

**Shri Saiya Narayan Shaha:** You are also aware, because you have been associated with this House since 1934, that this has been the practice. In those days the President's Address was not there, but the general discussion of the budget was there. Now you have got not only the President's Address, but the general discussion coming up very soon within two or three weeks and the hon. Member will get ample opportunity to say whatever he wants to say on these matters.

**Mr. Speaker:** I will only cut this short by saying that no final decision has been taken on that yet. Otherwise it would have found a place in the minutes. There is sufficient opportunity for discussing this matter. We will then consider if sufficient opportunity has been given. If not, we shall bring it up in this session later. Therefore, it is only a question of putting it off for some time and not putting it off permanently.

**Shrimati Rena Chakravartty:** Am I to take it that it is not going to be put in the early part of the session and that it will meet the normal fate it does at the end of the session?

**Mr. Speaker:** The hon. Member is entitled to draw any inference. It was said that there would be a general discussion when it can be raised and so on. There is no meaning in asking whether it will be endless and and so on. We are having the debate on the President's Address; let us see. If there is no opportunity to discuss it then we shall try to provide for it. I will call a meeting of the Business Advisory Committee where we will take it up. The hon. lady Member will kindly try to be present.

The question is:

"That this House agrees with the Seventeenth Report of the Business Advisory Committee presented to the House on the 11th February, 1958."

*The motion was adopted.*

## CRIMINAL LAW AMENDMENT BILL

**Mr. Speaker:** The House will now resume further discussion on the Criminal Law Amendment Bill. Out of 4 hours allotted for the various stages of the Bill, 36 Minutes have already been taken on the general discussion and 3 hours and 24 minutes now remain.

**Shri Ajit Singh Sarhadi** may continue his speech.

**Shri Raghbir Sahai (Budaun):** On a point of order. I would like to know how much time will be allowed for the general discussion and how much for the clause-by-clause consideration, etc

**Mr. Speaker:** There is no point of order, but still let us consider. How many amendments are there? I think 22. I think one hour will be necessary for that. Therefore, general discussion will conclude after 2½ hours and then one hour in the end will be reserved both for the clause-by-clause consideration and the third reading.

**Shri Ajit Singh Sarhadi (Ludhiana):** I was submitting yesterday that the Criminal Law Amendment Bill now before the House deals with that aspect of corruption which can be met by legislation and that aspect comprises of obtaining illegal gratification, monetary advantages or other advantages by misuse of power and criminal misconduct and offences of that kind.

The other kind of corruption to which attention has been drawn by some hon. Members is favouritism and nepotism. But these cannot unfortunately be met by legislation. They can only be eliminated or lessened by the creation of public opinion and pressure. The present amendment that is before the House has got a very important salutary effect, and I congratulate the Minister for having brought it forward which prescribes a minimum punishment in case of proved guilt of corruption.

[Shri Ajit Singh Sarhadi]

I also concede, as I was submitting yesterday, that the ambit of the definition of the term 'public servant' in section 21 of the IPC must be broadened, and clause 12 as an addition to the present eleven clauses of section 21 would meet the situation. But there is one thing to which I would like to draw the attention of the Minister. The proposed clause 12 which increases the category of public servants in section 21 of the IPC runs thus:

"Every officer in the service or pay of a local authority or of a trading corporation established by a Central, Provincial or State Act or of a Government company as defined in section 617 of the Companies Act, 1956".

That means that every officer coming within the scope of the above clause shall henceforward be a public servant. Now, section 21 of the IPC lays down eleven categories of public servants, and those categories comprise of both officers as well as persons. The present section 21 definitely deals with an officer and in describing the office of a public servant, defines and lays down his duties, before he becomes a public servant. That is to say, there is a distinction which already exists between an officer as a public servant and a person. The proposed clause 12 which is before the House does not define 'officer' at all. What it lays down is that every officer in the service or pay of a local authority or of a trading corporation established by a Central, Provincial or State Act or of a Government company as defined in section 617 of the Companies Act, 1956 would be a public servant hereafter. But section 21 distinguishes between an officer as a public servant and a person. Therefore, I would submit that this clause is bound to create confusion what categories of servants in the service or pay of a local authority would constitute public servants. If it would be only officers, then in the absence of a definition of what an officer is, it

would be very difficult for the courts to come to a conclusion as to who an officer is and who not.

