

**Mr. Deputy-Speaker:** The question is:

"That this House approves the recommendations contained in the Report of the Committee appointed to review the rate of dividend which is at present payable by the Railway Undertaking to General Revenues as well as other ancillary matters in connection with the Railway Finance vis-à-vis the General Finance which was presented to Parliament on 29th November, 1965."

*The motion was adopted.*

14.57 hrs.

#### DELHI HIGH COURT BILL

**The Minister of State in the Ministry of Home Affairs and Minister of Defence Supplies in the Ministry of Defence (Shri Hathi):** Sir, I beg to move:\*

"That the Bill to provide for the constitution of a High Court for the Union territory of Delhi, for the extension of the jurisdiction of that High Court to the Union territory of Himachal Pradesh and for matters connected therewith, be taken into consideration."

Sir, under the present arrangement, a Circuit Bench of the Punjab High Court functions in Delhi to deal with the High Court cases arising in the Union territory of Delhi and the Delhi Administration is paying to the Punjab Government the actual cost of the Circuit Bench in Delhi, and it has also to share the expenditure on the rent of the building etc. It is not a question of money. Really, the question is that Delhi is now expanding and the number of cases are also increasing. In order that the people of Delhi may have the benefit of having a separate High Court this

measure<sup>f</sup> is brought forward. Delhi is a growing city. With the Supreme Court here, because the advocates come from outside, there is no settled Bar here. A High Court in Delhi might also give a good Bar. The Bar Association of India has made a demand that there should be a separate court.

**Shri Hari Vishnu Kamath (Hoshangabad):** Sir, I rise to a point of order. I am sure you will agree that when the hon. Minister is piloting an important measure for the capital of India there should be quorum in the House.

**Shri Shinkre (Marmagoa):** At least Members from Delhi ought to be present here.

**Shri Hari Vishnu Kamath:** They are protesting against the Bill or what?

**Mr. Deputy-Speaker:** The bell is being rung.

There is quorum now. The hon. Minister may continue his speech.

15 hrs.

**Shri Hathi:** On that consideration as well as on the consideration that there should be separation of the executive and the judiciary and that this would be the first step in that direction, this Bill is being brought before this House. After all, the judiciary has to play a very important role and an independent High Court, which will have control over the judiciary—the magistrates and the judges—would be a welcome step. I am sure the House will welcome this and support me in this measure.

So far as the Union territories are concerned, there is no High Court yet in any Union territory; but the Constitution does provide for setting up High Courts. Article 241 specifically says:—

"Parliament may by law constitute a High Court for a Union

\*Moved with the recommendation of the President.

[Shri Hathi]

territory or declare any court in any such territory to be a High Court for all or any of the purposes of this Constitution."

It also provides that for consequential changes—

"The provisions of Chapter V of Part VI shall apply in relation to every High Court referred to in clause (1) as they apply in relation to a High Court referred to in article 214 subject to such modifications or exceptions as Parliament may by law provide."

In this Bill, therefore, as the House will find, out of 21 clauses, clause 2 deals with the constitution of the High Court, clause 4 deals with these modifications which would be necessary in order to constitute a High Court for Delhi. For example, there is no Governor and when the question of appointment of the Chief Justice of the High Court or of the judges of the High Court is concerned, it is done by the President in consultation with the Chief Justice and the Governor of the State. That word "Governor" will have to be omitted and that is provided in this clause; but here we are not substituting the word "Administrator" because the President would not have to consult him instead of the Governor.

Similarly, modifications are being sought in articles 219, 225, 229 and 230. It was really not necessary that any modification should be made in article 230 because there is already a provision, namely,—

"Parliament may by law extend the jurisdiction of a High Court to, or exclude the jurisdiction of a High Court from, any Union territory."

That is, the jurisdiction of one High Court can be extended to another Union territory; but, we thought that because the Constitution only deals with the High Courts of States, it may

perhaps sometimes be argued that only the jurisdiction of a High Court of a State under article 214 can either be excluded from or extended to a Union territory. In order to remove that doubt and make it absolutely beyond doubt, modification of this article also is sought to be made.

Then, clause 5 deals with the jurisdiction of the High Court and there it is provided "ordinary original civil jurisdiction in every suit the value of which exceeds twenty-five thousand rupees." That will be the original civil jurisdiction. Then, clauses 6 to 9 are only procedural and practice provisions.

In clause 10 a specific provision is sought to be made to the effect that when a single Judge tries a suit in exercise of the original jurisdiction vesting in the High Court, an appeal would lie to the Division Bench.

Then Clause 17 is another important clause where it is said that the jurisdiction will also extend to the Union Territory of Himachal Pradesh. That is an important provision. Then Clauses 20 and 21 are about the power to remove certain difficulties if they arise and power to adopt laws—all these are procedural ones. The important Clauses are only 3, 4, 10 and 17. In order to see that the Himachal Pradesh people do not suffer any inconvenience in coming over to Delhi, provision can also be made for having a circuit bench for Himachal Pradesh. Therefore, while keeping in view the importance of having a separate High Court for Delhi, we have also looked to the fact that people in Himachal Pradesh do not suffer. I am sure that the present measure, which is a step forward in separating the Executive from the Judiciary and in having an independent High Court for Delhi itself, will be welcomed. I move.

**Mr. Deputy-Speaker:** Motion moved:

"That the Bill to provide for the constitution of a High Court for the Union territory of Delhi, for the extension of the jurisdiction of that High Court to the Union territory of Himachal Pradesh and for matters connected therewith, be taken into consideration."

**Shri Hari Vishnu Kamath:** I rise on a point of order. You will please recollect—I do not know whether you were in the House at that time; Mr. Speaker was in the Chair—that I had raised a point of order, which he held over and said that I could raise it later.

I invite your attention to Rule 376, proviso to sub-rule (2). I am concerned because the sudden change without notice in the order of business has handicapped us to a certain extent. I will explain to you as to how it has handicapped us. The order paper that we got yesterday put the High Court Bill low down in the list after the Seeds Bill and the Foreign Marriages Bill, if my memory serves me aright. This morning I was taken by surprise, when I noticed that the Delhi High Court Bill had been upgraded, so to say, and had been put on top of the other two. We had planned, I had planned—I will speak for myself—to give certain amendments on the basis of what we got yesterday—the order paper of yesterday. But when I saw the order paper today, I was aghast, taken aback, because I have been deprived of the opportunity and the right, if I may say so, to table amendments to this Bill. That is number one.

