that only the large houses can ensure production, you must see that they shed their shareholding and throw it open to the general public. Section 27 has to be used effectively as also section 37 so that this Act becomes an effective instrument to check the growth of monopolists. Only then the Company Law Department can justify its existence.

SHRI D. K. PANDA (Bhanjanagar):
Sir, with regard to the administration of the MRTP Act of 1969, at page 72 some facts have been given with regard to some of the cases which were brought and disposed of. But there is absolutely no review of the activities of this Commission and to what extent they have really checked the growth of monopoly and other nefarious trade practices. As far as this ministry is concerned, there is a total failure on its part to make any review. They have not the courage also to come with a factual report as to whether they have actually gone to some extent in checking the growth of monopoly. On the other hand, under the very Act, the Hindustan Lever was granted a

licence for the manufacture of what is known as S.T.P. which is used to manufacture synthetic detergent. The approval for this has been given. It is based upon the judgment of two members, with one other member of the Commission dissenting. The dissenting opinion is already laid on the Table of the House, and I need not enumerate all those things. What I find to my surprise is that all those points that have been raised by the dissenting member have not been met, nor any attention has been paid to those very vital aspects of the matter.

As far as the past record of this particular company, the Hindustan Lever Ltd., is concerned we know that there was stockpiling of dalda by this company; then all of a sudden when the Government raised the price of ghee, they released to the market all their goods. Similarly, with regard to baby food and other goods, the same type of stockpiling went on. This was brought to the notice of the Government, but no action has been taken. As far as Rex. Sunlight Lifebuoy and other soaps are concerned, they are not available and if at all they are available the prices have gone up. As I said, they hoard and stockpile all the consumer goods and when the prices rise, they release the goods. This affects the consumer; specially those with fixed-salaries are very badly affected.

They are today increasing the distribution charge by 20 paise per dozen of soaps and from tomorrow it will come into effect. Originally there was absolutely no distribution charge. After some time there was a charge of 25 paise, and now another 20 paise are being added to it. When it actually reaches the consumer, he has to pay nearly one rupee.

I want to know why this company, a foreign company, which is a subsidiary of a multi-national giant known as Unilever, has been given all these favours, what is the reason. When indigenous industrialists are available both in the public sector and in

the private sector who are well-versed in the production system of the some detergent, where was the necessity to give licence to this particular foreign company which has been looting the country?

I will point out one more aspect also. The Hindustan Lever are already having a dominant position; they are controlling 60 per cent in Indian detergent industries. Now, by this licence, the control will go up to 80 per cent. The other industries, small industries, have made a representation to the Commission that their production will be greatly affected, and even though they have applied for licence, they may refrain from going for further production or further expansion because of fierce competition. Under the such circumstances, I demand that this Ministry should take immediate steps to revoke the approval already granted to the Hindustan Lever Ltd.

The only argument that the hon. Minister may advance is that there will be equity dilution; from 85 per cent of the shares, it will go down to 70 per cent. But by that the concentration of economic power in the hands of the Hindustan Lever Ltd. is not going to be checked or reduced. Therefore, it is a monopolistic position and by that they are dominating over every aspect and there is absolutely no check on the growth of monopoly power. Not only a great harm is done by these existing monopolies but they cannot also be brought even under effective control. This is a core sector. The public undertakings should not be affected by such granting of licences.

Now, I will just give some facts. The total dividends are expected to increase from Rs. 231 lakhs in 1972 to Rs. 403 lakhs in 1978 and the dividend to Unilever which was Rs. 146 lakhs in 1972 has increased to Rs. 152 lakhs in 1973. But the Unilever's actual cash contribution to the creation of assets in the Hindustan Lever is only Rs. 272 lakhs. It has further obtained

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bonus shares of the value of Rs. 1012 lakhs and the total dividend remitted abroad upto 1972 after deduction of taxes by this firm is Rs. 1488 lakhs. These are the remittances and these are the dividends. And what is their actual contribution? It was only Rs. 231 lakhs. So, from this point of view it is against the policy of the Government. Section 28 categorically says that when such cases come up, this section is meant to curb such growth of monopolies. But that section 28 of the MRTP Act is violated in this particular case. Therefore, I demand that it should be revoked.

Now, with regard to the MRTP Act, what I want to suggest is that several times several things have been brought to the notice of the Government and specially, the Law Minister has a special duty to make certain amendments to this very Act. We have been demanding complete nationalisation of the monopoly houses and especially, foreign monopolies. But, at the same time, within the frame-work and the existing frame-work certain amendments can be brought about, but, the hon. Minister has been showing a callous attitude to this problem. Several times this was brought in this House for discussion.

Now, a word with regard to the amendment of the MRTP Act making the share in the equity in the ratio of 75:25 and not 74:26. The existing ratio is 74:26. It must be made 75:25. Then those foreign shareholders companies who are having a small share cannot have a dominant hold and control of the companies concerned. Therefore, this amendment has to be made immediately. Take for instance, the ESSO take-over. Now, in the matter of expansion of capital structure, sale of assets beyond Rs. 50 lakhs, investments of this company in any other field and equity participation, with regard all these four aspects, the major share-holder

has absolutely no say. It is the minority share-holders who are the foreigners or the vested interests or the big and large business-houses which have got the vote power and on these matters the majority view cannot prevail because it can be voted down. Therefore, to that extent an amendment is warranted immediately.

The other aspect is that the Punjab Private Company which is prospering with government money is a monopoly concern and is taking big loans from Government and financial institutions and is flourishing with Government money. It should be immediately checked. Now this Hindustan Lever never wanted to come in for the fertiliser plant which was to take place in the joint sector with the Government of Punjab because that would not yield more profits. Therefore, immediately they switched on to this particular manufacture of sulphate. Their motive is profit, nothing but profit. To check it it is our demand that there should be strict provision and amendment of the Election Law.

43 cases were referred to the MRTP Commission. A few cases have been withdrawn by the CLD, Company Law Department, after the Commission had spent a lot on investigation. From the report it is seen as to how many cases were referred, how many cases were withdrawn, etc. I do not know why they should be allowed by the Government, by the Company Law Department, to withdraw the applications. The Commission had already started investigation. They have spent lot of money for that. It is a great loss to the country, to the Government and to the people at large. It is my submission that Government should not intervene and withdraw such cases. It shows that they are in league with vested interests and big monopoly houses.

There are a number of cases which to be referred to the Commission under Sections 21, 22 and 23 of this

Chapter III of the Act, but they have been decided by the Government, without any reference to the Commission. Now, this has come out in the *Statesman* dated 10-3-74. A spokesman on behalf of this Commission had issued a statement, in a press conference. He had come out clearly that the Government of its own accord, had taken decision without even referring certain matters to the Election Commission. Therefore, I demand, this practice should be completely stopped and such cases have to be referred to the Election Commission.

Now, there are no particular guidelines for reference the cases to the Commission. I say that such guidelines should be adopted. It is immediately necessary that we should adopt such guidelines. If the Government does not refer certain cases, then they are not seized of the matters and they cannot make enquiry. This should be changed. Some guidelines should be there. They must have full power to go into and decide matters themselves. Where it is found that the law stipulated under the Industrial Policy Resolution is being thwarted, then, on such occasions, the Ministry should interfere and see that there is a check.

With regard to Law and Justice, I have to make some points. We have been demanding legal aid to be provided to poor. They simply say: 'The recommendations of the expert Committee, dated May, 1973, are under examination'. How long will it take? I have absolutely no time. I have catalogued various assurances given in the public meetings, in this House, outside also. In Nagpur the hon. Minister himself issued several statements. The dates are 19-11-73, 9-5-72, 11-3-73. Then on 15-11-73 so many promises were made. After our Twentyfifth Amendment, if at all it is meant for weaker sections of the society, if at all it is meant to be a check on the growth of monopoly, if at all it is to check concentration of economic power in the hands

of a few, then, subsequent action should have followed. Legal aid is a part of such an aid to the weaker sections of the society.

There may be a law. But, if that law is not implemented and if the poor cannot see that that is implemented in their favour, we cannot say that it is going to help the weaker sections of the society.

In 1958, a bill was introduced by Government of Maharashtra; and in Kerala also, the same bill was introduced. There the bill is still in vogue. What is there for further examination of the same? With regard to Orissa also, there are about 4 lakhs acres of surplus lands and about 34 lakhs of Government lands which are going to be distributed to the landless poor. But, the landlords resist that move and they are evicting their tenants. And Cr. P.C. is being used against the poor tenants.

When they are going to enact the Land Reforms Bill, however, progressive the measures that may be, the ceiling on land is only upto 10 standard acres of land. Beyond that, the surplus lands are going to be distributed to the landless. There are disputes already. And the matter is being taken to the Civil Court; the matter is also being taken to the criminal courts. The police is interfering. And 145 Cr.P.C. is used against them. That has brought in the people in the nature of disputes for being in possession of such lands. As a result of this, persons are deprived of the lands. Under the system of legal aid to poor, thousands and thousands and even lakhs and lakhs of poor tenants have to be defended for being in possession of such lands. This is very important. I think the Government should not shut its eyes as far as this issue is concerned. There is encroachment of Government lands by these very tenants amounting to more than 2 lakhs. They are defending the cases in the court. As far as their cases are concerned, they feel

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that they are helpless because they cannot take up the matter in appeal to the District Collector.

So, even to-day, the legal aid to poor only remains on paper. There should be a change in the attitude of Government as far as legal aid to these poor people is concerned. I am going to submit one thing. I have already submitted four or five bills but they are not allowed to be introduced. What difficulty is there in drafting such a bill for giving aid to the poor? This position must be made very clear by Government. If you feel that this will result in a lot of money being invested for the purpose, this only means that the same is going to help the poor agriculturists to produce more and more. The poor cultivating peasants should be encouraged to make their contribution as far as food production is concerned.

MR. DEPUTY-SPEAKER: Mr. Panda, you have taken more than double the time allowed.

SHRI D. K. PANDA: I am finishing it. My demand is this. As regards judicial authority, a memorandum has already been addressed to the President and a copy sent to the hon. Law Minister. That is dated 6th October, 1972 by 44 advocates supporting the demand for socialistic judicial reforms. I shall read that out so that I can finish in a minute. I shall take a minute only. This relates to a social worker Shri H. P. Vaid. What is stated by the order is: I have already referred to the memorandum. I simply want to draw his attention how this very judge has again revised his own erring judgement by another order. I quote:

"By this order, undoubtedly, the allegations contained in the memorandum dated the 6th October, 1972 stand admitted and proved and now only the question of fixation and apportionment of responsibility remains to be probed into. Even though the restoration of the pro-

perty back to Mr. Vaid, its rightful owner, has been ordered, but nevertheless, the same is virtually lost to him as it has been fraudulently sold twice in the meantime and its recovery from the transferees requires protracted and indefinite litigation."

My point is: whether there is abuse of authority. There must be a check. Therefore, I demand that there should be a highpowered Committee consisting not only of Members of Parliament who are well equipped in law but also some of the eminent jurists should be taken in that Committee to have a check and safeguard against the misuse of power.

SHRI DINESH CHANDRA GO-SWAMI (Gauhati): I rise to support the Demands for Grants of the Law Ministry. The Demands of this Ministry were guillotined last time without a trial, and therefore, we are all happy that this time we have got an opportunity to discuss it. We find, if we go back to the last two or three years, that some of the most controversial decisions which had rocked this country were initiated by this Ministry.

For example, we can refer back to the constitutional amendment relating to the power of the sovereign Parliament to amend the Fundamental Rights or the constitutional amendment regarding article 31 or to the recent controversial decision regarding supersession of judges. If we look at this controversy we find also that the controversy has arisen because of the legal education and the legal system that we have followed where we have been guided by the traditional concept of the rule of law, namely that the law must treat everyone equally and the inner aim of law is to protect life, liberty and property. It is because of this traditional concept that in many cases the controversy has taken a misguided direction.

I, therefore, feel that the Law Ministry has today the duty to formulate a review of the entire legal

system of this country and to bring a new approach to the legal system. After all, we should not forget the Aristotlean concept of justice that there is injustice when equals are treated unqually and there is also injustice when unequals are treated equally. The controversy took place on the constitutional amendments which we had passed during the last two or three years which were in a sense intended to do away with the equal treatment of the unequals. But it is not really by the constitutional amendments only that we can create an atmosphere in which this unequal treatment of the equals can be done away with. There is much to be done in various other spheres, and I feel that the Law Ministry should think of a comprehensive approach to the entire aspect.