Therefore, I would submit for the consideration of the Minister that if he substitutes the word 'officer' here by the word 'person', that would clarify the position. In that case, every employee of a local authority or of a trading corporation established by a Central, Provincial or State Act or of a Government company as defined in section 617 of the Companies Act shall be a public servant. An amendment has already been tabled in this respect by Pandit Thakur Das Bhargava. The position will be clarified only if the word 'officer' is substituted by the word 'person'. Otherwise, there is the possibility of confusion being created as to what categories of employees of a local authority or trading corporation or Government company would be public servants.

My next point is in regard to the proposed clause 8 in the Prevention of Corruption Act, wherein it is proposed to give immunity to the bribe-giver in regard to any statement that he likes. As I stated at the outset, the offence of bribe-giving and corruption of that kind are certainly very heinous and must be deterrently punished, and no mercy should be shown where such offences are proved. Therefore, I welcome the provision that the individual who is proved guilty must be punished with imprisonment, and the proposed amendment rightly prescribes the minimum. But, at the same time, the law must protect the innocent persons, and not only protect them as such, but protect them against harassment. We have got to see whether the proposed amendment which gives absolute immunity to the bribe-giver for any statement that he makes before a court of law would not lead to some harassment of the public servants, and whether the present law would not meet with the situation.

We have already got sections 337 and 338 in the Criminal Procedure

Code which give powers to the district magistrates and also the other magistrates to give pardon to accomplices who associate in crimes to make a clean breast of certain facts. Of course, as long as the accomplice or associate in a crime makes a clean breast of the entire facts and completes his contract for getting the pardon, he is absolved and freed. But if he does not lay down the correct facts, then his statements can also be used against him. This is with a view to stopping harassment of individuals. The person who makes the statement, himself being an associate in crime or an accomplice must appreciate his responsibility. If he makes a statement of that kind which implicates others then he has also got a responsibility.

In dealing with the present measure, if we permit the person to make any statement he likes, and he is exempt from the consequences, then there is every possibility that there would be no limit to the making of irresponsible statements against public servants. Every public servant, however innocent he may be, . . .

**Shri Kasliwal (Kotah):** It will have to be corroborated.

**Shri Aht Singh Sarhadi:** . . . and however responsible he may be, will be running the risk. I concede, as Shri Kasliwal has pointed out, that the statement of the accomplice must be duly corroborated, and there will be no conviction without a corroboration. That is correct, and that is the position under the law. But he should appreciate at the same time that the individual would be acquitted in the end but the harassment would be there. Again, what about the irresponsible statements which you allow the bribe-giver to make? You give him a licence to make a statement, an irresponsible statement, without prescribing any punishment that if there is an acquittal he will be hauled up, because under this provision he himself gets absolved. Therefore, my respectful submission to the Minister

is that he should consider this aspect of the case.

The hon. Minister in his speech while introducing the Bill said that this deals with decoy witnesses, persons who help in the detection of corruption by a trap. I respectfully submit that I disagree with him. Decoy witnesses help in the detection of corruption, but they do not come under the definition of bribe-givers because there is no intention to give bribes in the sense that the clause postulates.

Therefore, while I welcome the measure otherwise—and I congratulate the Minister on bringing forward such a salutary measure whereby he prescribes a minimum punishment to the guilty person—at the same time, I would draw his attention to the fact that this clause whereby he gives absolute immunity to the alleged bribe-giver in saying what he likes without endangering himself, is naturally one which needs reconsideration. If he makes a statement against a responsible public servant after trying to give him a bribe, he is exempt because this clause would exempt him from any consequences. Under Defamation Prosecution, possibly he will not be hauled up either. Possibly the court may not hold it as a malicious prosecution. Therefore, this portion of the proposed amendment needs reconsideration.

With these remarks, I heartily support the Bill which is before the House.

**Shri Mohamed Imam (Chitaldrug):** Yesterday, I heard with great interest the interesting speech made by the Minister while introducing the Bill. It was a speech, if I may say so, full of pathos and emotion. Of course, I do appreciate his anxiety to eradicate this evil which has become a big menace. He hopes to do it by enacting the present measure.