**Mr. Deputy-Speaker:** There is one amendment here.

**Shri Hari Vishnu Kamath:** That is another thing; that is about referring the Bill to a Select Committee. But there is an amendment to one of the Clauses; I have given notice this morning; and I shall take it up when the time comes.

Another matter which I wanted to raise was with regard to arrangement of business. Yesterday, you will recall, when you were in the Chair, the Central Vigilance Commission's report was taken up, discussed and put off. I do not know whether it will be taken up during this session. It is a bad precedent that it should be taken half way through and left in the middle. Therefore, I would request you to discuss with the Speaker and the Minister of Parliamentary Affairs and the Leader of the House, as to whether they want to put through at least the business which we got this morning in today's and tomorrow's order papers; this business will take much more than the time at our disposal. I would, therefore, suggest that the House should be told before we rise today whether we will sit on Saturday because it is necessary, if you want to dispose of this business—consideration of the Central Vigilance Commission's report etc.—to sit on Saturday. If you want to push it to the next session, you can do anything you like. There must, however, be some sort of method in their madness, some sort of planning. This has been a truncated business but if you want to push even that to the next session, it will be a hopeless affair. I, therefore, request that we should be told before 5.00 P.M. today whether this business is meant to be transacted in this session and whether the House will sit on Saturday.

एक माननीय सदस्य : मिनिस्टर श्रीफ पार्लियामेंटरी प्रफेसर्स को बुलाना पड़ेगा ।

श्री हरि विश्वु कामथ : जी हां, मिनिस्टर श्रीफ पार्लियामेंटरी प्रफेसर्स को बुलाना पड़ेगा । वे फौरन यहाँ पर बुलाये जायें ।

I had planned—but I find after the Minister's speech that my plan has fallen through—to raise this point of order based on the Constitution—Articles 214 and 230. I was not aware

[Shri Hari Vishnu Kamath]

—because I was not a member of Parliament at that time—that a Union Territory also is entitled to have a High Court if the Parliament so decides, under Act 341. I am glad that Delhi will be the first Union Territory to have it. I do not know whether the Constitution has got some such disparate Articles. We should take separate steps to make them harmonious. The Deputy Law Minister must take notice of this and bring them in line with the others.

**Shri Hathi:** Not for the purpose of this Bill?

**Shri Hari Vishnu Kamath:** Not now; later. Articles 214, 230 and 241 should be brought together; at least Articles 214 and 241 should be put together in one Article and not in two Articles because otherwise we lose the thread. I would suggest that the Constitution may be amended at an appropriate time;

I would now move:

“That the Bill to provide for the constitution of a High Court for the Union territory of Delhi for the extension of the jurisdiction of that High Court to the Union territory of Himachal Pradesh and for matters connected therewith, be referred to a Select Committee consisting of 25 members, namely: Shri S. V. Krishnamoorthy Rao; Dr. M. S. Aney; Shri Bhagwat Jha Azad; Shri Ramchandra Vithal Bade; Shri S. M. Banerjee; Chodhury Brahm Perkash; Shrimati Renu Chakravartty; Shri P. R. Chakraverti; Shri N. C. Chatterjee; Shri N. Dandekar; Shri Shiv Charan Gupta; Shri K. Hanumanthaiya, Shri Himmatsinhji; Sardar Kapur Singh; Shri Harish Chandra Mathur; Shri Bakar Ali Mirza, Shri Gulzarilal Nanda; Shri Naval Prabhakar; Shri Shivram Rango Rane; Shrimati Yashoda Reddy; Shri Sham Nath; Dr. L. M.

Singhvi; Shrimati Ramdulari Sinha; Shri Ram Sewak Yadav, and Shri Hari Vishnu Kamath, with instructions to report by the first day of the next session.”

I will not take the time of the House. I will only remind the Minister, the Government, the House and yourself that the Delhi Administration Bill has rightly been referred to a Joint Committee, a Joint Committee of both the Houses of Parliament. It was a big measure, but as regards this Bill, the Minister, in his speech, has indicated how certain Articles, certain provisions in the Constitution . . .

**Mr. Deputy-Speaker:** Let me put the motion and the amendment to the House. The motion and the amendment are now before the House.

**Shri Hari Vishnu Kamath:** The hon. Minister has indicated in the course of his speech, and a lucid speech at that, that certain articles of the Constitution will have to be seen in a new light, so to say. But I am sorry to note that the time allotted, if I am informed aright, is only one hour for this Bill. That is what I am told, and I am saying this subject to correction. Allotting one hour for this Bill seeking to create a very important institution in a Union Territory for the first time, the first of its kind, a pioneer institution for a Union Territory, and expecting the House and the Parliament of the country to dispose of it in one hour will be atrocious, to say the least.

**Shri Shinkre:** Ridiculous.

**Shri Hari Vishnu Kamath:** It is posterous!

No doubt, the measure is welcome, and we hope that the people of Delhi and of Himachal Pradesh will take advantage of the new High Court which is going to be set up. I do not know, but I am told that some other neighbouring districts would also like

to take advantage of it, and I hope that it will be examined by the Ministry and by the Government. The people will naturally feel a sense of gratification at this institution of the High Court that is being provided for them in the Union Territory of Delhi and the extension of its jurisdiction to Himachal Pradesh. But may I ask the hon. Minister whether he really, in all conscience, thinks that the matters which he has referred to in the course of his speech with regard to the various articles of the Constitution are such that the House, with the quorum bell ringing now and then and with this atmosphere that is prevailing at the fag end of the session—I do not say that it is extraordinary, but it is usual—is in a mood to discuss and finish off this important Bill in one hour?

**Shri Kapur Singh (Ludhiana):** He is only joking.

**Shri Hari Vishnu Kamath:** My hon. friend Shri Kapur Singh has made a wise observation, a pertinent observation. He says that the hon. Minister is only joking. But this is no matter for a joke. The Delhi High Court Bill is a serious and important measure, and Shri Kapur Singh will agree with me that if the hon. Minister is really joking, he is not doing the right thing . . .