Coming to the reform of law, I want to project a few points before the House for consideration. If we look around the country today we find that many of the progressive projects which we had taken up during the last few years have not been implemented fully because the official machinery is not there to implement it. We have all been talking about it, but unfortunately we find that although there have been many major constitutional changes and amendments, there has been no effort on the part of Government to bring about changes in the different laws and also in the Constitution with a view to making a complete restructuring of the administrative system. I feel that the time has come when Government should seriously think of amending article 311 of the Constitution. I do not think that in any other democratic country, a civil servant enjoys so much of protection as we have given to him in this country. Even if a civil servant commits mistakes he is really in the most advantageous position because of the constitutional protection given to him. Even if he does not achieve any results, he is fully protected by the Constitution. I feel that if we want to implement the progressive policies of this country, we

must make the civil servant result-oriented, and we can do so only by amending article 311 and other relevant provisions of the different enactments. I do appeal to the Law Minister to take it up very seriously about how to achieve this. We know that a very highpowered Cabinet Committee had also been formed, and as the press report goes they have submitted an interim report also. I do not know what type of interim report they have given. I hope that the hon. Minister will give us some indication of how he is viewing the entire problem.

The time has come when we should have a complete and comprehensive change of the penal provisions of the different laws. Today, the unfortunate situation is that the penal provisions in the different law are being dealt with by different Ministries. For example, it strikes me as rather odd that the IPC or the Cr.P.C. are still the subject-matters of the Home Ministry, and the Home Ministry brings forward the Cr.P.C. Bills before the House. After all, the IPC and the Cr.P.C. touch every individual very gravely in this country and I feel that an expert like the Law Minister should handle these laws. But I find that they are being dealt with by the Home Minister. I have nothing against the Home Minister, but I feel that an expert persons like the Law Minister and the Law Ministry should handle it. Similarly, the Prevention of Food Adulteration Act comes under the Health Ministry. Equally, I find that the company law and other different laws containing penal provisions are under different Ministries. If you look at the penal provisions of all these laws you will find that there is absolute irrationality in them. For example, under the IPC when a man commits a murder, the punishment is a capital one and in mitigating circumstances life imprisonment. But an individual who willingly and knowingly poisons another by food adulteration resulting in the death of that individual receives under the Prevention of Food Adulteration Act a maximum punishment of only 3 years. There is absolute irra-

[Shri Dinesh Chandra Goswami]

tionality in this. When a person commits a crime against the entire society by hoarding foodstuffs, the punishment is very very less. Today the entire economy is jeopardised by the existence of black money. But there is no adequate punishment to those who are caught indulging in these transactions.

I feel the time has come for the Law Ministry to take into account the entire gamut of the penal provisions of all the Acts and have a rational approach and have an approach which is completely different from what it is now. If the punishment for killing a man is the death penalty or in mitigating circumstances life imprisonment, how could a similar crime of killing a man by food adulteration or paralyzing him, be dealt with except by capital punishment or life imprisonment? I do not see any justification for the three year imprisonment now in force. Yet this is what we find in the Prevention of Food Adulteration Act. I would request the Ministry to examine all these provisions and rationalise them and recommend to the respective Ministries how different offences should be met by the appropriate penal provisions.

Now to the question of law's delay which has been dealt with by many friends. If we look round the country, at least those who are in the legal profession, we carry a feeling that justice today is justice for the rich and not for the poor. Recently we read a statement by the Lord Chief Justice of UK that it takes only two months for a criminal case to be disposed of in UK from the committal stage to the appellate stage. But in this country it takes twelve years or more. Today civil litigation takes 14-15 years. How can we expect an ordinary human being to believe that he can have protection of his life, liberty or property if litigation takes so long? Obviously, the time has come for the Law Ministry to give serious thought to this.

One cannot do away with delay completely, but it is possible to minimise it. For that, the provisions of law should, to a great extent, be simplified. We find that in the Civil Procedure Code, Cr. P. C. and so on a lot of time is taken in revisions, appeals and so on and so forth giving good scope for greedy lawyers to make money at the expense of poor litigants. As a lawyer, I would be happy in such a situation, but as a parliamentarian, I feel that the entire legal system should be simplified and if possible, unnecessary revisions, appeals and other things should be cut out.

This brings us to the other question, the question of the conditions of service of the judicial officers. I think this is another aspect to which the Law Ministry should give very serious attention. I am in complete agreement with previous speakers who deprecated the practice of appointing retired judges to different commissions. I feel it reflects upon the independence of the judiciary. This has been criticised all round the country and therefore Government should do away with the practice of taking retired judges to different commissions. After all, if we feel that a person at a certain age is not fit to be a High Court judge, how can he be fit to head a commission? There are young people all round the country able to shoulder this responsibility.

The emoluments and other conditions of service of High Court judges should be improved. The hon. Minister knows about this very well. Today, for example, in the smaller High Courts, not the important high Courts, nobody is coming forward to be a judge. This is the tragedy of the situation and unless you have a person of the highest calibre in the seat of justice, how can we expect that the administration of justice will be carried out in the best possible manner? I feel, therefore, that there should be an improvement in the conditions of the terms of appointment of the high court judges, and this practice of appoint-

ment of retired high court judges or the Supreme Court Judges to different commissions and all that should be done away with.

These are some of the suggestions which I wanted to place before the House for consideration and I hope the Law Minister will really think about them and take appropriate decisions.

श्री आर० बी० बड़े (खरगोन) : माननीय उपाध्यक्ष महोदय, विधि और न्याय मंत्रालय की मांगों पर मैं आज बोल रहा हूँ और उसका कारण यह है कि मैं इसका कुछ विरोध करना चाहता हूँ। पहले के समय में जो न्यायदान की बात कही जाती थी वह तो अब समाप्त हो गई है क्योंकि हर स्टेट में कोर्ट फीस बढ़ती जा रही है। मंत्री जी कह सकते हैं कि यह तो स्टेट सब्जेक्ट है लेकिन क्या मंत्री जी का यह काम नहीं है कि वे स्टेट्स को गाइड-लाइन्स दें। मेरी स्टेट में जहाँ पहले 4 रुपए कोर्ट-फीस लगती थी वहाँ अब 10 रुपये लगती है। इस प्रकार से न्याय बहुत महंगा होता जा रहा है और किसी गरीब के लिए न्याय प्राप्त करना बड़ा मुश्किल हो गया है। स्टैम्प और रजिस्ट्रेशन से जो रेवेन्यू होता है उसके मैंने कुछ आंकड़े निकाले हैं। 1971-72 में 121.8 करोड़ की रेवेन्यू थी, 1972-73 में 133.8 करोड़ हो गई और 1973-74 में 143.3 करोड़ हो गई। इस प्रकार से कोर्ट फीस बढ़ती जा रही है। मेरा कहना है कि विधि मंत्री का काम है कि वे स्टेट्स को डायरेक्शन दें।

इसी प्रकार से कहा गया है—जस्टिस डब्लेड जस्टिस डेनाइड। आज जो केसेज पेंडिंग हैं उनके कुछ आंकड़े मैं देना चाहता हूँ। इलाहाबाद में 78,617 केसेज पेंडिंग हैं, बम्बई में 41,442

केसेज पेंडिंग हैं, मध्य प्रदेश में 20,653 केसेज पेंडिंग हैं, पटना में 23,704 केसेज पेंडिंग हैं, पंजाब और हरयाणा में 25,150 केसेज पेंडिंग हैं और राजस्थान में 13,356 केसेज पेंडिंग हैं। पिछले 4.5 या 6 साल से वह पेंडिंग हैं। इस सम्बन्ध में एक कमेटी बनाई गई। इन्होंने कहा है “उच्च न्यायालयों में बकाया मुकदमों की समस्या का अध्ययन करने और इस सम्बन्ध में उपायों का सुझाव देने के लिए बनाई गई न्यायाधीशों की समिति ने जनवरी, 1972 में अपनी रिपोर्ट सरकार को प्रस्तुत कर दी।”

लेकिन वह सिफारिशें क्या हैं, वह नहीं बताया है। मन् '72 के बाद अब '74 आ गया लेकिन पता नहीं उस पर क्या हुआ, क्या नहीं हुआ है। मैं समझना हूँ जहाँ भी कोई डिफीकल्टी आती है सरकार कोई कमेटी बिठा देती है। कमेटी अपनी रिपोर्ट देती है, फिर उसका परीक्षण होता है—इस प्रकार से तीन चार साल का समय निकल जाता है। मेरा निवेदन है कि जो भी सिफारिशें आई हैं वह हमारे सामने भी आनी चाहिए।

हिन्दी अनुवाद के बारे में कहा गया है कि इसके लिए हम प्रयत्न कर रहे हैं। कांस्टीट्यूशन के हिन्दी अनुवाद की मैंने ने लाइब्रेरी में मांग की तो उनके पास हिन्दी का अनुवाद भी नहीं है। तो हमने कहा कि हिन्दी अनुवाद क्यों नहीं है? तो उन्होंने कहा कि छपा नहीं है। यह हालत हिन्दी अनुवाद की है। मैं जानना चाहता हूँ कि ऐसे कौन से ऐक्ट हैं जिन का हिन्दी अनुवाद नहीं किया गया है? विधि मंत्री महोदय के पास ही सेठ गोविन्द दाम जी बैठे हुए हैं, मैं उन को भी कहना चाहता हूँ

[श्री आर० बी० बड्डे]

कि हिन्दी अनुवाद क्यों नहीं होता है, इस पर ध्यान दिया है क्या? मेरी मांग है कि हिन्दी अनुवाद जल्द होना चाहिये।

15.41 hrs.

[SHRI DINESH CHANDRA GOSWAMI in the Chair]

आप ने कहा कि हम निर्धनों को मदद करने के लिए कोशिश कर रहे हैं। मैं जाइट कमेटी का मेम्बर था, उस में ला मिनिस्टर ने कहा कि इस बारे में हम एक कामप्रीहिंसिव बिल ला रहे हैं। गुजरात में कोई श्री भगवती थे उन्होंने निर्धनों की मदद करने के लिये कानून बनाया है, उसी पैटर्न पर हम भी कानून ला रहे हैं। मैं जानना चाहता हूँ कि वह कब तक आयेगा? इस में कौन सी दिक्कत है। अगर पैसे की दिक्कत है तो इसकी जिम्मेदारी स्टेट गवर्नमेंट्स पर डालिये। जो आदिवासी हैं उन को तो मदद मिलती है, लेकिन जो गरीब हैं, हरिजन हैं उन को मदद नहीं मिलती क्योंकि इस का प्रोसीजर बहुत लम्बा है जिस की वजह से हरिजनों को कानूनी मदद मिलने में देरी हो रही है। यह नहीं होनी चाहिये।

इस के बाद आप ने कहा कि कम्पनी ला में विचार कर रहे हैं जिस से उद्योगपति अधिक पूजी उद्योगों में लगा सकें। जो बातें हिन्दुस्तान लिबर के बारे में कही गयीं वह तो ठीक हैं, लेकिन कम्पनी ला कानून की वजह से कितनी कैपिटल आप अट्रेक्ट कर सके? कैपिटल मिलने के लिये आप ने कोशिश की है क्या? हिन्दुस्तान लिबर ने 20 पैसा डिस्ट्रिब्यूशन का बढ़ाया है उस की तरफ आप ध्यान दें। लेकिन जहाँ तक कैपिटल अट्रेक्ट करने का प्रश्न

है आप की रिपोर्ट से मातूम पड़ता है कि आप अधिक कैपिटल अट्रेक्ट कर सके हैं; इसलिये आप को कम्पनी ला ऐसा बनाना चाहिये जिसे से अधिक कैपिटल इंडस्ट्रीज में लगे।

दिल्ली और बम्बई की बात तो अलग है, लेकिन हमारे यहाँ आदिवासी क्षेत्र ऐसे हैं जहाँ वह नहीं समझते हैं कि कानून क्या है। कोर्ट में जाते हैं तो उन की समझ में कानून नहीं आना बठे रहते हैं, मजिस्ट्रेट कुछ पूछता है और वह कुछ कहते हैं। तो उन को लीगल एड देने के लिये आप को विचार करना चाहिये। माननीय मंत्री जी आप स्वयं हाई कोर्ट के जज रह चुके हैं आप को मातूम है कि किस प्रकार लोगों की कानून समझ में नहीं आता है।

इलेक्शन कमीशन के बारे में, इलेक्शन ला के बारे में जाइट कमेटी थी उस में कहा गया है कि एक आदमी का ला कमीशन नहीं होना चाहिए। कम से कम 5, 6 आदमियों का कमीशन होना चाहिए। ऐसा रिपोर्ट में लिखा हुआ है। लेकिन वह रिपोर्ट ऐसी ही पड़ी हुई है। उस के बाद लिखा है कि वोटर की आयु 21 साल के बजाय 18 मान की होनी चाहिये। यह रिपोर्ट भी युनानिमस है, लेकिन उस पर भी कोई अमल नहीं हुआ है। उस में लिखा हुआ है कि 5, 6 करोड़ वोटर्स ज्यादा बढ़ते हैं। जब इंडियन मैजोरिटी ऐक्ट के मुताबिक 18 साल का लड़का मेजर माना जाता है, वह दस्तावेजों पर दस्तखत कर सकता है तो उन को वोट देने से क्यों रोका जाता है? इसलिये मेरी मांग है कि वोट देने की आयु 18 साल होनी चाहिये। वह रिपोर्ट भी कोल्ड स्टोरेज में पड़ी हुई है।