This is not the first enactment that has been passed to combat the evil of

[Shri Mohamed Imami]

corruption. There is always that provision in the Penal Code intended to prosecute offenders. Then it is followed by a series of legislative measures, including the Prevention of Corruption Act. Again, the Home Ministry has built up a big division called the Administrative Vigilance Division at an enormous cost with hundreds and hundreds of officers—I think the present number is about 450—who are expected to combat this evil by punitive and preventive methods

In spite of all these measures taken so far by Government, we must admit that this evil is not mitigated. The menace is still there. On the other hand, it must be admitted that this evil of corruption is growing by heaps and bounds. Not only that, it is spreading upwards. There are unmistakable signs that the evil of corruption is not merely confined to the lower or subordinate ranks but it has a tendency to spread upwards so much so that even highly placed officers in responsible positions are also party to many grave irregularities under very suspicious circumstances.

So we must admit that this evil of corruption has grown and it has become a big menace, after we attained independence, after the rule of democracy was ushered in. It has spread throughout the country. I must say corruption has spread not merely among officials, but there is demoralisation among the public also. If we compare the conditions that existed before independence, we will find what a sorry contrast the present represents. It is true that now we have independence, but there was greater integrity, greater honesty and greater discipline before democratic rule was ushered in.

I support this Bill. I know the Minister has brought it forward with the best of intentions. But what I

want to ask is: under the existing circumstances, is this enough? Is the Minister satisfied that by enacting this measure, he will combat the evil of corruption effectively? Will it have the desired effect?

I am not very much concerned about the corruption prevailing among the subordinate staff, among the low-paid officials. I know it is not of much consequence so far as society is concerned. After all, they do it for the sake of their tummy. But what worries me most is that even highly placed officers, people holding responsible positions, are committing very grave and serious irregularities involving lakhs and crores. We have heard of scandals of such magnitude as the jeep scandal, the scandal of the prefabricated houses or of the Sindri fertiliser factory. All these grave irregularities boarding on corruption have been committed on account of the negligence or connivance of the officers holding very high and responsible positions.

The Bill contemplates a minimum deterrent punishment for the offence, for the offender. Secondly, the Minister wants to bring it within the purview of the employees of local governments and other statutory institutions. Again, he wants to give protection to the person who comes out with truth to help justice. This may be a laudable measure, but I am confident that this will be another enactment which will be in the Statute-book; it will not have much effect in eradicating this evil.

This menace has reached such dangerous proportions that, I think, a complete diagnosis of this disease is called for. The time has come when we must review all the past events that have led up to the increase of this evil. This is not a party matter. We are all one with the Minister that this evil should be eradicated or its effect at least minimised for the good of the society. Irrespective of party considerations, all of us must do our ut-

most to rescue the country from the dangers, privations and misfortunes of this evil.

I pointed out that since people's rule was introduced, this evil became more rampant and more acute. You must find out the reasons. After the democratic rule was ushered in, there were greater opportunities created for making money by unscrupulous persons. A fertile ground was created when controls were introduced and when rationing was introduced and also when the State undertook trading, especially in foodgrains. All these things created a good opportunity for unscrupulous people both in service and outside to make money by taking unfair advantage of the occasion. All of us know how during the controls not merely the merchants but officers took advantage of it and scandals after scandals were heard of. It was at that time that corruption spread throughout the country. Many opportunities were created.

Lately, Government have been handling works of a big magnitude involving crores of rupees. We have undertaken many such works. All these were taken advantage of. Government had to place orders for materials worth crores and crores. We have seen how in many cases people who were entrusted with responsible jobs misused the occasion and made use of it for their own personal ends.

The Governmental policy is to some extent responsible. For instance, I may mention one instance: Prohibition. Prohibition and controls were introduced with the best of object. They were intended to help the public. But they can work well only when the nation is disciplined and respects the law and abides by it. Otherwise, controls will not work well and it will be to our disadvantage. Similarly, prohibition might have been introduced with the best of intentions. But it has become the means of making money by all those people who are entrusted with the work of enforcing Prohibition. It is an open secret that

people who are in charge of mitigating the drink evil are conniving with the manufacturers of illicit liquor. You can make enquiries. Prohibition has proved a fertile ground for people to get monthly *mamools* or payments. It is such policy adopted by the Government that give opportunities for people to earn money by illegal means.