**Shri Kapur Singh:** I agree with the hon. Member.

**Shri Hari Vishnu Kamath:** I would submit that he should not do so.

**Shri Hathī:** I only meant that the Bill was not controversial.

**Shri Hari Vishnu Kamath:** I thought the joke was non-controversial, but I think the Bill is controversial.

**Shri Hathī:** Otherwise, most of the Members who want to oppose the Bill would have been here.

**Shri Hari Vishnu Kamath:** The statement made by the hon. Minister

is somewhat reminiscent of the attitude which he took on the Judges (Inquiry) Bill . . .

**Shri Hathī:** I was not there at all in connection with that Bill.

**The Deputy Minister in the Ministry of Law (Shri Jaganatha Rao):** I was there.

**Shri Hari Vishnu Kamath:** Anyhow, one of the two Ministers was there. After all, it is collective responsibility or joint responsibility.

He resisted the proposal for referring that Bill to a Select Committee. But the entire House was with me at that time. I had proposed that, that Bill should be referred to a Select Committee. Government resisted it till the last minute so to say; it was a last-ditch resistance, so to say until the entire House came down upon them, literally. He, then took time to consider, and said that he would tell us the next day. Government were feeling uncomfortable here, and the entire House had agreed that it should go to a Select Committee; then, of course, Government had no alternative, and they went even one step further, and rightly I accepted their forward step. That was that they wanted to refer the Bill to a Joint Committee of both the Houses.

In the case of this Bill too, I myself would have been happy to refer it to a Joint Committee, but I suppose this is a financial Bill or money Bill coming under article 110(a) to (f) of the Constitution, and, therefore, a Joint Committee of both the Houses is ruled out for this Bill. It is because of that, that I have sought to move this motion for reference of this Bill to a Select Committee.

It is only in the placid, quiet, sober, sedate and contented atmosphere of a Select Committee or a Joint Committee that we can pay adequate attention to measures of this nature. We have been pleading—you, Sir, will also recollect, because you have been

[Shri Hari Vishnu Kamath]

for long in this House and in the other House, and you know, Sir, that we have been pleading—for umpteen years or many years (I would not like to use the word 'umpteen' because it may be ruled as unparliamentary, but if it is not unparliamentary, then I would say 'umpteen years') that Government should as a matter of course, on their own or *sou motu* refer all important measures, important in public interest, whether they are controversial or not, all Bills in the national interest, to a Select Committee or a Joint Committee. That has been our plea during all these years. But Government have been shilly-shallying, dilly-dallying and 'billy-ballying' over this issue.

I would, therefore, request that this Bill should go before a Select Committee, because this can not go before a Joint Committee. I would request the House, if Government are allergic to it and are intransigent over this matter, to bring sufficient pressure to bear upon them so that this Bill also goes before a Select Committee of the House and in the next session which is a long session, we can consider it before the Demands are discussed or after the Demands are disposed of, and not in one hour or two hours as is proposed now.

If Government are not going to accept this motion of mine, let the time allotted for this Bill be extended at least to four or five hours. One hour is absolutely, hopelessly, inadequate, and it will be an outrage upon the House.

I, therefore, move and commend my motion for the acceptance of the House.

**Mr. Deputy-Speaker:** No time has been allotted for this Bill. Shall we have two hours for this Bill? Are the Government accepting the motion for reference of the Bill to a Select Committee?

**Shri Hathi:** No.

**Mr. Deputy-Speaker:** Then, we shall have two hours for this.

**Shri Ram Sewak Yadav** (Bara Banki): Three hours.

**Shri Hari Vishnu Kamath:** Let us have three hours, because there is the stage of clause-by-clause consideration also. Let us have 2 hours for the general discussion and one hour for the clauses.

**Shri Shinkre:** Let the allotment be 2 hours, but if the debate indicates real interest by Members, then you can extend the time.

**Mr. Deputy-Speaker:** We shall have two hours for the time being.

**Shri Hari Vishnu Kamath:** Let us have one hour for the clause-by-clause consideration.

**Shri P. K. Deo** (Kalahandi): That means that the Seeds Bill will not come up today?

**Shri N. C. Chatterjee** (Burdwan): I think the hon. Minister has done well in sponsoring this measure. I know the feeling of the lawyers in Delhi, both of the district court as also of the Circuit Bench which is functioning here. I am now coming straight from the Circuit Court and I may tell the hon. Minister and you, Sir, and the House that there is a good deal of feeling among the senior Members of the Bar Association functioning in the Delhi Circuit Court over the fact that there is one observation in the Statement of Objects and Reasons, which has offended them namely, that the present arrangement is unsatisfactorily. I assured them—of course, I had no mandate from the Minister or from the Government—that that meant no reflection on the judiciary which was functioning in the Delhi Circuit Bench or on the Bar.

There were three Englishmen associated with the High Courts in India.

One was Sir Trevor Harris. You know, Sir, that he was an eminent judge who was induced by both Pandit Nehru and Sardar Patel to continue to function as Chief Justice of Calcutta after India became independent and he continued to the great advantage of the High Court, and he maintained the rule of law fearlessly in my High Court. I had the privilege to work with him, and I can pay a tribute to that gentleman's forensic and juridical ability. The next one was Mr. Justice Mootham, who was the Chief Justice of the Allahabad High Court. The last in the series is Mr. Justice Falshaw, who is now the Chief Justice of Punjab High Court. I am quite sure that there is no reflection on the judiciary now functioning in the Circuit Bench here.

**Shri Hathi:** Not in the least. I may say that straightway.

**Shri N. C. Chatterjee:** I am quite convinced that there was no such feeling, but I am very happy that it has come out from the horse's mouth and that will satisfy all people.

**Shri Ram Sewak Yadav:** Not the horse's mouth, but 'Hathi's' mouth.

**Shri N. C. Chatterjee:** I know the importance of Shri Hathi and so I would not use that language.

I must say that we are all committed to the rule of law. That is the very basic foundation of our Constitution. The rule of law will be administered in this part of the country if we have a properly equipped High Court here.

I remember I was appearing in the Delhi Circuit Court, when the Attorney-General was appearing against me, and we had to open out some maps; the room was so small that the map hit the judge, and we were likely to be hauled up for contempt of court. The arrangements really were very unsatisfactory, but

that is not from the juridical point of view but from the other point of view.