अभी य० पी० में चुनाव हुआ हम में देखा कि कितनी रिंगिंग होती है । इस की तरफ भी ध्यान देना चाहिए । वोटिंग की ज० स्थिति है उस को बदलना चाहिये, अन्यथा इसी तरह से हल्ला होना रहेगा । 31 परसेंट वोट ले कर पार्टी शासन कर रही है यह किस प्रकार का चुनाव है ? आप ने देखा कि रायवरेली में पहली और दूसरी काउन्ट में बी० के० डी० का कैंडीडेट जीतता है, लेकिन तीसरी और चौथी काउन्ट में कांग्रेस कैंडीडेट जीतता है । तो ऐसा क्यों होता है । मेरा मुझाव है कि पार्टी का वोटिंग होना चाहिये न कि व्यक्ति का । शासनतंत्र भी इस में गड़बड़ी करता है । तो हम को कांग्रेस नहीं बल्कि गवर्नमेंट मशीनरी से इन्वेक्शन लड़ना होता है । रायपुर का प० स० डी० ओ० कांग्रेस के पोस्टर्स अपनी जीप में ले जा रहा था । मैं ने उन को पूछा कि आप क्यों ले जा रहे हैं तो उन्होंने कहा कि मुझे नहीं मालूम । किसी ने जीप में पीछे रख दिये होंगे । इस प्रकार का वोटिंग में गोलमाल होता है । इस बारे में आप को विचार करना चाहिए । कानून में ऐसा संशोधन करना चाहिये जिस से इस तरह की घांघली न हुआ करे । इन शब्दों के साथ मैं यही कहना चाहता हूँ कि गरीबों के वास्तं ला, हिन्दी अनुवाद और चुनाव की जो प्रक्रिया है उस को बदलने के लिये आप कोशिश करें ।

SHRI VIKRAM MAHAJAN: (Kan-
gra): Mr. Chairman, Sir I think. It is for the first time that in this Parli-
ment, we are discussing the Demands for Grants in respect of the Ministry of Law. There should be some con-
vention that once in two or three years every ministry should be dis-
cussed. I remember, during the last Lok Sabha, the demands for grants in respect of this Ministry were hardly

discussed. Therefore some convention should be established so that every Ministry's demands are discussed at least once, during the course of 5 years, if not twice.

Many hon. Members have made a point about legal aid being given to the weaker sections of the society. I must say that the Law Minister deserves credit. He is encouraging voluntary associations to give legal aid and I think he is trying to support some of them, I think he will pursue this and will become the first Law Minister to give official recognition to this particular aspect. Many speakers have spoken on this subject and I do not want to repeat whatever they have said. But, it is very essential that justice should be cheap to the weaker sections of the society.

I would like to make some suggestion in regard to company law and the general law. In regard to company law, I wish to point out that there are some cumbersome procedures which are being adopted these days. Some reform is needed in this direction. I wish the number of forms which have to be submitted to the Ministry by the companies for various purposes is reduced and they are kept to the bare minimum so that the paper work in the Ministry as well as in the companies, is reduced to the minimum.

But, apart from that, the time has come, so far as the companies are concerned when the law should be modified and some changes should be brought in, in the company law so that employees and the labour are associated with the management of the companies. Not only in the socialist countries, but also in Western countries, the law has been changed to such an extent that labourers have been taken as directors in the management. Especially, in Germany the percentage has gone up. The directors are elected from the employees of those companies and they sit on the Board of Directors or Board of Management. The time has come when we also should

[Shri Vikram Mahajan]

change the company law so as to give a share to labour in the management by being made directors. This will bring a new outlook and a sense of responsibility in the labour and act as a check on the management. It will also create a harmonious relationship between management and labour; As an experiment, you can choose an industry and you can provide that there will be one director from the labour or employees on the management. If it succeeds—I am sure it will—it can be extended to other companies. In any event, the experiment should start right now when we are wedded to the philosophy of socialism.

Coming to arrears of cases, there is a famous saying: "Justice delayed is justice denied". I know cases which have taken 20 years or more to be concluded. Many remedies have been suggested like increasing the number of judges etc. I personally feel that this has not been very successful. I feel an incentive system should be introduced for the judges. The number of units to be decided by each judge every month has been laid down. If he decides more units and if ultimately his decision is up hold by the final court, he should be given an incentive in the form of more promotion chances. That is for promotion the emphasis should on seniority cum merit. The other suggestion I want to give may sound novel, but it can be tried. Instead of having more judges why don't you ask the same number of judges to decide more cases and pay them extra for each unit? For example, if the monthly quota is 20 units, if he does 30 units pay him extra for those 10 units at the rate of Rs. 50 or 100 per case, provided his decisions are upheld by the final court. This will reduce the number of arrears. It will be in the interests of the judge to decide more cases in the shortest possible time. They say that judge is another from of God and so forth, but I think the time has come when we should take a more practical view of the problem rather than a

theoretical view. If this incentive scheme has worked in the industry, it can work in the judiciary also. I personally think—and this is my observation—that an increase in the number of judges has not helped in the reduction of cases in any court; I would not name any court but I have seen that in most of the courts where the number has gone up in the last 15 years by 30 to 40 per cent, the number of arrears also has gone up by the same proportion. Therefore, I submit that this principle of incentive should be adopted in this sector also as it is adopted in the industrial sector, and I am sure that it will help in this sector also.

Apart from that, the conditions of the judges should be improved. This point has been made by some hon. members. Because of the inflationary conditions in the country the rise in prices, the salaries are not enough to attract the more brilliant section of lawyers or students the persons for lower judiciary are selected directly from colleges. The top-grade students and top-grade lawyers are not attracted. There should be some sort of incentive or attraction; improvement in their conditions should be made so that the top-class, from the students as well as from the lawyers, is attracted for lower judiciary and higher judiciary because in many States, especially in many High Courts like Calcutta, Bombay and Madras, the top lawyers are not coming forward to become the judges of the High Court. The Law Minister, I think, will bear me out. Similarly, First Class students are not opting for lower judiciary; they opt for Foreign Service or some other service but not for judiciary. This shows that their conditions have to be improved if you want to attract top-class students or lawyers.

I may mention a little about the Monopolies Act also. This Act does need revision as my hon. friends have pointed out. Without going into the

details, I would put it this way that, as the country is facing shortages, all the Acts should be production-oriented; If a particular Statute imposes restrictions as present in increasing production, to that extent it needs modification. Of course, it may have the effect of monopoly houses, as they are commonly known getting the benefit, but there are other ways of mopping up the surplus in the form of, for example, wealth tax or estate duty or higher income-tax. But any Statute which at this stage hinders production need-revision because the entire country is facing shortages in essential commodities. Therefore, from that point of view, I would submit that this Act or any other Act which does hinder production needs to be revised.

Another point that I wish to make is about Advocates the new class which is coming up and which is known as 'freshers'. The entire system here should be changed. What is happening now is that directly from colleges the young boys are coming into the courts and they start handling cases. It not only harms the interests of the clients but at times it harms them also. What I submit is that there should be some training period for them. That is that they should be attached to some lawyers and they should go through their probation period with a senior lawyer before they are allowed to handle the cases on their own....

SHRI M. C. DAGA (Pali): So that they can serve them literally freely.

SHRI VIKRAM MAHAJAN: Apart from that, if necessary, if they are poor, some sort of stipends or scholarships may be given to them.

16 hrs.

AN HON. MEMBER: Who will pay?

SHRI VIKRAM MAHAJAN: It does not pay if the probation period is done away with. The probation period should be there. It may be one year. Not only that, it also happens that when freshers directly start practising

in the High Courts and the Supreme Court as I have put it, it does a great deal of harm to the interests of the litigants. Therefore, as was the system before, that is, no fresher can go to the High Court before he has done three years' practise at the trial court or no lawyer can go to the Supreme Court before he has done seven years' practice at the high Court that system should be re-introduced because it was a healthy system and I think this aspect does need reconsideration and the Law Minister who was himself a Judge, I am sure, knows how much harm it has done to the cause of justice.

SHRI R. P. ULAGANAMBI (Vellore): It is injustice to the juniors..

SHRI VIKRAM MAHAJAN: Injustice to the junior can be mitigated in some form, say be scholarships or stipends. Between the injustice to the freshers and the injustice to the litigants. I think, I would prefer the injustice to the former because there should be no injustice to the litigants because it is their interest which is more important than the interests of the persons who are pleading their case.

Finally, I think you for having given me this opportunity and I should re-emphasise that the time has come when Labour-Directors should be on the Board of the Directors of companies.

SHRI R. P. ULAGANAMBI: While we are discussing the Demands for Grants of the Ministry of Law, Justice and Company Affairs, I would like to raise a very important constitutional issue before our hon. Law Minister.

The DMK Government in Tamil Nadu have taken revolutionary steps for social reconstruction, for social justice, for economic justice and also for political justice. The DMK Government is introducing many social reforms through legislation. Here, I would like to mention one thing. There is one type of marriages called Self-Respect Marriages. It was not valid before 1967. that

[Shri R. P. Ulaganambi]

is before the DMK came into power. In Self-Respect Marriages the priest is not invited and *Mandirams* have no place. So, such a marriage was recognised by the State Government after DMK came to power.

Another social reform measure the DMK Government has introduced is to encourage inter-caste marriages... (Interruptions) To do away with the caste system we are encouraging the inter-caste marriages by offering gold medals to the couples...

SHRI A. K. M. ISHAQUE (Basirhat): This is revolutionary but the other one is more destructive than revolutionary.

SHRI R. P. ULAGANAMBI: It is not destructive. There, we have done away with the age-old practice of inviting the priest and chanting *mantrams* which are not understood. To make the people understand what they are doing and why they are getting married, we have introduced self-respect marriages. It is not destroying the society. It is a constructive measure and a social reform and a measure towards taking the society to social justice.

Regarding the second one I mentioned, about gold medals offered to the couples who contract inter-caste marriages, it was initiated by our late lamented leader, Arignar Anna. Another revolutionary measure has been taken by the present hon. Chief Minister of Tamil Nadu Dr. Kalaignar Karunanidhi, who happens to be the only Chief Minister in the country, in implementing meaningful social reforms. We have trustees for maintaining the Temples. We are the only State in the whole of India to formulate and implement the rule that one of the Trustees must be a person, belonging to the Scheduled Caste or Scheduled Tribe. It has been adopted and we are now implementing it. There is another social reform measure in vogue in Tamil Nadu. The Government brought out an amendment to the Act called the Hindu Religious and Charitable

Endowments Act 1959. This legislation was enacted in 1959. The Government brought out many Amendments. This was done in 1961, 1965, 1967 and 1968 also. In 1970 the Government of Tamil Nadu brought an amendment to the Hindu Religions and Charitable Endowments Act of 1970 for abolition of the hereditary priesthood. The Act was passed unanimously in the Tamilnadu Assembly. Why does the Government of Tamil Nadu want to abolish the system of hereditary priesthood? The reason is this. The principal Act of 1959 was amended in certain respects by the amending Act of 1970 which came into force on January 8, 1971. The amendment was made to Sections 55, 56 and 116 of the principal Act. Some consequential provisions were made in view of those amendments. This was a step towards social reform. In the statement of Objects and Reasons of the amending Bill, it is stated that the basis for the amendment is the Elayaperumal Committee's Report on social reform. I quote:

"In the year 1969 the Committee on Untouchability, Economic and Educational Development of the Scheduled Castes has suggested in its report that the hereditary priesthood in the Hindu society should be abolished, that the system can be replaced by an ecclesiastical organisation of men possessing the requisite educational qualification who may be trained in recognised institutions in priesthood and that the line should be open to all candidates irrespective of caste, creed or race."

This is the recommendation made by the Elayaperumal Committee set up by the Government of India, but the recommendation are not being implemented by the Central Government. But the Government of Tamil Nadu brought in amendment to the Hindu Religious and Charitable Endowments Act for implementing this recommendation.. This was challeng-

ed by 12 petitions which came before the Supreme Court. It was stated by the Supreme Court that though this was not contradictory to the rules yet it was in contravention of Articles 25 and 26 of the Constitution which say that Government should not interfere in matters of religion. This is regarding securing freedom of conscience, to professing, practising and propagation of religion, freedom of management of religious affairs, etc. The Supreme Court of India has categorically mention this in the recent judgment.

Sir, the members of this community cannot become *archakas* in a temple. The Government also cannot interfere in religious matters and introduce reforms like the abolition of castes or something of that sort.