There is also the inefficiency of the Government, lack of vigilance and supervision and reluctance to take timely action. They encourage corruption. It is a well-known fact that under the present administration, the Minister has no control over the Secretary, or the Secretary has no control on his subordinates. Each is a boss unto himself. We have learnt during the recent enquiry how each officer wants to shirk responsibility. The head of the administration must be responsible for the proper working of the entire department but that is not the case. It looks as if there is no supervision or no vigilance. That was not the case before Independence. The head of the institution or the department or Ministry was held responsible for the proper administration of his department. Nobody was allowed to say that he was not responsible for any act of commission or omission under his supervision.

Many cases of grave irregularities are brought to the notice of the Government. What is the action taken by the Government? Till now we have had many transactions which involved big scandals but what action has been taken by the Government against these persons responsible for the loss? What was the action taken against persons responsible for the losses in regard to the purchase of jeep? Who was responsible for the losses in the Sindri? There was also a committee's report on the losses in the building of the Mahanadhi bridge. It was reported that there were losses to the extent of millions of rupees and there was a recommendation to the effect that action should be taken against officers responsible for all these losses.

[Shri Mohamed Imam]

A number of cases had been reported by the Audit and Accounts. I am quite certain that the officers who are entrusted with the responsibility of enforcing discipline refuse or they take their own time. Instances were brought to the notice of the higher officers. Years are lost in investigating and by the time the Government takes action, the officer concerned will have retired either from this world or from service. It is lethargic and inefficient—the machinery. The officers are encouraged to indulge in corruption. I think I must charge the Government to be directly responsible for the increase in corruption. It is not merely the officers that are responsible for the increase in corruption. I must find fault with the public also.

The public organisations that are entrusted with this work must also realise their responsibility. The first organisation in the State, the Ruling Party must set an example of purity and honesty. The Ruling Party or the organisation accepts what it calls a donation of Rs. 20 lakhs from private companies and firms and merchants on the plea that it is needed for the Congress organisation. What shall we call it? They may call it a donation. It was revealed that Tatas gave Rs. 20 lakhs to the Congress organisation for the election.

Shri Tyagi (Dehra Dun): On a point of order, is the matter of an organisation to be discussed in this House? It is a matter pertaining to a political party?

An Hon. Member: It is a fact. (Interruptions.)

Shri Tyagi: How can a Party be discussed in this House?

Shri Mohamed Imam: It is the Ruling Party.

Shri Tyagi: Ministers, I can understand.

Mr. Speaker: This amendment relates to persons employed in the corporations, autonomous corporations etc. which we have set up and also other public servants. I do not find how it is relevant to bring in the others. Under an exemption clause in the Income-tax Act, a company subscribes to one or other party. An hon. Member refers to this. Then, possibly other hon. Members may refer to some other. Whoever contested the election spent some money. It may be the party or the hon. Member himself. If one hon. Member refers to this and says so; some other hon. member says that it came from some other source. Are we to go into all those matters here, true or otherwise—may be true, may not be true? Therefore, let us confine ourselves to the subject under discussion. I can understand the hon. Member saying that responsible Ministers ought not do a particular thing. He has got plenty of argument; he can argue very well without bringing all these things. It is clear that every party has spent money wherefrom it got its money is the question. We need not go into all these issues. The other person also will say something embarrassing. I am not going to allow this kind of thing on the floor of the House, because our time is precious

13 hrs.

Shri Mohamed Imam: I am only saying that bribery is of two kinds: illegal gratification and legalised bribery. Such legalised bribes should not be allowed.

Mr. Speaker: That is beyond the scope of discussion. The hon. Member will proceed to some other point.

Shri Mohamed Imam: So the purity of the administration must be maintained; the purity of the moral atmosphere in the public must be maintained. The Government must be vigilant. Otherwise, they will never be able to eradicate this evil. Such measures will only find a safe place

in statute-book and they will be put in cold storage. If the present state of affairs continues and the Ministers and officers do not exercise proper vigilance and allow the officers to have their own way, I am sure this evil will assume such dangerous proportions and the very foundations of society will be disrupted and the entire nation and the entire people will be under a misfortune which they never expected.