What I am pleading for is not in any spirit of obstruction but in a spirit of co-operation. I am supporting Shri Kamath, because I want this High Court to be given as much power and as much jurisdiction as possible and to be a properly equipped High Court.

The Circuit Bench of the High Court which is now functioning is not at all inferior to any other High Court in India. I have had the privilege to know some of the High Courts and their standards of juridical and forensic work and also those of the Bar, and they have been quite satisfactory and up to the mark.

But what I am thinking is this. I am appealing to the Minister also to take into consideration the future of the Punjab State. Punjab is itself in the melting pot. We do not know what will happen. I am not here a protagonist of either side, either for Punjabi Suba or against it. But you know that a demand has been made; some leaders of the Congress and some leaders of other parties have strongly opposed it; some are in favour of it; great leaders like Sant Fateh Singh and Master Tara Singh are strongly pleading for the creation of a linguistic state called Punjabi Suba. If that happens, there is bound to be Haryana, and it will be necessary to place Haryana under this proposed High Court. Everyone is anxious that a quick decision should be taken. All that I am saying is that a man from Rohtak or a man from Gurgaon does not want to go to Chandigarh if he has got a full equipped High Court next door. It will, to some extent, be fantastic to ask citizens who have now got the right to go to the High Court for the vindication of fundamental rights to take a long detour to Chandigarh when they have got to pass through Delhi where there is a fully equipped High Court.

Therefore, I am suggesting that the Bill be sent to a Select Committee. Shri Kamath has suggested it. He has

[Shri N. C. Chatterjee]

fixed a time-limit. Do not allow it to be extended.

**Shri Hari Vishnu Kamath:** First day of the next session.

**Shri N. C. Chatterjee:** In the meantime, we shall know the fate and the contour of the Punjabi Suba or the Punjabi State. We shall know where we stand and accordingly we adjust the territorial contour of this Delhi High Court.

**Shri Hari Vishnu Kamath:** Heavens won't fall by that time.

**Shri N. C. Chatterjee:** I do not think there will be any difficulty in just waiting till the commencement of the next session. I think it will be desirable; it will be good for the litigants.

You know there is a good deal of congestion in that High Court, a good deal of congestion because of one judgment. You may remember, as a man of law, that Mr. Justice Patanjali Shastri declared in the leading case of Election Commissioner v. Saka Venkata Rao, that all election cases in which the Union of India is a party must be heard in Delhi. The Election Commissioner issued an order only in respect of a Madras election. He went down to Madras himself and said, 'I will pass some order', which was being challenged. But the Supreme Court said, 'You cannot have a writ filed in the Madras High Court; You must come up to Delhi'. It was argued very strenuously by Shri Mohan Kumaramangalam that it is really a travesty of the fundamental right given to our citizens under art. 32. We have not merely given them fundamental rights, but, we have given them a remedial right to go to the Supreme Court for the vindication of the fundamental rights. We have made a conscious departure from all other constitutions in the world and we have made that remedial right a fundamental right.

That is why Chief Justice Patanjali Shastri said that that is a fundamental right, but that must be vindicated in the Delhi Court. You cannot file any writ petition in any High Court in India. The result has been that hundreds, possibly thousands, of writ petitions had to be filed here and many of them are still pending adjudication, blocking the normal work.

Now, to some extent, the mischief has been redressed. But still there is a lot to be done. I am pleading for the early establishment of a properly equipped High Court. I hope there will be no provincial or parochial considerations entering in the recruitment of the Judges, that it will be only motivated by the highest considerations of merit, judicial integrity and probity, and that would be a successful venture.

I am pleading not for Delhi; I am pleading for a practical, pragmatic approach so that this thing may be put on a proper pedestal.

**Shri Kapur Singh:** May I, first of all, support the proposal made by Shri Kamath for referring this Bill to a Select Committee instead of being considered straight on, as is now proposed?

Shri Hathi has said that this Bill is not being referred to a Select Committee because it is non-controversial. After a perusal of the statement of objects and reasons, it does not appear to be so obvious that the Bill is altogether non-controversial. As far as I can see or as far as one can read out of the statement of objects and reasons, four reasons are given as to why a separate High Court should be set up for Delhi. One of these is that the population of Delhi is increasing. The other is that the work in Delhi is also increasing. The third is that it will facilitate separation of the judiciary from the executive. These three reasons are far

from convincing. Even if there is no separate High Court for Delhi, it should not be a hindrance or a bar to the separation of the judicial from the executive functions under the present arrangement. With regard to increased work and the increase in population, it is an argument for increasing the strength of the Punjab High Court and not an argument for constituting a separate High Court for Delhi.

But there is a fourth reason which may have weighed with Government in coming forward with this Bill. It is stated in the statement of objects and reasons—it is proposed to have a separate High Court for this reason, it is proposed to have a separate High Court for this reason, it is proposed to have a separate High Court for this reason, and for other reasons. As far as the other reasons are concerned, they can only be of a non-judicial and political nature. If one can hazard a guess, perhaps, the other reasons relates to a type of work which the Supreme Court Judges and the Circuit Bench Judges of the Punjab High Court have to do here. That work sometimes relates to the executive actions of the Government of India itself—and by way of writ petitions it comes up before the Circuit Bench. If it is for that reason, a non-judicial and political reason, that a separate High Court is desirable for Delhi, this is a question which requires very calm consideration and it should not be hustled through, as it is proposed to be done.

With these words, I support the motion moved by Shri Kamath.

**Mr. Deputy-Speaker:** Shri Yadav.

**Shri Shinkre:** On a point of order. Did I not catch your eye now or before?

**Mr. Deputy-Speaker:** My eye can catch only one Member.

**Shri Shinkre:** I stood up more than twice. I have no objection to allow

Shri Yadav to speak, but I should also be called.