In this respect I would quote what Dr. Ambedkar once said on the judgment of Supreme Court on the issue of a communal G.O. I quote:—

"I am bound by the decision but I am not bound to respect the same"

Here my submission is this. We have already brought out many amendments to the Constitution of India. For social justice, we brought out as many as thirty-two amendments to our Constitution. Such as doing away with the Privy Purses to our ex-rulers and so on and so forth. My request is this. You encourage a harijan to become an I.A.S. Officer. But he is not allowed or rather he is unqualified to become a simple priest. The Supreme Court comes and says that under Art. 25 and 26, the State shall not interfere in the religious matters. The amendment was to Sec. 55 of the Hindu Religious Charitable Trusts Act. Under this act, vacancies whether permanent or temporary, among the office-bearers or service of religious institutions shall be filled by the trustees. 'In cases where the office or service is not hereditary'—this is the original act—we need an amendment reading: 'In all cases omitting the rest of it. A person belonging to scheduled caste or schedule tribe, becomes an I.A.S. Officer, judge of a High Court or Sup-

reme Court he becomes a minister and he also becomes, a Chief Minister or Prime Minister and even President of India, but, he is forbidden in the name of the Constitution to become an *archaka* or a priest in a temple. Is this not a shameful-thing? So, I would like to ask our hon. Minister one thing. We had brought forward many amendments to do social justice to economically backward people. I would like the Government of India to come forward with an amendment to Art. 26 of the Constitution so that there should be no bar in the law that a scheduled caste or a scheduled tribe person shall not become an *archaka* or a priest. I shall quote what is stated in a magazine called 'The Modern Rationalists' published in Madras.

It has been stated therein that a member of the scheduled caste is listed in a schedule which gives him more rights and privileges than others. What is the social status given to him in this country? The reply given is: 'A harijan is a child of God.' Do you mean to say that he is a holy person? If that is so, why then he is not allowed to become a priest in a temple? The name 'harijan' was given by Mahatma Gandhi. He said that he was the son of God. But he is not allowed to worship or perform the puja before Him. I am not preaching anything in the name of God. Under the Constitution we are talking so much about the welfare of scheduled castes and scheduled tribes. We have given the name 'harijan' to this community. But we are not even allowing them to become priests. This is a very very shameful thing. It is high time that Government should think over and bring forward an amendment to article 26 of the Constitution so as to enable harijans also to become priests and there is no bar against any person becoming a priest.

In conclusion, I would like to quote what Dr. Ambedkar said on the 26th January, 1950. He said:

"We are going to enter into a life of contradictions. In politics we will have inequality"

[Shri R. P. Ulaganambi]

How long shall we continue to live this life of contradictions? I am putting this question to the hon. Minister.

श्री नूल चन्द्र उलागा (पाली) : सभापति जी, मैं गोखले साहब ने 26-27 साल के बाद पूछना चाहता हूँ कि आज हम बजट पाम कर लेंगे साल करोड़ का लेकिन अदालतों में या कचहरियों में कहीं न्याय हो रहा है क्या? मंहवाई जरूर है, चीजों के दाम बढ़ गये हैं तो न्याय भी मंहगा होना चाहिए। काले बाजार में हर एक चीज मिलती है तो न्याय भी काले बाजार में मिलता है। यह वकीलों की बातें हैं, उनको पैसा दो, हम में से कुछ जज बना दो, अंग्रेजी पढ़े-लिखे जज होने चाहिए, और जो वकील हैं वह उनके सामने अंग्रेजी की क्लिपबोर्ड कोट करें और आदमियों को बता दें कि हम तुम्हारे लिए पैरवी करते हैं। ऐसी भाषा में वह बोलते हैं जिसको वह मोझबिल तो समझ सकें नहीं। वे तो यही समझते हैं कि हमारा वकील बहुत अच्छा बोलता है लेकिन भगवान ही जानता है कि वे लोग कचहरी में क्या पैरवी करते हैं। इसलिए सवाल यह है कि 26 साल के बाद भी आप न्याय देना चाहते हैं या नहीं। मुझे दुख के साथ कहना पड़ता है कि यहां पर बड़े बड़े आदमी बोलते हैं लेकिन मैं नहीं समझता क्या हो सकता है न्याय। जो पुलिस केन्द्र की एन्टी होती है उसके लिए वहां पर कोई बड़ा समझदार आदमी होना चाहिए। छोटी कोर्ट या बड़ी कोर्ट में जाने के लिए हजारों रुपए चाहिए। आप सुप्रीम कोर्ट के वकील को करिए तो उसके लिए हजारों रुपए दीजिए, या डिस्ट्रिक्ट कोर्ट में वकील कीजिए तो उसके लिए भी सैकड़ों रुपए दीजिए। आज आपने रिपोर्ट से मालुम हुआ कि आपका जो रिपोर्ट लिखते हैं उसके

लिए इतने आफिसर्स होने हुए भी दूसरों को आप पैसा देते हैं। आपका आफिसर्स की एक टीम बनी हुई है लेकिन उसके बाद भी लाखों रुपया आप दूसरे वकीलों को देते हैं। आखिर आपके आफिसर्स करते क्या हैं? इस सम्बन्ध में जब आपने एक सवाल पूछा गया तो आपने उसका उत्तर दिया। वह क्वेश्चन था :

"The names of the lawyers engaged by the Central Government to defend Government in the Supreme Court and various High Courts in cases challenging the Banking Companies and Constitution Amendment Act seeking abolition of privy purses etc."

आप सोचें कि खुद आपके आफिसर्स मौजूद हैं, एडवोकेट्स मौजूद हैं, आपके आफिसर्स की पूरी टीम है वहां पर फिर आप क्यों पैसा दें रहे हैं। आप श्री नीरेन डे को 79 हजार दे रहे हैं। एक दूसरे केस में 2 लाख 11 हजार दे रहे हैं। समझ में नहीं आता आपके सालिसिटर्स हैं, गवर्नमेंट एडवोकेट्स हैं, हाई कोर्ट्स में वकील हैं आखिर वे किस काम के लिए हैं। फिर भी इन्होंने श्री नीरेन डे को 2 लाख 11 हजार दिया, एल0 एन0 सिन्हा को जो सीलिसिटर जनरल हैं 2 लाख रुपया दिया, श्री डी0 पी0 सिंह एडवोकेट का हिसाब नहीं आया है। इसी तरह से श्री जी0 एल0 सांघी हैं जिनको आप लाखों रुपया दे रहे हैं। मैं जानना चाहता हूँ आपके जो गवर्नमेंट एडवोकेट्स हैं वे करते क्या हैं? क्या वे कुछ समझते हैं? नहीं हैं? आप अपने दिमाग की एकत्रसाइज कीजिये। यह सफेदपंथ जो वकील हैं क्या इन से देश ठीक होगा? आप लाखों रुपया इनको देते हैं। या तो यह कहिए कि हमें राज्य इसनिये करना है कि ईसकीयर स्टेट न हो, और

एक ऐसी स्टेट होनी चाहिए जिस में लोग दुनिया का शोधन कर सकते हैं, उन को इजाजत है। वकील जो चाहे वह मेहनताना ले, किसी को कोई मना नहीं है।

अदालतों में जजेज, मंसिफ और मैजिस्ट्रेट हैं, राजस्थान में हाई कोर्ट में एक नई बात देखी उन्होंने कहा हम हर एक ब्यान के लिये कमीशन मुकर्रर करते हैं। न्याय मंत्री जी कहेंगे कि यह स्टेट सभ्जेक्ट है, लेकिन यह सही है कि हाई कोर्ट ने यह राय दे दी प्लेन्टिफ या डिफेंडेंट के गवाहों को कमीशन से एग्जामिन करवा लीजिये। 100, 100 रु देना होगा एक एक वकील को। कोर्टों के अन्दर कमीशन बैठते हैं प्लेन्टिफ के सारे गवाहों को एग्जामिन करता और चार, पांच दिन तक करता है ताकि उस को 400, 500 रु मिल जायें। जजेज क्या करेंगे। तो हाई कोर्ट के जजेज कहने लगे कि इस तरीके से जल्दी डिस्पोजल हो जायगा। क्या बात है? आखिर जजेज चाहते क्या हैं? जो हमारा परपज है जस्टिस का कि हम कुछ न्याय दें वह पूरा होगा इस तरह? मैं आप को एक उद्धरण पढ़ कर सुनाना चाहता हूँ।

"Delay in Justice: Speedy dispensation of justice is not directly concerned with the concept of natural justice. But since it is the quality of all justice to give expeditious relief to the party aggrieved. it may be associated with the rule for hearing. Procrastination of hearing may sometimes result in injustice, because in an unduly prolonged process, much of the material evidence may perish, as when witnesses die or situations are altered.

"It was one of the declarations in the famous Magna Carta that right and justice shall not be sold, denied or delayed. To Gladstone, justice

delayed was identical with justice denied. The Hindu view blatantly advocated for promptness in justice, so much so that a delay in hearing a complaint might bring evil consequences to the giver of justice himself. In the Epic period, King Nriga had to incur a curse from two Brahmins who came to seek justice but were only detained for some time at the gate of the royal palace. King Nimi, an ancestor of the famous Janak, had to incur a curse from sage Vashishta who, in his own urgency, had run to the King when the latter was sleeping. The personages above named might even be myths, but that is no point for any controversy. It is the moral that matters most.

"In the modern complexities of administration, a party is generally reduced to material bankruptcy and mental brokenness by the time his case is over".

मैंने यह तो नहीं कहा कि किस प्रकार से डिले होती है केसेज के अन्दर। जो बड़े बड़े लोग हैं वह तो अपने घर से काम ले लेते हैं। लेकिन गरीब बेचारा फंसता है, और वैसे वाला छुट जाता है। आप बताये कितने बिनों में न्याय होना चाहिये, किस तरह ये हो सकता? आप सब को शपथ दिलाते हैं; आखिर में आप चाहते हैं कि हम लोग ईमानदार न हों, और कसम भी खाते हैं कि जो कुछ कहूँगा सच कहूँगा। मैं कहता हूँ कि जजेज को भी शपथ दिलाइये कि मैं भी धर्म से कहता हूँ, वकीलों को भी शपथ दिलाइये। जजेज, मंसिफ ईमानदारी की शपथ लें। गवाहों से तो आप शपथ लेते हैं। वह कहते हैं कि वकील साहब जो आप कहोले हम वही कह देंगे। तो इस प्रकार का जो जस्टिस हो रहा है क्या इसमें न्याय हो सकता है। हिन्दी के ट्रांसलेशन की बात तो भ्रमल रही, लोअर कोर्ट्स से हाई कोर्ट तक की बातें जानता हूँ। आज कल क्या हम न्याय पा सकने हैं? हम इन्साफ मांगते हैं राज्य में। अगर

[श्री: मूल चन्द डागा]

राज्य हमारी सीमाओं की सुरक्षा करे और हमें न्याय दे तो उस से आर्डियल और कोई राज्य नहीं हो सकता। लेकिन आज जो मिस्टम है उस में जब न्याय नहीं मिलता तो क्या किया जाय ? हर गरीब आदमी का विश्वास हट गया है कि कोई में उसको न्याय मिलेगा। वह कहता है कि जिसके पास पैसा है उस का जतन होगा, तबे वकाल करने होंगे इस लिये न्याय नहीं मिलता है। और दूसरा कारण यह है कि हम ने अपनी पोलिसी में कोई रद्दोबन्द नहीं किया।

आप देखें कैसे कैसे लोग पना रहे हैं। इंडिया ला इन्स्टीट्यूट ऑनल के अनुसार ऐसा कानून बनना चाहिये, वह कहते हैं कि कुछ गुंडे पना रहे हैं, उस के लिये क्या कानून है, उन्होंने बताया कि अर्बन गुंडे क्या होते हैं, कौन से होते हैं। इन के लिये कोई रोक टोक नहीं है। कई कहते हैं कि पोलियोमियन्स गुंडे होते हैं :

"...this category is very difficult for the police to deal with because it has political patronage...."

red-light areas goondas, court-area goondas....

कोर्ट ऐरिया गुंडों की भी बात उन्होंने कही है :

"In certain cities and towns, there are ruffians and hirelings who try to win over the prosecution witness by threat of force or violence...."

यह कोर्ट के गुंडे होते हैं, गुंडाज आफ पब्लिक प्लेस। इन को कौन डोल करेगा। यह इंडियन ला इन्स्टीट्यूट ने कहा है। इस प्रकार के जो गुंडे हो गये हैं कोर्ट में गवाही चाहो तो मिल जायेंगे, लोगों को डराते धमकाते हैं कोई कानून है जिस के जरिये आज इन बदमाशों को दया सके।

एक बात चारटर्ड अकाउन्टेन्ट्स के बारे में कही है, इनके ट्रेनीज की क्या हालत बिगड़ी

है। मैं ने कई दफा "इंडियन ऐक्सप्रेस" से पूछा है कि ट्रेनीज को पैसा नहीं देते हैं :

"Three complaints regarding alleged malpractices by the Practising Chartered Accountants relating to the non-payment or inadequate payment of stipend to the students; prevention from getting suitable jobs; harassment from the assistance of the auditors; general conditions of working etc. were received during the year 1973."

तो यह जो शोपण कर रहे हैं चारटर्ड अकाउन्टेन्ट्स और जो उनके पास ट्रेनीज जाते हैं उन के लिए क्या आप ने सोचा ?