बंधित ठाकुर दास भार्गव (हिसार) :

जनाब स्पीकर साहब, इस बिल पर बहस करते हुए मैं बहुत ज्यादा दूर तक नहीं जाना चाहता क्योंकि इस हाउस में बहुत बार इस भ्रमर पर बहस हो चुकी है कि कोरप्शन को किस तरह से रोका जाए। पब्लिक सर्वेंट्स की कोरप्शन और बाहर वालों की कोरप्शन यानी नान-अफिशल्स की कोरप्शन में बड़ा फर्क है। हमारे सामने इस वक्त जो बिल है वह केवल पब्लिक सर्वेंट्स के बारे में है और इसी पर मैं अपने विचार यहाँ पर रखूंगा।

पहला सवाल जो इस बिल के अन्दर आता है वह कुछ बाहर वालों का आता है। कुछ आर्गेनाइजेशंस थीं जिनमें काम करने वाले इसकी जद में नहीं आते थे। मानरेबल मिनिस्टर साहब ने एक तरकीब पेश करके यह चाहा है कि ऐसे प्रशासन जो फिलवाका अब पब्लिक सर्वेंट्स की तारीफ में आने चाहियें थे, उनको भी अब इसके अन्दर लाया जाए। जहाँ तक इस भ्रमर का सवाल है, मैं उनकी बात बता दूँ और जो कुछ उन्होंने किया है ठीक किया है। ऐसे लोग इस किस्म के बिल की जद में आने ही चाहियें थे। लेकिन इन बिल के अन्दर जो प्रलफाज इस्तेमाल किए गए हैं उनके बारे में मुझे डर है कि जो हमारे मिनिस्टर साहब का मंशा है वह शायद पूरा नहीं हो सकेगा। उन्होंने चाहा है कि

a Central, Provincial or State Act or of a Government company as defined in section 617 of the Companies Act, 1956."

लेकिन आफिसर की तारीफ इसमें नहीं दी गई है। मालूम ऐसा होता है कि मानरेबल मिनिस्टर साहब की तबज़ह दफा २१ आफ दी पीनल कोड की तरफ थी लेकिन उसकी तरफ वह पूरी तरह से गई नहीं है। आप देखेंगे कि इस इंडियन पीनल कोड में जहाँ दफा २१ दर्ज है वहाँ पर या तो आफिसर्स का जिक्र है या परसंस का जिक्र है। जहाँ पर आफिसर्स का जिक्र है वहाँ पर दफा २१ में उनकी इयूटीस भी साथ ही दे दी गई हैं कि जो आफिसर इस तरह के काम करेगा, वह पब्लिक सर्वेंट बनेगा। लेकिन यहाँ पर जो प्रलफाज इस्तेमाल किए गए हैं, इनमें आफिसर तो लिखा है लेकिन उसकी इयूटी या इयूटीज दर्ज नहीं की गई हैं। अगर इयूटी दर्ज होती तो वह परसन आफिसर की तारीफ में आ सकता था और यह मालूम करने में कोई दिक्कत नहीं हो सकती थी। अब इस संवधान को लेते हुए मुझे डर है कि जब तक आफिसर की तारीफ न हो या उस काम की तारीफ न हो जो वह करता है हम किसी शरूत को पब्लिक आफिसर साबित नहीं कर सकेंगे सिवाय हाइएस्ट आफिसर के, हालांकि मानरेबल मिनिस्टर साहब की मंशा यह है कि जो शरूत भी इस काबिल हो कि ऐसा काम कर सके, जो रिश्तत ले सके, वह इसमें शामिल होना चाहिए। लेकिन यह पूरी नहीं होती है। इसलिए मैं चाहता हूँ कि या तो आफिसर की तारीफ कर दी जाए या परसन लेकर उसकी इयूटीस लिख दें। इसके बिना यह जो एक्स-प्रेषन है यह वेग सा ही बना रहेगा। इसी तरह से इसको भ्रमर रहने दिया गया जो आप को उसके खिलाफ जिसके खिलाफ कि आप मुकदमा चलाना चाहेंगे सबूत पेश करने में बहुत दिक्कत होगी। बिना डिफाइन किए इस कानून को लागू करने में बहुत दिक्कत का सामना करना पड़ेगा।

"Every officer in the service or pay of a local authority or of a trading corporation established by

[पंडित आनंद दास भार्गव]