**Mr. Deputy-Speaker:** Order, order. One by one I am calling.

**श्री रामसेवक यादव :** उपाध्यक्ष महोदय, यह जो दिल्ली में उच्च न्यायालय स्थापित करने का विधेयक प्राया है, इसका मैं इस माने में स्वागत करता हूँ कि जो प्राज मौजूदा सर्किट बेंच दिल्ली में है और जो पंजाब उच्च न्यायालय के मातहत है, उसको हटा कर दिल्ली में उच्च न्यायालय स्थापित कर देने से यहां लोगों को सहूलियत मिलेगी। लेकिन इसके साथ-साथ मैं माननीय कामत जी के संशोधन का भी समर्थन करता हूँ जिस में उन्होंने यह मांग की है कि इस विधेयक को प्रवर समिति के सुपुर्द कर दिया जाए।

श्री माननीय मंत्री महोदय ने इस विधेयक के उद्देश्यों का उल्लेख करते हुए यह कहा है कि इस का एक उद्देश्य यह है कि उच्च न्यायालय यदि यहां कायम हो जायगा तो य जो प्रशासनिक लोग हैं, उनके हाथ से न्याय विभाग का जो काम है वह चला जाएगा और एक माने में न्याय और कार्यकारिणी के बीच में जो रिश्ता कायम है वह खत्म हो जाएगा, उसका फलगाव हो जाएगा। लेकिन मैं समझ नहीं पा रहा हूँ कि यह जो मौजूदा विधेयक है इस विधेयक के पारित होने पर ही, जैसे ही यहां पर उच्च न्यायालय स्थापित हो जाएगा वैसे ही कैसे यहां पर एग्जिक्यूटिव के जो लोग हैं और जिन को न्याय विभाग के अधिकार भी मिले हुए हैं, वे समाप्त हो जायेंगे। मैं चाहता हूँ कि मंत्री महोदय जब उत्तर दें तो इस बात की भी सफाई करें। प्राज जितनी बर्बा चवती है कि हम न्याय विभाग को प्रशासनिक विभाग में घलस करना चाहते हैं, उसके संदर्भ में अगर सभी राज्यों की स्थिति को प्राय देखें तो प्रायको पता चलेगा कि चाहे ज्युडिशियल मैजिस्ट्रेट हों या डिप्टी क्लर्क हों या क्लर्क हों, सभी का कुछ

[श्री रामसेवक यादव]

न कुछ न्यायालय के भी अधिकार प्राप्त हैं और साथ साथ प्रशासनिक काम भी रहते हैं और जब कभी भी प्रशासनिक मामलों का सवाल आता है उनका दृष्टिकोण धूमिल हो जाता है चाहे वह हाई कोर्ट के मातहत ही क्यों न हों। इसलिए अगर आप सही मानों में प्रशासन और न्याय दोनों को अलग अलग करना चाहते हैं तो न्याय विभाग के किसी भी आदमी को आप प्रशासन का काम सुपुर्द न करें, केवल न्याय विभाग का काम ही उसके पास होना चाहिए।

अभी परसों यहां पर एक दिल्ली प्रशासन विधेयक पेश हुआ है। उसको एक प्रवर समिति के सुपुर्द किया गया है। उसमें भी यह चर्चा चली थी और यह मांग की जा रही थी कि दिल्ली के लिए एक जिम्मेदार प्रशासन होना चाहिए। माननीय मंत्री महोदय ने तब यह तर्क दिया था कि उसकी आवश्यकता नहीं है।

लेकिन मैं चाहूंगा कि जो तर्क माननीय मंत्री महोदय ने यहां पर उच्च न्यायालय की स्थापना का दिया कि दिल्ली की आबादी बढ़ रही है, मुकुंदमेबाजी बढ़ रही है, उन्हीं चीजों को और बातों के सम्बन्ध में भी ध्यान में रखा जाये। अगर मैं माननीय मंत्री महोदय की दलील को ही इस्तेमाल करूं तो जहां आज मंत्री महोदय एक और दिल्ली की आवश्यकता को महसूस करते हुए अलग न्यायालय देने की बात सोच रहे हैं वहां उन को चाहिये कि दिल्ली के लिये एक जिम्मेदार प्रशासन भी दें, क्योंकि उन के तर्क से ही यह सिद्ध हो जाता है कि इसकी आवश्यकता है। मैं आज इस लिये यह कहना चाहता हूं कि लोगों के मन में हंकायें हैं। जब एक तरफ दस न्यायालय को कायम करने के लिये दिल्ली की आबादी का तर्क था तब दूसरी तरफ यह देखा जाता है कि दूसरे मामलात में दूसरा तर्क दिया जाता है। इन सब बातों से जब अलग

प्रशासन या अलग सरकार बनाने की बात कही जाती है तो लोगों के मन में यह भ्रम होता है कि पता नहीं कौन चीफ जस्टिस बने या कौन हाई कोर्ट के जज बने, इस में किन्हीं और से मांग रखने की बात हो सकती है। लोग सोचते हैं कि कहीं ऐसी बू तो इसमें नहीं आती है। मैं चाहूंगा कि इस तरह के सुधार इस में आने चाहिये जिस से कि यह सब बातें इस में न हों।

मैं एक दूसरी बात भी उठाना चाहता हूं। यह अच्छी बात है कि न्यायालय कायम हो। लेकिन साथ ही साथ मैं यह चाहता हूं कि हम देश में ऐसी व्यवस्था करे कानून के जरिये और व्यवहार के जरिये कि जो न्यायालय हों वह बिल्कुल ही निष्पक्ष हों। वह निष्पक्ष हो कर अपने फैसले करें। लेकिन यह तभी होगा जब हम लोग न्यायालयों की इज्जत करेंगे। न्यायालयों का सम्मान करेंगे। मैं आप का ध्यान खींचू कि जब लखनऊ विधान सभा के प्रश्न को लेकर उच्च न्यायालय के खिलाफ वहां पर अनुशासन भंग का प्रश्न आया और सर्वोच्च न्यायालय के सुपुर्द किया गया राय जानके के लिये, तब इसी सदन की प्रतिक्रिया यह थी कि न्यायालय और कानून बनाने का जो भाग यह सदन है, उस के अधिकारों को ले कर कोई बड़ी चीज खड़ी हो गई। इस लिये मैं चाहता हूं कि न्यायालय तो बने, लेकिन साथ साथ हम उस न्यायालय की इज्जत भी करें, और मैं मिसाल के तौर पर दूसरी बात भी कहूँ, अभी इलाहाबाद विश्वविद्यालय के उपकुलपति के सवाल को लेकर इलाहाबाद उच्चन्यायालय के सामने वह मामला गया। इलाहाबाद उच्च न्यायालय ने फैसला दिया कि वहां के उपकुलपति की नियुक्ति अवैधानिक थी, गैरकानूनी थी। अब इस फैसले की इज्जत करने के बजाय जो एग्जीक्यूटिव है, जो प्रशासन है, वहां की जो सरकार है, उसने एक दूसरा अध्यादेश जारी करके इस गैरकानूनी काम को कानूनी करार दिया।