एक सवाल आप से किया था ;

"Whether the Government's attention has been invited to the fact that with the increasing cost and the decline in the value of the rupee, it is no longer possible for any candidate to fight any Parliamentary or Assembly elections within the prescribed limits of election expenses;"

जो खर्च की सीमा निर्धारित की गई है उस के अन्दर चुनाव नहीं लड़ा जा सकता है आज के जमाने में। इस वास्ते पहला गलत काम यह होता है पार्लियामेंट में आने के बाद कि गलत शोध ली जाती है और कहा जाता है कि धर्म से मैं कहता हूँ कि इतने रुपये खर्च किए हैं। जान बूझ कर ऐसी गलत बात कही जाती है। पार्लियामेंट के लिए खर्च की राशि अपने 35,000 रखी है और असेम्बली के लिए 15,000। जीत जाने के बाद जो रिटर्न फाइल की जाती है उस में लिखा जाता है कि इस सीमा से कम खर्च किया गया है। आप देखें कि रुपये की क्या कीमत हो गई है, महंगाई कितनी बढ़ गई है इसके बारे में आप कुछ तो करें। ला कोबदले या कोई ऐसा तरीका निकालें कि पोलिटिकल पार्टीज उनको रुपया दें चुनाव लड़ने के लिए, उनको आप कुछ सुविधा दें। इसका क्या हल हो सकता है, क्या सालक्षण पासिबल हो सकता है इसको आप देखें।

हुठ बक्ता एक बात कहेंगे जिसका जवाब देने का मुझे मौका नहीं मिलेगा, इसलिए मैं पहले ही कह देना चाहता हूँ उस बात को। राजस्थान में हाई कोर्ट बन गई है। लोग खड़े हो कर कहेंगे कि हाई कोर्ट का एक बेंच जयपुर में हो। इस मंत्र के लिए लड़ाई हुई थी, कमिशन भी बैठा था बांचू साहब ने निर्णय दिया था कि रेवेन्यू बोर्ड अजमेर में रहेगा हाई कोर्ट जोधपुर में रहेगा, कैपिटल जयपुर में रहेगा। सब निर्णय हो चुका है। लेकिन उसकी कोई परवाह नहीं। एक जगह हाई कोर्ट हो तो खर्चा कम हो। अब बेंच के बारे में प्वाइंट जो उठायेगे वे किस लिए? इस लिए ताकि चन्द लोकल आदमी जो उन हैं को खुश करने के लिए। जनता परेशान नहीं है। लेकिन कुछ लोगों को खुश करने के लिए यह बात होगी।

अन्य में मैं कहना चाहता हूँ कि हिन्दी में ट्रान्मिशन जो होता है उस में आप तीव्रता लाए। आपने बम्बई, कलकत्ता, मद्रास आदि में ब्रांचिज खोल रखे हैं। कितना वहां काम होता होगा? वहां बकील अलग पाइंट होते हैं। इस में बहुत ज्यादा खर्च होता है। इसको भी आपको कम करना चाहिये।

SHRI SHYAMNANDAN MISHRA (Begusaral): Mr. Chairman, There are certain factors which seem to be adversely affecting the dignity, objectivity and impartiality of the highest judiciary of the land. One such factor had been pointed out by some hon. Members who have preceded me, namely, the appointment of judges to certain lucrative posts and assignments after their retirement. I wholeheartedly agree with the view that a convention should be built up by which the High Court and the Supreme Court judges should not look forward to any patronage at the hands of the Government after their retirement. I really do not know what comes in the way of the Government building up such a convention.

The second factor, to my mind, which seems to be militating against the dignity and objectivity of the judges is the interpretation of article 124 of the Constitution in the matter of

appointment of judges and the Chief Justice of the Supreme Court. Without going into the merits of the interpretation that had been brought to bear upon article 124 of the Constitution by the Law Ministry, I should only like to point out that the hon. Prime Minister has a different interpretation to give this article. She has told Parliament, and I had mentioned it earlier, that in the matter of the appointment of the Chief Justice proper and appropriate consultations are being held. But, now, the Ministry of Law seems to be taking a different position. The country would like to know which interpretation is the correction and whether the practice prevails, as the Prime Minister had been pleased to tell the Parliament some time back, that proper and appropriate consultations are held in the matter of appointment of Chief Justice of the Supreme Court.

Then, the third factor, to my mind, is the scant regard the Government seems to be paying to the observations of the High Courts in certain matters. A glaring instance, a case in point is the disregard which this Government showed to the remarks of the High Court of Orissa on the conduct of the Governor of Orissa, Mr. B. D. Jatti. One would like to know what is their interpretation, how did the Law Ministry interpret the observations of the hon. High Court of Orissa, so far as the conduct of the Governor of Orissa was concerned, in not calling upon the Leader of the Opposition, who to their mind, did command the majority in the Assembly there? If the Law Ministry did think that these remarks were not justified, then, did the Law Ministry take steps to get these remarks vacated by the higher Court. If the Law Ministry or the Government concerned have not taken any steps to get these adverse remarks of the High Court of Orissa vacated by a higher Court, then, it would stand to reason to think that these remarks are such as could not be vacated by any Court. If this happens, Mr.

[Shri Shyamnandan Mishra]
 Chairman, that the Government of India does not pay any regard to the remarks of High Courts, you can very well understand how the dignity of the Courts of justice can be maintained. There are the three factors which I wanted to mention in this connection. But I do sometimes feel that when we make such points, the hon. Minister concerned ignores some of them. But these are not going to be ignored by the people, who seem to be in a state of upsurge now everywhere. It is because of such shabby behaviour and conduct of the Government that the people seem to be in a state of unrest everywhere. The feelings of the people cannot be ignored though. Some of the points that we make, may be ignored by the Government. So far as the people are concerned, they are no longer in a mood to reconcile themselves to these things.

Mr. Chairman, in this very context. I would like to suggest another thing. I would have pointed this out in the context of the Election Commission, but, I think, it would be apt to refer to it at this stage. When I say that no High Court or Supreme Court Judge should look forward to any patronage at the hands of the Government after retirement. I also want to refer to the office of the Election Commissioner in that context, and would like to stress that the Election Commissioner of India too should not be appointed to any post after his retirement. Frankly we did not like it, when the former Election Commissioner of India was appointed as a Member of the Law Commission. We want to go on record in this matter. It may be that the Law Minister would again try to trot out some plausible pleas that this was not going to affect the objectivity of this office. But if you make an incumbent of this high office look forward to some kind of advantage at your hands, then we should be executed if we do not have full faith in the integrity of such an Election Commissioner.

Mr. Chairman, I would also like to make yet another suggestion. Probably, this suggestion has been made earlier too, but, this has been ignored all the time. The Chief Justices of High Courts should be appointed from outside the States concerned. The stage of development at which we find ourselves, there are many evils which have crept in and many kinds of closed circles and vested interests have come to be created. I would not like to spell them out very clearly for obvious reasons. But there is no doubt that certain evils which have crept in and I would suggest that the Government should think about appointment of Chief Justice of High Courts, from outside the respected States.

THE MINISTER OF LAW, JUSTICE AND COMPANY AFFAIRS (SHRI H. R. GOKHALE): What is your view about judges?

SHRI SHYAMNANDAN MISHRA: Let us make a beginning somewhere. I have applied my mind to this and it seems to be a feasible proposition.

SHRI H. R. GOKHALE: I am responsive to this suggestion. But, I would also like to know your view, whether we should appoint outsiders as Judges.

SHRI SHYAMNANDAN MISHRA: You can do that, but I wanted to make a proposal of smaller dimension in order to appear to be more practicable. I have not gone into all the practical aspects of it—so far as the vast number of judges is concerned. But this appears to me to be quite a feasible proposition.

I have also a very serious grievance against this ministry that it is not of much help to Parliament in sorting out many of the complex legal and constitutional issues. Parliament does require some assistance in understanding and clarifying certain complex legal issues. May I quote here what Mr. Wilson, the present Prime Minister of U.K. had to say in the House of Commons only a few days back. That must hold good so far as gene-

ral assistance to Parliament is concerned. One can infer from this how much assistance the House of Commons would be getting in legal and constitutional matters from the Government of the day. I quote:

"He had appointed an adviser to the Government on constitutional questions, concentrating particularly on the Kilbrandon report. The services of the constitutional adviser would be available to the leaders of individual political parties in the House."

How very solicitous they are in the matter of according assistance to Members of Parliament in understanding the legal and constitutional issues, we can very well understand from this single observation of the Prime Minister of the U.K. But here the Law Ministry seems to be completely oblivious of its duty so far as Parliament is concerned. Every time when a request is made that the Attorney General should come and help us in understanding and clarifying many issues Government makes it a matter of prestige and does not permit the Attorney General to come and assist us in this House. In fact, Mr. Setalvad, had taken a clear stand and he has said in his autobiography that the status of the Attorney General is that of an independent constitutional advisor. He says:

"Departing from the British practice and the practice of other Constitutions based on the British model, our Constitution seems deliberately to have constituted the Attorney General, an independent law adviser who can when required advise the Government or Parliament in a detached manner."

But the Attorney General seems to have precious little to do with the Parliament of India. It seems that this House of the People will have served its full term without having the good luck of hearing the Attorney General of India on any subject.

I would therefore like to know whether the hon. Minister proposes to

take steps in regard to assisting Parliament in legal and constitutional matters.

I would like to point out a particular instance which occurred recently. We really do not know where we stand so far as the Constitution (Twenty-fourth) Amendment Act is concerned. It went through the process of judicial review and very complicated judgments had been delivered upon it. Was not incumbent on the Law Minister to come before the House and tell us, "This is how we stand with regard to the Constitution (Twenty-fourth) Amendment Act now." There has been a great deal of difference of opinion about the final picture that has emerged after the judicial review, and it is necessary to know whether any follow-up action was required in the light of judicial review. That is a very clear instance which would make it clear to the hon. members of this House that the Law Ministry is not doing its duty to parliament. In fact Parliament ought to know what has happened to the laws it has passed, and this is a very important law about which there had been so much controversy and active discussion throughout the country.

Mr. Chairman, one thing which is uppermost in the minds of not only the hon. members of this House but also of our countrymen is the development that took place in Gujarat very recently. The people of Gujarat have dismissed the State Government there; they have dismissed the State Legislature there. In fact they fought a battle not only against the Chhimanbhai Minister, but later also against the Central Government itself and they did win in the final run. The point that I want to raise here is whether Government has given any serious thought to the implications of this development. And this has happened for the second time; earlier it had happened in Kerala where also the people had dismissed the Government a few years back,

{Shri Shyamnandan Mishra}

Should not there be a Constitutional method for giving expression to the will of the people, so that it does not take the form of an upsurge to recall a legislature which, the people think has lost its confidence? If you do problems like this, you are not probably taking care of democracy as you ought to.

Only two days back we read in the newspapers that the General Secretary of the ruling party, who also happens to be a member of this House, Mr. Chandrajeet Yadav expressed an opinion about the Company Donations Act. As you know, now donations by companies have been banned; but he has expressed an opinion that steps should be taken to restore *status quo ante*, that is, the donations by companies should be permissible. We would like to know what is the opinion of the Government in this matter and whether the General Secretary of the ruling party is reflecting the opinion of the Government or of the Party which has formed this Government.

I would like to come to two Constitutional issues. One is this. This is my firm opinion that the Government should lay down certain conventions so far as suspension of a legislature is concerned. Now the Government is taking to this device much too frequently. To my mind, article 356 was not meant as a clinic clause of the Constitution, it was not meant for the rehabilitation of the party in power, so that after the party has recovered from certain sickness, it should be brought back again to power. But that is precisely what the present Government is doing. So there must be certain conventions laid down for the suspension of a State Legislature and imposition of Presidents rule.

Then I would like to say a few words about the Election Commission—the way in which it conducts the elections. I have a feeling that the conduct of elections leaves much scope for im-

provement. One particular thing I would like to point out about which I have carried a certain amount of correspondence with the Election Commission. My suggestion is that there should be only one ballot box for every polling booth and, if necessary only as a stand-by arrangement there could be a provision for another ballot box. You know for every polling booth there are only about 800—1000 voters. Now, should it not be possible to have only one ballot box which could contain all the one thousand ballot papers or on an average only 800 ballot papers? This problem has assumed a greater significance now; I carried correspondence with the Election Commission saying that the provision of multiple boxes this leaves scope for doubt, as we have found in certain cases that while the first ballot box contained only 200 ballot papers I am giving only an illustration—the second one contained 400 ballot papers. It stands to reason that the second ballot box should not be placed before the first is full. In reply the Election Commission has stated that they have not come across any such instance. Whether really the Election Commission has got anything to do with the counting and whether they can concern themselves with this problem, we don't know. But Sir, we do concern ourselves with this problem and we are present at the time of counting and this has happened in our experience. But the main reason that they have given is that it would cost a great deal of expenditure to the Exchequer if the present ballot boxes are scrapped. May I ask here whether this should be a sufficient reason for rejecting a suggestion of this kind? Many a time we have felt that these ballot boxes are stuffed with ballot papers before they were brought to the polling booth and if you want to dispel this impression you should make provision for only one ballot box. The reason given by the Election Commission is totally unacceptable—it would cost a great deal of money to the public exchequer.