इसके अलावा दो और एमेंडमेंट्स इसमें करनी चाहियें। मैं समझता हूँ कि मिनिस्टर साहब को ये कबूल होंगी। अब तक जो कानून है उसमें सात साल की सजा रखी हुई है किमिनल मिसकंडक्ट के लिए। किसी छोटी सी बात के लिए इतनी सजा देना मुश्किल हो जाता है। जो रिषवत होता है उसको अदालतों आम तौर पर इस कदम सख्त सजायें नहीं देती हैं या काफी नहीं देती हैं। जो हाइएस्ट पनिशमेंट इंडियन पीनल कोड में या और जगहों में रखी गई हैं वे बहुत कम लोगों को दी जाती हैं। आम तौर पर जैसा कि मिनिस्टर साहब ने खुद फरमाया एडमोनिशन के साथ ही छोड़ दिया जाता है। इसका कारण यह है कि हर कोई यह जानता है कि यह फलां आफिस में इतना बड़ा अपराध है, इतने बड़े अखत्यारात् बरतता है अब अगर इसको कनविकट कर दिया जाता है तो इसकी बीकरी जाती रहेगी, अगर रिटायर होने को है, तो इसकी पैशन जाती रहेगी और साथ ही उसके साथ जो सक्तियां होंगी, उनको भी हर एक अदालत अपने सामने रखती है। इस तरह से आम तौर पर सजायें कम दी जाती हैं। लेकिन अब जब हम तरमीम करने जा रहे हैं तो यह मुनासिब ही है कि ऐसे केसिस में कम से कम एक साल की सजा होनी चाहिये। सात साल तक की सजा दी जा सकती है लेकिन एक साल से कम नहीं दी जानी चाहिये। मैं इस चीज को बेलकम करता हूँ और मैं चाहता हूँ कि जो सजा एडमिनिस्टर करते हैं ऐसे केसिस में वह एक साल से कम नहीं होनी चाहिए। इसके साथ ही स्पेशल सरक्यस्ट्रांसिस की क्लास भी है। मैं जानता हूँ कि कितने ही ऐसे सरकम-स्ट्रांसिस होते हैं कि जिनमें अदालतों को ह्यूमेन म्यू जेना पड़ता है और ह्यू मन एसपेक्ट को अहेनजर रखना पड़ता है। अगर वे इस चीज को अहेनजर न रखें तो किन्हीं केसिस में एक साल से अधिक सजा हो सकती है और किन्हीं में बहुत सख्त हो सकती है। ऐसे केसिस में कोर्ट को अक्वियार दिया गया

है कि एक साल की सजा न दे या कुछ भी सजा न दे। यह मुनासिब है कि ऐसा ही क्योंकि जो इंडिकेशन है वह साफ है कि आम तौर पर एक साल से कम सजा नहीं होनी चाहिये। मैं दीगर एमेंडमेंट्स में तो नहीं पढ़ना चाहता लेकिन बहुत छद्म से अान-रेबल मिनिस्टर की तबज्जह उस तरफ बिनाऊना जहां पर कि कहा गया है कि गेहरबानी करके इसको प्रोबेशन एक्ट से मुसतसना कर दें। मैं यह महसूस करता हूँ कि प्रोबेशन एक्ट जो हमने बनाया है वह निहामत अण्डी चीज है। लेकिन ताहब अन्व एक अरायम ऐसे होते हैं जिनको कि उसकी अब से बाहर रहना चाहिये। कोर्ट को जहां यह कहा गया है कि एक साल से कम सजा न दे वहां यह भी होना चाहिये कि ऐसे केसिस में कोर्ट प्रोबेशन पर उसको न छोड़ दे। या महज एडमोनिशन करके न छोड़ दें। इस बास्ती में आहूमा कि गवर्नमेंट यहां नहीं तो किनी दूमरी जगह हमको प्रोबेशन से भी बाहर कर दें।