जो गरकानूनी काम था वह ठीक से कानूनी भी नहीं क्योंकि कानून की हैसियत से जो अध्यादेश जारी हुआ, जिस में इस बात की कोशिश की गई कि जो वहाँ के उपकुलपति हैं उन्हें कानून के अन्तर्गत ओहदा दिया जाये, वह गलत था । कानून की हैसियत से जो वहाँ का उच्च न्यायालय है उस के मुख्य न्यायाधीश ने अपना निवृत्ति उस कमेटी में की जो उपकुलपति का चुनाव करती है । यह वह नहीं कर सकते थे । जब तक अध्यादेश में, कानून में इस चीज को हटाने की व्यवस्था न हो तब तक उपकुलपति की नामजदगी को अध्यादेश के द्वारा रद्द करना अनुचित था ।

15.43 hrs.

[MR. SPEAKER in the Chair]

इस लिये मैं कहना चाहता हूँ कि न्यायालय बने, लेकिन यदि उस न्यायालय की इज्जत हम नहीं करते हैं तो उस का कोई बहुत बड़ा लाभ नहीं होगा । मैं चाहूँगा कि इन सारी बातों को ध्यान में रख कर हम कोई काम करें ।

**Shri Himatsingka (Godda):** I support the Bill that has been introduced in the House. The Bill is a very simple one, for the establishment of a High Court for the Union Territory of Delhi. I do not think that it is at all necessary that it should be referred to any Select Committee. After all, the provisions are very simple, and I feel that it is not necessary.

While we are discussing this Bill, I feel that the conditions of service of Judges need very early consideration. What is happening at present is that you do not get the proper kind of persons to accept this high post of a Judge. Previously you would never hear of any case of anybody having been offered a judgeship refusing the same, but now a number of advocates who are offered and invited to be Judges do not find it possible to accept it, and the reason is obvious.

When the High Courts were established, the salary of a Judge was fixed at Rs. 4,000, and there was no income-tax. Subsequently, even up to 1939, the income-tax was very low. But now the income-tax is so high that no one having any good practice is at all willing to come and join the High Court. Therefore, I feel that the conditions of service should be such that they may attract proper persons so that the disposal of cases may be quick and they do not become costlier. From my personal experience I can say that cases which used to take about two hours or three hours before take more than a week and this is the case with at least one High Court that I know of; I am told it is so in other places also. The result is that litigation has become more expensive. Similarly, I think their pension should also be raised so that they will not have to do something after they retire as judges. It does not appear to be very suitable for a High Court judge to seek employment after retirement. So, it is necessary that their conditions of service should be examined and made suitable. Only then you can have proper persons to administer justice. If the standard of justice deteriorates, it will be a very bad day for the country. The courts command very great respect in this country and it will be a very sad day if the standard deteriorates. So, it needs the consideration of government. The salaries should be raised or some other advantage should be given so that proper persons may be selected.

**Shri U. M. Trivedi (Mandsaur):** Mr. Speaker, it is a matter of pleasure for one to be able to take part in this debate. I welcome this Bill. After all wisdom has dawned upon the government to re-establish the system of ordinary original civil jurisdiction of the High Court. This has somehow or the other fallen in such disrepute and in Bombay the powers of the Bombay High Court have been taken away by the provisions of the Civil Courts Act. As I said, I welcome the

[Shri U. M. Trivedi.]

establishment of a High Court which is long overdue in the capital city of this great country.

I cannot understand for a moment how the same attention has not been paid in framing this Bill as has been paid letters patent in framing the letters patent of the various High Courts, of the charter of the several old presidency High Courts. Dubious provisions have been made about appellate jurisdiction to be exercised by a single judge; that is put in by implication and not by the provision of law. I am afraid that it is going to create troubles. I also find that no provision has been made for testamentary jurisdiction which is very essential, especially so when the original civil jurisdiction has been granted. The district judge ought to have been divested of that jurisdiction . . .

**Mr. Speaker:** Some other talk has been interrupting the proceedings for the last few minutes. I am waiting but it is not subsiding.

**Shri Yashpal Singh (Kairana):** Senior Members do so . . . (*Inter-ruptions*).

**Shri U. M. Trivedi:** No provision to that effect about the testamentary jurisdiction has been made. Then again, although original civil jurisdiction has been given for sums more than Rs. 25,000 suits, yet there is no provision for transfer of the business that will be pending in the district courts. I therefore say that there is some substance in the suggestion made by my hon. friend Shri Kamath; as usual, he is the one man who applies his mind more towards legislative measures than many others do. It is a good thing that we have at least one man amongst us who does that.

**Shri P. K. Deo:** He is from Madhya Pradesh too.

**Shri U. M. Trivedi:** That is certainly a credit to me. I find that this

reference to the Select Committee, therefore, becomes necessary. Of course, the Government, if it wants to get through this Bill in a hurry, may do so, but then the whole difficulty will be that for all times to come jurisdictional matters will crop up and create difficulties.

One more thing which I would suggest and on which I strongly feel nowadays is this. Some provision ought to be under existence for the exercise of the appellate jurisdiction of the high court, pointedly in view of the present position—sections 96 and 100 of the Civil Procedure Code—that in second appeals, the high court refuses to interfere, generally, on account of the recent position of the law as laid down by the Supreme Court that any concurrent finding of fact will not be disturbed. A man pays his courts-fees—a heavy amount for a poor man,—and his advocate gets a chance of standing up in a high court like the Punjab High Court; he hears the very sweet words of the high court judge—'dismissed', and goes out. For hearing this word 'dismissed', he need not be made to pay a heavy fees. Some provisions must be made that for the purpose of preliminary hearings, a token fees may be charged and not the full court-fees. If it lay in my hands, I would go further and recommend to the Government that the procedure obtaining in England about the filing of suits and registering of suits must also be established in India and that court-fees must not be a thing which may be considered remunerative for the Government but that it should be a fixed sum.