Finally I would like to refer to the functioning of the Monopolies Commission. It seems to me that the Commission is confining itself more and more to the field of restrictive trade practices and less and less to the curbing of the concentration of economic power to the public detriment. This development seems to me an unfortunate one. The Monopolies Commission has to concern itself as much with the curbing of the concentration of economic power to the public detriment as to the field of restrictive practices. The price point which, however I would like to detriment as to the field of restriction: that the Company Law Department had initiated some time back a legislation to break up the industrial and business conglomerates and to delink particular productive enterprises from big business houses through an amendment of Section 27 of the Monopolies and Restrictive Trade Practices Act. The move had reached an advanced stage of the formulation of a Bill. We would like to know where does this move stand now, whether the Government do propose to amend Section 27 of the Act in order to break up these industrial and business conglomerates and to delink particular productive enterprises from the big business houses.

These are few points I have tried to make in the short time that was available to me.

Mr. CHAIRMAN: Before I call upon the next speaker, I want to inform the House that the Minister for Health and Family Planning will make a statement on the junior doctors' strike before the House adjourns for the day.

SHRI A. K. M. ISHAQUE (Basirhat): Mr. Chairman, Sir, I rise to support the Demands for Grants of this Ministry. I have some words of praise for this Ministry. This Ministry is responsible for conceiving and piloting in this august House some revolutionary laws which as a matter of fact brought about tremendous sense of joy throughout the country, like, the Privy Purses Bill, the Twenty-fourth and the Twenty-fifth Amendment of the Con-

stitution Bills etc. The country was really electrified by such enactments. I am thankful to the Law Ministry for piloting this type of revolutionary measures in this House. I would like to thank them for a future Bill which I am just now proposing.

Sir, our Constitution provides for certain rights. These rights enable us to lead a civilised life in this country. To name some of them, we have got right to equality before the law. We have the right to freedom of speech and expression. We have got the right to assemble peaceably. We have got the right to form associations and labour unions. We have got the right to move freely throughout the territory of India. We have got the right to acquire, hold and dispose of property. We have got the right to practice any profession or carry on any occupation trade or business. These rights enable us to lead a civilised life in this country. But, the right which is missing very much is the right to work. Our Constitution has not guaranteed to its citizens the right to work. In this country we have got enough persons who are able to work, those who are ready to do any type of work in this country. They do not have any opportunity to work. Therefore, Sir, I will express my thankfulness to this Ministry if they conceive and pilot this type of amendment to our Constitution in this august House.

Sir, I am in the public life for quite a long time, I was elected to the West Bengal Legislative Assembly for three terms. Now I am Member of this House. While I was a Member of that Assembly, in the beginning, if ten people came to see me a day, nine of them discussed social problems. They came for development of society, for social works. Some of them wanted to set up schools, hospitals and so on. Some of them wanted to construct bridges and roads. Those were the types of demands that they used to make then. Some of them used to say, some tube-wells should be sunk in their locality. These were the types of demands we were facing then. Now Sir, if we go back to our constituency, out of ten people who come to see us,

[Shri A. K. M. Ishaque]

also are for employment. This is the type of change which we have undergone throughout this period. This is the sort of acute unemployment problem that we are facing in this country now. Therefore, in my humble opinion, a time has come for us to conceive of such a Bill. And we should pilot this Bill through this august House so that able-bodied persons who are now suffering from frustration may get some hope that he has a right in this country, and that is the right to work.

16.57 hrs.

[SHRI NAWAL KISHORE SINHA in the Chair]

I know there is financial involvement in all these schemes. I know that.

But ways and means have got to be found out in order to carry out those measures. Only the other day Government implemented the Pay Commission's recommendations. The Government had to undertake a financial burden of Rs. 345 crores a year implement the recommendation.

We are happy that Government has undertaken upon itself the financial burden. If Government enacts such a Bill and amends the Constitution in that regard, I am sure, the financial commitment is not going to be of that magnitude. Unless and until a person is provided with a job, he must be given a subsistence allowance. I do not think that Government will have to pay to the extent of Rs. 345 crores as have been given to the serving employees of the Government. If money could be found for those who are already on the jobs I cannot understand the logic of providing for some subsistence allowance for those having no jobs at all. I submit that the society has also an obligation to provide jobs to the jobless when it could undertake to increase the salary of the persons who are already in service. The society has an equal obligation or an intensive obligation to those persons who are not in the payroll of the country. Therefore I

would be very much thankful to the Ministry if they would bring forward an amendment to the Constitution providing for the provision of the right to work as a fundamental right so that everybody born in India is assured of his life or at least he is assured of subsistence in this country.

Sir, our Law Minister was in the profession of law. He was also holding the post of a judge. He has got the experience both as a judge and as a lawyer. I hope you will agree with me that there are some laws which have cost a tremendous burden to the society. There is a provision in the Indian Registration Act in section 47. Section 47 of the Act permits various types of corruptions being perpetrated in the country. I shall only read the relevant provisions of the law. Section 47 reads as follows:—

"A registered document shall operate from the time from which it would have commenced to operate if registration has been made."

17.00 hrs.

The effect of this section is that one document might have been executed and registered in respect of certain properties. Another document concerning the same property might have been executed and registered in the Registrar's Office. Both the parties will go the court to determine their rights. This later type of documents are popularly known as back dated documents. A vicious circle operates to patronise this type of nasty deals in the registration offices. The deed writers clerks in the registration office the vendors and the clients, themselves form a vicious circle. I can quote as an instance one case. Suppose there are two brothers. One of them sells out a certain property to another person. The person who was interested in that property comes to him—he comes to the very person—who has sold out that property and tells him to sell that property to him again. How can you do this according to law? In a competition to between registered documents, the document which was executed earlier will in accordance

with present law prevail. According to registration law, a document executed to-day can be registered on any day within four months. There is a further grace period of four months during which it can be registered by paying some extra money by way of specified registration fee. A deed of title, therefore can be got registered within eight months from the date of execution. The result is that a deed of title or a conveyance deed can be executed and registered on any day, the 24th January, and on 26th January, another similar document can be registered, but it would be seen in that document that that document was executed prior to 24th. How is this possible? This is possible because they go to the stamp vendor and purchase the stamps back-dating them, though they had actually purchased it on the 26th, it would be shown in the stamps that they were purchased on 20th or 18th or 12th. The stamp vendor is also therefore in the vicious circle. This plan is generally master-minded by the deed-writer.

MR. CHAIRMAN: How can that be stopped by law?

SHRI A. K. M. ISHAQUE: It can be stopped only if this section is amended so that this vicious circle can be done away with, and this nuisance on the society can be done away with. The Law Minister is very much in the know of matters. I am sure he has come across thousands of cases like this, just as all of us have also come across. Therefore, I am pleading with him to apply his mind to this and amend this section, so that thereby he can do a tremendous service to the society. As a matter of fact, this provision is creating quarrels between friends and creating enmities between brothers, apart from its other social ills. Therefore, I would plead again that he should amend section 47 and do away with these back dated documents.

As regards legal aid to the poor, almost everybody has pleaded for it. So far as the thinking of the Government is concerned, Government have

accepted the idea of rendering legal aid to the poor and that was why a committee had been constituted as early as in 1972 under the chairmanship of Shri V. R. Krishna Iyer and that committee has already submitted its report in May, 1973. The report has not been released till now, but then some of the recommendations are known, and it can be safely presumed that if these recommendations are accepted and codified as a statute, it may go a long way in rendering assistance to the poor.

Every hon. Member who has spoken has said that the poor people, even though they are assured of equality under the Constitution are actually denied of justice for reasons of poverty. They go to court for seeking justice, but because of their poverty they may not and do not get justice all the time. The difference that prevails in the legal profession in regard to lawyers' fees is perhaps the highest in India as compared to any other country. Here, you will get a lawyer who will charge Rs. 1700 per single case or even more, and you will also get a lawyer who will charge Rs. 4 only. This is the type of difference that we have got in this country. The rich person is in a very advantageous position as compared to a poor person and he can get the legal advice of the most competent person whereas the poor people cannot do so. There are poor people who do not get any legal assistance at all. The procedural laws like the Cr. P.C. and the C.P.C. were enacted by the Britishers only to help the feudal system in India and the feudal people took full advantage of these laws. I know of thousands of cases where the landlords had instituted false suits against tenants and ejected them, and the tenants could not afford to contest those suits as the expenses of the litigation was prohibitive. The procedure was so long-drawn that it was not possible for a poor litigant to resist the money power of the landlord. To my mind, these procedural laws were enacted by our previous masters, the Britishers, only to help the feudal system in the country. These served their purpose very nicely. The situa-

(Shri A. K. M. Ishaque)

tion has changed. We are now free. I do not understand why these laws which served only the feudals in the country and which prevented the poor section from getting justice in courts of law should be permitted to remain in the Statute Book. I suggest immediate steps be taken to amend these laws and to make the procedures simple.

Our Law Minister is very much aware that in civil suits the real trouble begins when one wins the case. One may get a decree after protracted delay of three or four years. Then the question of putting it into execution comes in. It entails a delay of 10, 12, 15 and in some cases 40 years. This is simply inconceivable. One cannot simply mentally adjust to it. There must be a limit to everything. Therefore, I suggest that these types of law which served the imperial purposes must not be allowed to remain on the statute book after independence.

The Law Commission has submitted its 57th report regarding banami transactions. The Law Minister will agree with me that this is another source of corruption in society. He will also agree that the banami plea is almost a common plea in all the civil suits. In all civil suits, two common pleas are taken. The suit is barred by limitation. Whether it is so or not, everyone is certain to take this plea. Another plea everyone is sure to take is that the suit is barred by the principle of *res-judicata*. There two defences are universally taken. Another defence very often taken, not universally taken is that the 'transaction is banami; I am the ostensible owner. Through this defence, they try to save their property from being attached or sold in execution of decrees or their losing it in a suit straightway.

Not only in civil suits, these banami transactions have helped the tax evaders very much. Once these banami transactions are done away with—and this is the recommendation of the Law Commission—tax evasion, which is the order of the day, can be avoided to

some extent. Therefore, I will plead with the Ministry that the Ministry put those recommendations into action at once and codify and pilot a Bill doing away with these transactions as soon as possible.

Sir, I will make a submission for a minute regarding the Food Adulteration Act. As the law stands today, this Act gives an incentive to adulterate food. The penal measures that have been prescribed in the Food Adulteration Act is so ludicrous that it simply encourages the people to indulge in adulteration. Therefore, I would suggest two things. You may make the law more stringent, but if you only make the law stringent, I do not think the purpose is going to be served. The very onus of proof has to be shifted. As the law stands in the country today, it is upon the prosecution to prove the guilt of the accused. The onus of proof is upon the prosecution to prove the guilt of the accused. My submission is that in cases of this nature, the onus of proof should be shifted from the prosecution to the accused persons in all cases of adulteration. If a person is charged with adulterating foodstuff, he should be called upon to prove his innocence and the prosecution must not be called upon to prove his guilt. It would make a lot of difference in these adulteration matters if the law is changed that way.

The law prescribes a maximum punishment. If you prescribed the maximum punishment, it is left to the option of the judge to impose a punishment within that maximum. If you prescribe 10 years imprisonment and make that as the maximum punishment the judge or the magistrate can inflict, what usually happens, three months imprisonment. Or one is sentenced to a rigorous imprisonment for a period of three years or just three days. Therefore, in cases of such a severe nature, those who do not mind playing with the lives of the common people, in my view, are committing a more heinous crime than even murderers. It should not be treated so lightly—I do not find a

stronger expression—but those people should be inflicted with a deterrent punishment. Therefore, a minimum sentence should be prescribed. If one is found guilty of adulterating food-stuffs, he should be penalised with an imprisonment for a minimum term which may be two or three years or 10 years; but a minimum term should be prescribed.

Therefore, I plead with the Minister that if they want to seriously tackle the food adulteration problem, the onus of proof should be changed from the prosecution to the accused, and a minimum punishment should be prescribed, so that the accused cannot run away from being imprisoned.

Thirdly, it is only the petty shopkeepers who are prosecuted and become the victims in almost all cases of adulteration. If they do not do the business they go out of employment; if they do business they run the risk of being prosecuted by the police. Therefore, when food is suspected to be adulterated, it shall be the duty of the prosecution to run to the source-point, so that the person who is the big boss, who master-minds all this adulteration process and who creates all these troubles, is hauled up. He should be the main accused and the poor shopkeeper should be prosecuted merely as an abettor and not as a main accused. Therefore, I make this plea with the hon. Minister to consider these points and to amend the Food Adulteration Act accordingly.

With these words, I support the Demands for Grants.