अपनी तीसरी तरमीम के बारे में मैं यह कहना चाहूंगा कि मैं यह डाउट नहीं करता कि यह बेलकंसीड नहीं है। लेकिन इसके अन्व एक पहलू है जिनके ऊपर मुझे एतराज है। वह तरमीम इस तरह से है कि अगर सेंटेंस या पनिशमेंट दी जाये, तो कोर्ट को इस बात का लिहाज रखना होगा कि कितना रुपया रिषवत में लिया गया, कितने रुपये के बारे में चीज आफ ट्रस्ट है, कितना नुकसान उस शाक्स ने रिषवत लेकर पहुंचाया है। इन सब चीजों का जुमनि के वक्त अगर ब्याल रखा जायेगा तो जुमाना उसी लिहाज से लिया जायेगा। जहां तक सजा का तात्पुक है वह अलग है।

जुमनि के सबाल को आनरेबल मिनिस्टर साहब ने दो डिम्नों में तकसीम किया है। २(ए) में उन्होंने लिखा है :—

In fixing the amount of fine, the Court shall take into consideration the



amount or value of the bribery which the accused person has obtained by committing the offence of criminal misconduct.

दूसरे में यह कहा गया है कि अगर किसी शास्त्र को प्रिजम्पशन की वजह से सजा हो तो अन एकाउंटिड फार जितना रुपया है, उसका लिहाज रखा जाये। मैं पूछना यह चाहता हूँ कि तीसरी चीज के बारे में ख्याल करना वह क्यों भूल गये हैं। जरायम सिर्फ इस तरह से नहीं होता है कि एक आदमी ने कुछ रुपया ले लिया और इसी बात पर उसको सजा हो गई और न सिर्फ इस वजह से आम तौर पर होता है कि उसके पास इतना रुपया है जिसको एकाउंट फार नहीं कर सका है। एक तीसरी चीज भी बनती है और वह इन दोनों के ज्वायंट एक्शन से बनती है, इन दोनों चीजों को मिला कर कोर्ट इस नतीजे पर पहुंचती है कि जुर्म किया गया है और उसके वास्ते आपने कौनसा प्रोविजन रखा है? आपने कोई प्राविजन नहीं रखा है। आपको चाहिये था कि कोई तीसरी प्राविजन भी तीसरी हालत के लिये रखते। मुझे एतराज इस पर है कि यह जो दफा २(ए) में जो दो अलग अलग कमपार्टमेंट्स कर दिये गये हैं यह जायज नहीं है। आम तौर पर सजा होती है दोनों पहलुओं को देख कर। अगर दोनों को देख कर सजा होनी है तो कौन सी चीज मैजिस्ट्रेट अपने नुक्तेनजर में रखेगा। इस वास्ते मेरी गुजारिश है कि उसके वास्ते भी कोई प्राविजन होनी चाहिये थी जो इस वक्त इसमें नहीं है।

जब हमने प्रिवेंशन आफ कोरप्शन एक्ट बनाया था उस वक्त आनरेबल मिनिस्टर साहब गालिबन इस हाउस में नहीं थे। उस वक्त सरदार पटेल ने हमारे सामने जिन चीजों को रखा था और जो हालात हमारे सामने पेश किये थे उसकी बेसिस पर हमने १९४७ में एक एमरजेंसी ला बनाया था। एमरजेंसी क्या थी? उस वक्त

सरदार पटेल ने फिर्मा दी थीं और कहा था कि ५ करोड़ ६५ लाख की रिश्वत के मामलों की उस वक्त पुलिस तहकीकात कर रही थी उस समय जब कि रिश्वत का बाजार खूब गरम था। बड़े-बड़े अंग्रेज अफसर जो कि अपनी आनेस्टी के लिये मशहूर थे सब के सब उसमें बह गये। हिन्दुस्तान में इस कद्र रिश्वतखोरी हुई कि उसकी मिसाल मिलनी मुश्किल है। ११०० केसिस ब्राइवरी के उस वक्त मौजूद थे। एक एमरजेंसी ला बनाया गया, और उसके अन्दर हमने जो उन खास हालात में थोड़े ही अर्थों के वास्ते एक टेम्पोरेरी ला बनाया। गालिवन् तीन वर्ष उसकी मियाद रक्खी गई थी। उस वक्त जो एमरजेंसी ला बना था उसमें एमरजेंसी लाज में जो आम-तौर पर खराबियां होती हैं वह सब इसमें भी मौजूद थीं। मुझे याद है कि इस कानून का वह प्रिंसिपल सैक्शन जिसकी तारीफ किमिन्ल मिसकंडक्ट के अलफाज से की गई है, उस में दफा ५ के लिये मैं खुद जिम्मेदार हूँ। मैंने खुद इसके लिये अमेण्डमेंट दिया था। लेकिन मैं आज यह अर्ज करने के लिये तैयार हूँ कि इसके अन्दर कुछ हमने गलती की। मैंने गलती की क्योंकि मेरा अमेण्डमेंट था और उस अमेण्डमेंट की गलती मैंने महसूस की और मैंने ही नहीं हाईकोर्ट ने भी उस गलती को महसूस किया और आज अगर हम उसके अलफाज को देखें तो मुझे उम्मीद है कि आनरेबल मिनिस्टर भी मेरी उस गलती को महसूस करेंगे और उसको तरमीम करने को तैयार होंगे। मैं उनकी तबज्जह दफा ५ डी की तरफ दिलाता हूँ। वह इस तरीके से है :