In very recent days, there is a growing tendency among the various States to increase the court-fees; the court-fees have been increased abnormally. In the Bombay High Court, where for a suit under a particular provision of the charter and under section 3 of the Court-fees Act, a nominal fee of Rs. 10 was charged, for, the highest amount of the suit, now, there has been a change; a change has been effected, and while

those who have to sue for Rs. 3 lakhs may not pay, those who have to sue for a lakh of Rupees or Rs. 15,000 or Rs. 20,000 have to pay a very heavy fee. That obtains in all the States, and slowly they have veered round the view that the subject must be fleeced as much as possible and the people must not be encouraged in litigation to have their rights established. The difficulty arises in cases where Government officers act dishonestly, in a corrupt way and in a capricious manner and so act as to deprive a man, who has entered into a contract with the Government, of his legitimate dues, and the man finds it extremely difficult to approach a court, because, unless and until he establishes himself as a pauper and shows to the satisfaction of the Tahsildar concerned that he is a pauper, he will not be able to approach a court for the redress that he wants. Under these circumstances, this was a proper time when a provision could have been embodied in this Bill; this is a new Bill which ought to have all the various concomitants necessary for the purpose of setting up a correct picture of the administration of a high court. A provision to this effect, about the exemption of court-fees, ought to have been embodied in this Bill.

As I said earlier,—and I reiterate it—all the provisions must be studied. I reiterate it so that it may be noted by the hon. Minister who is in charge of this measure: that all the provisions must be studied in proper perspective and in relation to each other. It is not sufficient to extend by catch phrases the provisions of this law to the Himachal Pradesh Territory as is done in this case. Let there be a general Letter Patent for the whole of this territory. Also, specification must be made whether or not particular laws will or will not apply. Even today it is doubtful whether the Transfer of Property Act applies to Delhi or not and it creates difficulty in equitable mortgages. Any amount of litigation crops up in Delhi on account of this. Sometimes the Pun-

jab Acts apply, sometimes the UP Acts sometimes the Delhi Acts, sometimes the Bengal Acts and sometimes the Rajasthan Act. Thus, a big hotchpotch is created. It would have been better if in a schedule it was put down that these shall be the laws which will apply. That schedule must be complete. I do commend this Bill for the purpose of being referred to a Select Committee for a proper appreciation of the various aspects.

श्री बाल्मीकी (खुर्जा) : अध्यक्ष महोदय, मैं इस विधेयक का हृदय से स्वागत करता हूँ। जो कारण इस हाई कोर्ट को स्थापित करने के दिये गये हैं स्टेटमेंट आफ प्राबजेक्ट्स ऐंड रीजन्स में वह इस प्रकार हैं :

“The volume of work in Delhi has been on the increase and is likely to increase further. Having regard to the importance of Delhi, its growing population and other considerations, it is proposed to have a separate High Court for Delhi. This would also facilitate the implementation of the scheme for separation of the judiciary from the executive in the Union territory of Delhi.”

दिल्ली की बढ़ती हुई घाबादी को देखते हुए और यहां पर जिस प्रकार से न्याय सुलभ होना चाहिए, अस्तित्व होना चाहिए उसकी दृष्टि से भी यह आवश्यक है कि यहां पर हाईकोर्ट कायम किया जाय। यहां बहुत दिन से जनसाधारण को यह उन्मुक्तता थी कि यहां पर मेपेटेंट और पूरी शक्ति वाला हाईकोर्ट स्थापित किया जाय। पंजाब के हाईकोर्ट के अधीन जो सक्ति बांच यहां पर काम करती है उस पर काम का दबाव अधिक है और काम बढ़ता ही जा रहा है। यह बात जरूर देखने की है कि अब भी जो न्याय है वह लोगों को सन्ने ढंग से प्राप्त हो जाता है या नहीं अब भी मामूली लोगों को वकीलों का जहां तक सम्बन्ध है या अन्य तरीके से न्याय मिलने का सम्बन्ध है, वह न्याय मिलना नहीं है।

[श्री बाल्मीकी]

माननीय मंत्री जी ने जैसा कहा था कि इसका प्रभाव बढ़ाते हुए यह जरूरी है और यह देखना है कि न्यायपालिका और कार्यपालिका में अन्तर होना चाहिए और इन पिछले चन्द वर्षों के अन्दर उस तरह से न्यायपालिका और कार्यपालिका को अलग करने के लिए कार्य चल रहा है और उसका स्वागत भी किया गया है, दिल्ली के अन्दर भी इस हाईकोर्ट की स्थापना से उसको एक शक्ति मिलेगी। लेकिन फिर भी हम देखें कि न्यायपालिका से कार्यपालिका से अलग करने के बाद भी किस प्रकार से साधारण दृष्टि से न्याय प्राप्त हो सकता है, यह देखने की बात है।

काम का दबाव किसी भी दृष्टि से आप देखें दूसरे हाईकोर्ट्स पर भी अधिक है और इस के ऊपर भी अधिक दबाव होगा। मैं किसी और दृष्टि से कटाक्ष करूं या किसी प्रकार का दोषारोपण करूं, यह मेरा दृष्टिकोण नहीं है लेकिन यह बात बिलकुल साफ है कि आज भी नीचे से लेकर ऊपर तक देखा जाय तो नीचे की जो कचहरियां हैं चाहे जजेंट कोर्ट्स हों या कलेक्टरेट हो, वहां पर जो अष्टाचार का बोलबाला है वह इस तरह का है कि उससे गरीब भदमी का, मामूली भदमी को न्याय प्राप्त नहीं हो सकता है। जहां तक इस हाईकोर्ट की स्थापना का सम्बन्ध है यह हाईकोर्ट एक ऐसा होना चाहिए जो कि भ्रमदर्श बन सके और जिसका एक भ्रमदर्श दूसरों के लिए स्थापित हो सके।

16 hrs.