श्री श्री कृष्ण मोदी (सीकर) : सभापति जी, मैं इस सभा का बहुत कम समय लूंगा। राजस्थान व जयपुर में हाईकोर्ट की एक बेंच स्थापित हो, यह मामला बहुत पुराना है और कई साल से चल रहा है। इस विषय में सदन के प्रंदर कई दफा चर्चा हो चुकी है। कन्वेंशन के द्वारा और सीधे मामलों में इसके ऊपर बात-चीत हो चुकी है। अभी डागा जी ने उसके खिन्ना तीन बातें कहीं। एक यह कहा

कि वा कमिशन ने जयपुर को कैपिटल दे दिया, अजमेर को रेवेन्यू कोर्ट दे दिया और जोधपुर को हाई कोर्ट दे दिया। विश्वविद्यालय दूसरी जगह दे दिया। दूसरी बात यह कहें कि न्याय सम्प्ता नहीं। तबसे कहा कि प्रादमियों में न्याय होना चाहिये। मैं उन से जानना चाहता हूँ कि क्या वह न्याय करने की स्थिति में हैं? क्या उनके दिमाग में प्रान्त की भावना है? क्या वह यह समझ रहे हैं कि जोधपुर के अन्दर धौलपुर का प्रादमी न्याय लेने जाएगा? हरियाणा के पास से क्या हुआ झंझू और मोकर का प्रादमी जोधपुर जाएगा तो क्या उसे न्याय महंगा नहीं मिलेगा? अपनी छाती पर हाथ रख कर ईमानदारी में बताएं कि उनके लिए न्याय कितना महंगा पड़ रहा है, वहां कितना उनका समय बर्बाद होता है? यह बटवारे की चीज नहीं है। यह जनता को न्याय दिलाने की बात है तथा उसके फायदे की बात है। उन्होंने क्या कभी सोचा कि पूर्वी राजस्थान के कितने केसिम हैं जिन के लिए जोधपुर जाना पड़ता है और जोधपुर के कितने मुकदमे हैं? अगर हिसाब लगाएँ तो 70 प्रतिशत मुकदमे पूर्वी-राजस्थान के होते हैं और 30 परसेंट वहां के होते हैं। पूर्वी राजस्थान के लोगों के मन में बड़ी टीस है कि उनके साथ न्याय नहीं हो रहा है। वे हमेशा अपने आन्दोलनों के जरिये इस पर रोष प्रकट करते आ रहे हैं, समय समय पर जेल भी गए हैं, हड़तालें भी की हैं, मीटिंगें की हैं और न्याय की मांग की है। चुनाव के समय में विरोधियों ने इसको एक झू बनाया और हाई कोर्ट के बेंच के मामले को उन्होंने उठाया। हमें समझाया गया कि इस समय इस बात को उठाना अच्छा नहीं होगा। हमने मेहनत की और जनता को समझाया कि यह हाई कोर्ट बेंच के झण्डे को उठाने के लिए उपयुक्त समय नहीं है। लेकिन उनकी भावनाओं को आप कब तक दबाते रहेंगे? कब तक उनके रोष को आप दब एंने? उनका यह बीरज का बाँध कभी टूट न जाए। आपको तो पता ही है कि मेजा पूर्वी

[श्री श्रीकिशन मोदी]

राजस्थान के वकील हर पंद्रह तारीख को कोर्ट का बहिष्कार करने के रूप में अपना रोष प्रकट करते हैं। कल विधान सभा के अंदर हंगामा होने वाला है। विधान सभा के लोग और वहां की जनता के लोग घेराव करने जा रहे हैं, यह भी शायद आप को जानकारी है। मैं यह निवेदन करना चाहता हूँ कि पिछले टाइम पूर्वी राजस्थान के एक हजार एडवोकेट यहाँ तर प्रतिनिधि मंडल के रूप में आप से मिले थे। संसद सदस्य भी हम कुछ लोग मिले थे और प्रधान मंत्री से भी मिले थे। उन्होंने आश्वासन दिलाया था कि सारी बातों पर विचार किया जायगा। आप ने कहा था कि सारे पहलुओं पर सोच समझ कर हम इस का जल्दी निर्णय करेंगे। लेकिन आप ने अभी तक निर्णय नहीं किया है।

डागा साहब ने ला कमीशन की बात कही कि ला कमीशन ने ऐसा तय कर दिया था तो यह ला कमीशन का मामला तो जब ए० के० सेन के सभापतित्व में मीटिंग हुई थी और सब विधि मंत्री इकट्ठे हुए थे तो उन्होंने उसे उस समय अस्वीकार कर दिया था। डागा साहब ने जानबूझ कर शायद उस को छिपा दिया। उस बात को उन्होंने प्रकट नहीं किया। और दूसरे प्रान्तों में कई कई बेचेज चल रही हैं। मैं तो निवेद करता हूँ कि क्या संकीर्णता की बात डागा साहब न की? कोई बहुत बड़ी कुर्सी हम मांग नहीं रहे हैं। एक छोटी सी बेंच मांग रहे हैं। गोखले साहब से इतना ही कहना चाहता हूँ कि एक छोटी सी बेंच चाहिए और बीस या पच्चीस दिन महीन में दो जजेज आ कर जयपुर में हमारे केसेज की सुनवाई कर लें, इतनी ही हमारी मांग है।

एक क्वेश्चन आप से 29 अप्रैल को हमारे माननीय सदस्य श्री रामचन्द्र विकल ने किया था कि राजस्थान की हाईकोर्ट के बारे में आप क्या करने जा रहे हैं तो आप का जबाब मिला था कि हम जल्दी ही इस पर विचार करेंगे और अभी राजस्थान सरकार से रोमह

पास कोई चीज नहीं आई है। मैं आप से निवेदन करना चाहता हूँ कि इतना भयंकर, इतना भीषण मामला है। वहां पर एक आग भड़क रही है, प्रज्वलित हो रही है। आप उसको न भड़कने दें और इस का जल्दी फैसला कर दें।

मुख्य न्यायाधीश के मामले में भी आप ने कहा है तो एक हमारा प्रतिनिधि मंडल उन से भी मिला था। उस में मुझे भी मिलने का अवसर मिला था। तो उन्होंने बड़े स्पष्ट शब्दों में यह बात कही थी कि जयपुर के अंदर बेंच नहीं आई कोर्ट बननी चाहिए और जोधपुर में बेंच बननी चाहिए। यह उन के उदगार थे। इसलिए मैं गोख साहब से निवेदन करूंगा कि इस मामले की अहमियत को समझते हुए वह इस पर जल्दी ही निर्णय लेने की बात करें।

इस के बाद मैं एक ही बात कहना चाहता हूँ कि न्याय-पालिका इंडिपेंडेंट होनी चाहिए, स्ट्रॉंग होनी चाहिए और एफेक्टिव होनी चाहिए, इसमें कोई दो राय नहीं, यह तीनों बातें होनी चाहिए। इस के इलावा इस न्याय-पालिका से जल्दी से जल्दी इस भ्रष्टाचार को खत्म कर दिया जाय जो कि आग की तरह फैल रही है। अगर यह भ्रष्टाचार न्यायपालिका में भी बहुत ज्यादा भीषण रूप ले गया तो देश का क्या होगा यह आप समझ सकते हैं। मैं अनुभव की बात कहता हूँ कि किसीकिसी जगह तो न्याय बाकायदा नीलाम किया जाता है कि जो ज्यादा रुपया देगा उस की तरफ फैसला होगा, कानून नहीं देखा जाता। इस लिए आप ऐसा कोई कानून बनाईए, कोई नियम बनाईए जिससे कि यहाँ पर इमानदार आदमी आ सके और न्यायपालिका में लोगों का विश्वास जम सके। आज समाज का विश्वास न्याय पालिका के ऊपर से उठ गया है और समाज में इतनी शक्ति नहीं रही है कि उस भ्रष्टाचार का खुल कर मुकाबिला कर सके। मैं निवेदन करना चाहता हूँ कि अगर न्याय पालिका की और पुलिस की

काँठ नहीं हो गई और भ्रष्टाचार दोनों में फैल गया तो क्या होगा ? कितना जुल्म हो सकता है, कितनी भयंकर स्थिति हो सकती है । इस को समझते हुए घात को कोई बहुत बड़ा कानून बनाना चाहिए और साथ में यह भी निवेदन करना कि उन की सेवाओं की तरफ भी ध्यान देना चाहिए । उन को अच्छी तनखाह भी धाप को देनी चाहिए । जिसके उपर इतनी जिम्मेदारी का काम सौंप रखा है, जिससे धाप यह कहना चाहते हैं कि निष्पक्ष हो कर ईमानदारी से काम करे उस को पूरी सुविधाएं भी धाप को देनी चाहिए । इन सब बातों को ध्यान में रखते हुए मेरा धाप से निवेदन है कि हमारे प्रपते देश की प्रगति के लिए और भ्रष्टाचार को मिटाने के लिए अगर न्यायपालिका से भ्रष्टाचार को धाप हटा सके तो भ्रष्टाचार बहुत जल्दी दूर हो सकता है और अगर यह भ्रष्टाचार इसी तरह न्याय पालिका में जारी रहा तो हमारे हिन्दुस्तान के शब्दकोश में भ्रष्टाचार के स्थान पर शिष्टाचार शब्द जोड़ना पड़ेगा । इतना मुझे धाप से निवेदन करना है ।

SHRI TARUN GOGOI (Jorhat): Mr. Chairman, Sir, while supporting the Demands, I would like to take this opportunity to congratulate the Law Ministry for taking a revolutionary step, a bold step and a progressive step, in the matter of amendment of the Constitution, the 24th and 25th Amendments, whereby the obstacles which stood in the way of achieving the social and economic objectives have been removed and which have established the supremacy of Parliament in the matter of making laws.

Besides, the Law Ministry has become more and more important, particularly, in a democratic country like India. It is unfortunate that we have not realised its importance, as can be seen from the fact, that we are discussing the Demands in respect of this Ministry for the first time. In a democratic country, changes have to be brought about through change of laws. The Law Ministry has not only to make laws but reflect the

wishes and aspirations of the people. It must feel the pulse of the people. In the Constitution also, there must be changes keeping in tune with the changing times so that it becomes a dynamic one, reflecting the wishes of the people. Laws are meant for the people, not people for the laws. The Constitution is the vehicle for the people's life and it is the people who have to run this vehicle.

I agree there are serious wrongs in the present judicial system. We are still following the same colonial judicial system we inherited. It is not meant for the poorer and weaker sections. Constitution provides remedies for violation of the fundamental rights but these remedies are available only in the High Courts and Supreme Court not in the lower courts. In the case of poor people like drivers and Class IV people who are wrongly dismissed though there is violation of the constitutional provision, they cannot afford to go to the High Court or Supreme Court seeking the remedy. I would plead with the Ministry of Law that under article 32, the lower courts also should be empowered to give these remedies so that the poor people can take recourse to them.

Mr. Chatterjee started by questioning the *bona fides* regarding the appointment of judges. It is the prerogative of the Government to appoint judges. Government will only appoint these who can discharge their duties properly, and who will not stand in the way of socio-economic justice being done to the people and who will try their best to secure the objectives enumerated in the Preamble of the Constitution. Mr. Mishra said that article 124 has been violated by the appointment of the Chief Justice. As I understand it with my little knowledge of the Constitution, I think the appointment of the Chief Justice is quite in accordance with the constitutional provisions.

Allegations about rigging of elections have been made. It was said that the Election Commission is polluting the whole system and the ruling the

[Shri Tarun Gogoi]

party is corrupting the whole electoral system. This is not a fact. If it is a fact, how can so many opposition party members be elected to the Parliament and State Assemblies? When they are successful, they say, it is a fair election. If they are rejected, they say, the elections are not free and fair. This is nothing but the result of the frustration of the opposition parties who have been rejected by the people. I submit that the Election Commission is conducting the elections in a free and fair manner. There may be some lapses in the election rules which may be changed. But if such sweeping criticisms are made, it will undermine democracy and democracy would not take foot at all. If you do not have any faith in democracy, why do you contest elections? I do not find fault with the Election Commission. There may be certain deficiencies in the electoral system. I feel that there must be some reforms in the electoral system; there is involvement of lot of money and it should be curtailed.

I also agree with other hon. members that, after retirement, the judges and Election Commissioner should not be reappointed because justice should not only be done but should also appear to be done.

In respect of MRTP Act, I have great grievance against this Ministry. The Act has been brought into force in order to restrict the growth of monopolies, but how far it has been successful, I leave it to you to judge. Instead of monopolies being restricted, there has actually been a growth of monopolies; a lot of companies, foreign and Indian, have been growing through various nefarious activities.