जैसा कि बायदा किया गया है कि देश के अन्दर बढ़ती हुई मुकदमेबाजी को समाप्त किया जायगा लेकिन इस तरह के कानून बन रहे हैं, देश के अन्दर पंचायती राज भी हो गया और कुछ उस काम को ग्रामों तक भी फैला दिया गया है फिर भी पंचायतों और देश के अन्दर इन चन्द वर्षों के भीतर

देखा जाय तो मुकदमेबाजी कम नहीं हो रही है, बढ़ ही रही है। मुकदमेबाजी बढ़ने का एक कारण यह भी है कि कुछ पेशेवर दलाल या वकील मुकदमे बढ़ाते हैं, उनको घटाने के लिए सरकार क्या प्रयत्न करती है, यह देखने की बात है।

ग्रामतौर से यह देखा जाता है कि हमारे देश के अन्दर अगर एक छोटे से ग्राम में एक वकील पैदा हो जाय तो जहां पहले 10 मुकदमें लड़े जाते थे वहां बाद में ढाई सौ मुकदमें लड़ाये जाने लगते हैं। मुकदमों की संख्या बढ़ती चली जाती है। वैसे मैं यह चीज साफ कर दू कि मैं किसी भी प्रकार ऐडवोकेट या वकील के विरोध में नहीं हूँ लेकिन यह बात जरूर है कि उनके होने से मुकदमों की संख्या बढ़ जाती है। जैसे कि मैंने अष्टाचार की तरफ इशारा किया है मैं यह साफ तौर से कहने के लिए तैयार हूँ कि सारे देश के अन्दर आज भी गरीब गुरबा लोगों को, दयनीय स्थिति वालों को, न्याय नहीं मिलता है और न्याय अब भी व्यापक दृष्टि से बलशाली लोगों को ही प्राप्त होता है। स्वामी रामतीर्थ जी ने इस बारे में जो कहा था और जिसे मैं समझता हूँ कि मैंने पहले भी उद्धृत किया है और आज पुनः उनकी बात को दुहराना चाहता हूँ। उन्होंने कहा था कि जो न्याय है वह गरीब को प्राप्त नहीं होता है और न कानून ही गरीब के लिये है, इसलिए न्याय की अगर सारी किताबें समुद्र में फेंक दी जायं तो कुछ मछलियों का नुकसान हो सकता है लेकिन इस दृष्टि से यहां हमारे जनसाधारण का नुकसान नहीं होता है। इस ग्राम माननीय मंत्री का ध्यान आकर्षित करते हुए कहना चाहता हूँ कि उन्हें कोई ऐसा यत्न करना चाहिए जिससे एक मामूली और छोटे भदमी को नीचे के कोर्ट से लेकर ऊपर के कोर्ट तक न्याय पाने के साधन उपलब्ध हो सकें। उसको न्याय पाने के हेतु वह चाहे वकील की

दृष्टि से हो चाहे दूसरे प्रदातनी खर्च हों जैसे कोर्ट फीस आदि के मामलों में सुविधा प्राप्त हो सके।

वैसे मैं मानता हूँ कि जो हमारे हरिजन लोगों के मुकद्दमें हैं चाहे वह भ्रष्टपूयता की दृष्टि से हों या दूसरी दृष्टि से भी हों उनके लिए इशारा किया गया है कि उनको इस तरीके की सहायता प्राप्त होगी लेकिन मैं मंत्री महोदय का ध्यान आकर्षित करते हुए कहना चाहता हूँ कि वह सहायता उनको और दूसरे गरीब लोगों को प्राप्त नहीं होती है और किसी भी तरीके से उनको न्याय नहीं मिल पाता है। न्याय का सीधा मतलब यह है कि न्याय सब को एक समान मुलभ हो, लोगों को बिना खर्च किये न्याय सस्ते ढंग से थोड़े समय में हासिल हो सके। खेद का विषय है कि आज वह सस्ता और तुरत न्याय सर्वसाधारण को प्राप्त नहीं हो पा रहा है। महंगा न्याय जोकि आज प्राप्त होता है वह एक प्रकार से अन्याय है।

जब तक गरीब और साधारण लोगों का कचहरियों पर विश्वास न हो तो वह न्याय न्याय नहीं कहला सकता है। चूँकि मेरा सम्बन्ध गरीब लोगों से है इसलिए मैं यह चीज कहना चाहता हूँ कि देश के मामूली लोगों का गरीब लोगों का आज की कचहरियों में बिलकुल विश्वास नहीं है और साधारण भ्राममी एक मामूली सी दरक़्बास्त लेकर क्लैक्टर की कचहरी में और जज के की कचहरी में इधर से उधर घूमता फिरता है। उनको इस तरीके से न्याय प्राप्त नहीं हो सकता है? इस तरह का यत्न किया जाना चाहिए ताकि मामूली लोगों को एक साधारण दरक़्बास्त के ऊपर भी न्याय मिल सके। जिनकी आर्थिक स्थिति गिरी हुई है उनकी

और विशेष रूप से सरकार को ध्यान देना चाहिए। अगर कोई दयनीय स्थिति होने के प्रमाण में सर्टिफिकेट लायेगा या और कोई प्रमाण प्रस्तुत करेगा तो उसे सुविधा प्रदान की जायेगी। मेरा कहना है कि इसको ज़रा धासान बनाना चाहिए ताकि मामूली भ्राममियों को सही ढंग से न्याय प्राप्त हो सके।

दिल्ली के छन्दर यह जो हाईकोर्ट कायम किया जा रहा है वह स्वागत के योग्य बात है। मैं चाहता हूँ कि यहां पर यह बात साफ़ तौर से प्रकट हो कि जो मामूली भ्राममी यहां पर रहते हैं और उन के साथ यदि अन्याय होता है तो उनको न्याय पाने में सभी सुविधा दी जायेगी। दूसरे हाईकोर्ट कुछ भी करते हों लेकिन दिल्ली के हाईकोर्ट को एक भ्राममं इस बारे में कायम करना चाहिए। यहां पर कोई भी अपील तीन महीने से अधिक पैडिंग नहीं रहनी है। सफिट बँच में यहां पर 2-2, 3-3, 4-4, 5-5 और 7-7 साल बीत जाते हैं लेकिन अपीलें डिपोज़ और नहीं हो पाती है।

मैं इन शब्दों के साथ फिर इस विधेयक का स्वागत करता हूँ और मंत्री जी का ध्यान आकर्षित करता हूँ कि गरीब लोगों की साधारण लोगों को सही ढंग से सस्ता न्याय तुरन्त मुलभ हो सके ऐसा यत्न उन्हें करना चाहिए।

16.05 hrs.

CALLING ATTENTION TO MATTER  
 OF URGENT PUBLIC IMPORTANCE

THREATENED STRIKE BY CGHS DOCTORS  
 IN DELHI—contd.

Mr. Speaker: We shall now take up the Calling Attention Notice which was held over yesterday.