In respect of legal assistance to the poor, I would like to say that the judiciary should be accessible to the poor, it should be nearer to the people. Now the judiciary is not nearer to the people, it is far away from the people; not to speak of Supreme Court or High Courts, even the lower courts are far far away from the people, 40

per cent of our people live below the poverty line. And what is the system for them? How can they expect to get justice? They cannot afford to go even to the lower courts, not to speak of Supreme Court or High Courts. There should be a radical change in the whole judicial system so that all the people, irrespective of their financial status, can get proper justice. I would request the hon. Minister to appoint a Committee consisting of all the people—Members of Parliament, Judiciary and persons from all walks of life—so that they can go deep into the matter; unless the matter is gone into in depth, there cannot be any changes. Merely making a sweeping criticism against the present system will not serve the purpose. They should go deep into the matter, how the system can be changed whereby justice can be ensured to all sections of the people.

Then I would like to point out that you are giving too much importance to only higher judiciary. You must give importance to lower judiciary also. Their conditions are far from satisfactory; their scales of pay, living conditions and housing facilities are most deplorable. If the States are unable to provide all these facilities, the Centre should go to their help.

In respect of Official Language Commission, legislative side, I find that the language is very complicated. On the other hand, what is said? Ignorance of law is no excuse. Therefore, it must be in a simple language so that all people can understand the law; it should be translated in all the regional languages.

With these words, I extend my full support to the Demands for Grants of the Ministry of Law, Justice and Company Affairs.

SHRI B. R. SHUKLA (Babraich):
Mr. Chairman, Sir, I extend my full support to the Demands for Grants in respect of the Ministry of Law, Justice and Company Affairs. It is a matter of great satisfaction and pleasure that the Ministry is headed by a gentleman

who has been a brilliant lawyer and a sober judge and who has adorned the Bench and the Bar alike. His Ministry is entrusted with a three-fold task, namely, to ensure fair and impartial justice throughout the country, to maintain an impartial system of elections, and to administer the company law affairs in such a manner as to break up the system of monopoly and decentralise the economic power among the people. Now I would like to take up these three aspects in seriatim.

So far as administration of justice is concerned, it has been criticised from various points of view. One point has been that the judges after their retirement, are given jobs by the Government; thereby, the confidence in the judiciary is eroded; they are influenced by the prospect of future appointment. I am entirely in agreement with this line of reasoning, and my suggestion is that the judges should not be appointed to any remunerative post after their retirement. In other countries like UK and USA, the Judges are made Judges for life, but I would not have that system also because here, if an undesirable Judge has somehow or the other crept into the judiciary, then it would be a perpetuation of an undesirable type of man. Therefore, the age limit which has been fixed for retirement should be retained. Now, how to ensure the future prospects of a retiring Judge? I would submit that the remuneration of the Judges should be enhanced. Their pensions should be enhanced. I would appeal to every section of the House not to be very much influenced by the so-called socialistic ideas in matters of salaries and emoluments of Judges. Let us grant it because the benefit that will accrue by providing such good conditions for the Judges would be for the benefit of society. The hon. Minister of Law himself had been a Judge and if I remember aright he resigned his judgeship on grounds one of which was that the emoluments were inadequate. If they were inadequate at a time when prices were not so sky-high, it is all the more necessary and in the fitness of things that Judges' salaries should be raised, their

pensions should be raised and their conditions of living and working should be made so attractive as to induce talents from the members of the Bar to occupy the chair in the Judiciary.

There is one more point. In this very connection, I would like to suggest that the Chief Justices should be appointed not from among the Judges of the same High Court or from among the members of the Bar of the same High Court because it is a matter of daily occurrence and experience that the Judges who are appointed Chief Justices have developed a sort of clique and groupism and, therefore their functioning vitiated by intrigues. Therefore, Judges from outside cadre should be appointed as Chief Justices. At least 50 per cent of the High Court Judiciary should be manned by persons belonging to another High Court. Of course, there may be the difficulty of language. At least it should be made like this that in the Hindi-speaking area a Rajasthan man should be appointed in UP and a UP man should be appointed in Bihar. Similarly, in the southern zone there should be similar arrangements.

Another point which I want to place for your consideration is that at least nine year records of a person who is going to be appointed a High Court Judge should be taken into consideration and in that connection, the opinion of at least three places where the Judges has functioned during the last nine years should be obtained. The opinion should be obtained from the President and Secretary of such three Bar Associations as the Bar is the most effective source from which valuable opinion about the conduct and calibre of such persons can be obtained. Therefore, while making an appointment the opinion of three Bar Associations where he has held office as a Judge should be taken.

Now, as regards the election system. of course, the hon. Members who have the privilege of occupying the Opposition Benches and who have not the

[Shri B. R. Shukla]

good fortune of coming over to this side always make a grievance, I would not say that the election system has functioned to the satisfaction of all but I would say that certainly, by and large, the election machinery has acted fairly, effectively and impartially. After all, everything is fair in love and war. Election battle is also a battle and when there is a battle there are of course contending parties and somebody sometimes goes astray; even opposition Members, if they happen to be friendly with the officers, also exploit the situation. So, on that account, the high office of the Election Commission should not be subjected to unjustified criticism in this House. Let us promote the growth of healthy convention for proper and effective functioning of democracy. How the opposition parties have contributed? They have misbehaved in the State Legislature of UP by throwing a paper ball at the head of the State. Is it conducive to democracy? They have harassed the Governor. Is it conducive to democracy? My submission is this. The Members of the opposition parties as well as the members of the treasury benches should make a cooperative effort for promoting this institution of democracy which has been firmly planted in this soil of India. It is no use blaming at each other or mud-slinging at each other.

It has been said about the Attorney General that he has got a fabulous fee. My friend Mr. Daga has quoted from certain booklet. I would reply to him by saying that out of the fee which is to be paid to him, almost 97.5 per cent would be going by way of taxes. In the legal profession in spite of the uninformed and unenlightened criticisms that we hear, we have a dozen of eminent persons! Motilal Nehru, C. R. Das, Chakravarti Rajagopalachari, Sir Ferozshah Mehta, were dozens of the profession but they all accepted fabulous fees. They were not in any way less patriotic and their contribution to the cause of freedom of the country is in no way

inferior to anybody else. Benck-sheep may be there in every profession. But a person who comes to the top does not come up to the top unless he makes his mark by sedulous efforts and he rises up slowly and steadily. Look at the fee Mr. Palkhiwala has got. Mr. Niren Dey would have got more money than that of Attorney General if he had got brief on behalf of private parties. So, we should not condemn the fees which they are getting. As for breaking up of the monopoly, I would say, I would agree that we should break monopoly, but if the breaking up comes in the way of production. I for one would lend my support for production rather than for breaking up. The primary and foremost consideration is production. Today the paramount need of the hour is that there should be greater and greater production. We should not be lost in mere slogans and catch words. Ours is a task of waging war on poverty. For that we cannot ignore the talents of the private enterprise.

Let us all therefore combine and make tremendous efforts to boost up production and also try to put down the monopoly system but the monopolist should not be scared away in order to please a few misguided enthusiasts who have got their borrowed ideology from other countries which have no relevance to the context of things as they are today in our country.

SHRI SHANKERRAO SAVANT (Kolaba): Mr. Chairman Sir, I support the demands for grants relating to the Ministry of Law and Justice.

As a matter of fact, this ministry is a very important ministry because it controls the judiciary which affects everyday life of millions of people. But, somehow or other, this is the least criticised ministry. The main reason to my mind is this. There is a wrong belief that it is impolite to criticise the judiciary. As a matter of fact

this belief has created some wrong impression on the judges that like the king the judges can do no wrong. For this proposition I can cite an instance from the Supreme Court's judgment in the Golak Nath's case. They cited therein some unknown American precedents which were non-existing, viz., "This prospective over ruling" and on the strength of this principle gave a wrong judgment which is not publicly criticised. Take even the latest judgment on the Fundamental Rights case where thirteen judges gave almost as many judgments. Nobody knows the ratio decidenda of the judgments. Queer judgments are given not only by the Supreme Court Judges but also by the Lower Court Judges. They are not popular with the people. There is a belief that in the courts justice is rarely done. Somehow or other there is divergence between the fact as they are known to the people and the facts as they appear during the course of trial or as they emerge from the courts. The people know who is a murderer or an adulterator but, somehow or other when the matter comes up before the court, he goes scot-free. That is because a wrong interpretation is put by unscrupulous judges on a salutary maxim and as a result, the guilty persons escape. The maxim is that let nine guilty persons escape but let not one innocent person be punished. It is a good maxim. It is wrongly interpreted. The result is that in criminal court, the guilty people are rarely found to be guilty.

So, if we want to see that the judiciary becomes popular, we shall have to overhaul some of our judicial systems and some of the maxims also. Secondly, I would like to point out one thing. So far as the latest ruling of the Supreme Court goes on the Fundamental Rights case, it was alleged that the Chief Justice and even Shri Palkhivala tried to persuade the judges—it has been said openly and it has never been denied—to give a particular judgment. As a matter of fact the Chief Justice should have been impeached for this disgraceful behav-

viour. We simply did not take any cognisance on these things because of a belief that it is not proper to criticise the judges. This is a wrong belief.

Much has been said about overcrowding of work in the high courts and the supreme court. That is a fact I would like to make one suggestion. The Law Minister may kindly consider it. What happens is this. There is a concurrent jurisdiction in the High Courts and Supreme Court in the matter of laws passed by Parliament. It is not necessary to give the concurrent jurisdiction at all. The high courts' jurisdiction should be limited to the laws passed by the State Governments. If there is a challenge to the validity of any law passed by Parliament, then that challenge should be taken only in Supreme Court. If we can do this thing, we can reduce considerable litigation; writ petitions too could be reduced to more than a half.

As regards emoluments of judges, everybody has said that their emoluments should be increased. I would only point out one thing that the judges cannot act like the trade unions. We find that even the I.A.S. Officers have got their association. The judges have not done it. They should not do it as it will lower the dignity of the courts. Therefore, it is for the State Government to see that proper emoluments are paid to them. As a matter of fact, the costs of living have gone up. It is not necessary to bring that up by somebody. It should have been done automatically long time ago.

Now, I would like to point out certain things in regard to company affairs. I do not know whether the Department of Company Affairs considers that their duty is simply to watch the company affairs and the misdeeds of the companies only. I can cite the example of Morarkas. They have managed so many concerns, and every concern has come to grief. The Company Affairs Department has never interfered until the company concerned has actually come to grief. They have

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not paid even income-tax to the tune of crores of rupees and yet they are allowed to manage some of these firms and they are already mismanaging the employees' provident funds with the result that the employees are scared that in case the company comes to grief they may not get anything by way of gratuity or provident fund. So, I would suggest that the Department should take preventive steps in time after seeing what these company managements are doing.

With these words, I support the Demands of the Ministry.

17.57 hrs.

STATEMENT RE: JUNIOR DOCTORS' STRIKE

THE MINISTER OF HEALTH AND FAMILY PLANNING (DR. KARAN SINGH): I am glad to inform the House that the Junior Doctors of the Post-Graduate Institute of Medical Sciences in Chandigarh, and the Jawaharlal Institute of Post-Graduate Medical Studies and Research in Pondicherry have called off their strike and resumed duties. This follows the decisions on this problem reached by Government after careful and thorough consideration. In order to save the time of the Members I am placing a copy of the decisions on the Table of the House, and will only highlight a few salient points.

These decisions mark a further advance over the announcement by Government on 12th January, 1974, which had in turn improved upon the recommendations of the Kartar Singh Committee. According to the new decisions an Intern will get a stipend of Rs. 350/- per month with effect from 1st January this year as against Rs. 200/- on the 1st January, 1973 (an increase of 75 per cent). Similarly as against a fixed stipend of Rs. 275/- the First Year Junior Resident in Delhi will now

get Rs. 545 (an increase of 98.2 per cent) and as against fixed stipends of Rs. 300 per month the Second and Third Year Junior Residents will now get Rs. 599.50 and Rs. 654.00 (an increase of 100 per cent and 118 per cent respectively). What is more, the emoluments of the Junior Residents have now been made sensitive to rise in the cost of living, and they will be allowed further increases in Dearness Allowance at the same rate as admissible to Central Government employees of the same group.

Another important point is that Government, consistent with its policy of fairness and a genuine desire to avoid victimization of the strikers has made several concessions with regard to the treatment of the strike period. Whereas the period will be treated on the principle of 'no work, no pay', all punitive action will be withdrawn and Government will consider condoning the break in service for other purposes at the expiry of the tenure subject to satisfactory performance of duties. In the event of condonation there will be no mention of strike in the final certificate and records of Junior Doctors. If the Junior Doctors are required to extend their terms by the concerned academic authorities, they will be given facilities to do so and will also be paid for the extended period.

In the face of such a generous offer, it is most surprising that the Delhi Junior Doctors have not called off their strike. Although I have not yet received any formal communication from them, today's press reports are not encouraging. Hon'ble Members will appreciate that this whole matter cannot be allowed to drag on indefinitely. While the Junior Doctors are obsessed with their own demands they seem to be totally impervious of the continuing suffering that they are inflicting upon large sections of the community. It is not my habit to use strong language, nor do I wish to depart from the attitude of sympathy and consideration that I have adopted throughout this prolonged period. However,