5(1) (d) "A public servant is said to commit an offence of criminal misconduct in the discharge of his duty if he, by corrupt or illegal means or by otherwise abusing his position as a public servant, obtains for himself or

[पंडित ठाकुर दास भार्गव]

for any other person any valuable thing or pecuniary advantage."

दफ़ा ५ में ए, बी, सी, और डी० के अन्दर हमने लिखा है कि किन किन हालातों में एक पब्लिक सर्वेंट क्रिमिनल मिसकंडक्ट के लिये दोषी ठहराया जायगा। आज मैं यह महसूस करता हूँ कि एक इन्वॉलेंट अफ़सर जिसने कोई करप्शन नहीं किया वह भी इस (डी) की जद में आ सकता है। मसलन धीरे धीरे चीजों को जाने दीजिये। मैं आपके ख़बरू दो मिसालें देता हूँ। हमारे सामने आजकल मूंदड़ा शेयर्स की बहुत चर्चा है। वह अशख़ास जिन्होंने मूंदड़ा के शेयर्स ख़रीदे या ख़रीदने का हुकम दिया, मान लीजिये कि उन्होंने कोई पिव्युनियरी एडवांटेज नहीं लिया, बाइवरी नहीं हुई लेकिन हो सकता है कि सिर्फ़ एक गलतफ़हमी की वजह से, गलत वजूहात की वजह से एक शख्स ने हुकम दिया कि शेयर्स ख़रीद लिये जाय, इनवॉलेंटमेंट कमेटी ने हुकम नहीं दिया, इल्लोगल तरीके से उन अशख़ास ने जिनको कि हुकम देने का अख़्तियार नहीं था, ऐसा हुकम दे दिया, हालांकि उन्होंने या उसने ख़पया ख़ाने की नीयत से ऐसा आर्डर नहीं दिया लेकिन यह शख्स या अशख़ास इस दफ़ा की जद में आजायेगे और मात माल की सजा हो सकती है क्योंकि अल्फ़ाज यह है :

"...if he by corrupt or illegal means or by abusing his position." Means may be corrupt or may be illegal or both may not be there. But only he might have abused his position for the benefit of himself or for any other person.

इसका फ़ायदा किसे होता है इन शेयर्स के ख़रीदे जाने का? मूंदड़ा साहब को या उनकी किसी कम्पनी को। उस अफ़सर ने जिसने कि हुकम दिया उसको एक कौड़ी नहीं मिली लेकिन बूँकि उसने अपनी पोबीशन ऐब्यूज

की उसका एरर ग्राफ़ जजमेंट या इस्किवे वह ख़तावार ठहराया जायगा। मिसाल के तौर पर मैं आपको बतलाऊँ कि टेंडरें घाले हैं। आमतौर पर उनके लिये फ़ायदा यह है कि लोएस्ट ग्राफ़र को मंजूर कर लिया जाता है लेकिन अफ़सरान को यह हज़र है कि वह अगर वह समझते हैं कि लोएस्ट टेंडर वाला अपने ठेके को पूरा नहीं कर पायेगा तो वह उसका टेंडर मंजूर न करें।

Abusing his position only means not properly using his position. Abusing his position does not mean anything else.

वह अफ़सर एक कौड़ी भी नहीं लेता, बिलकुल करप्ट नहीं है, ईमानदार है, नेकनीयती के साथ उस टेंडर को मंजूर नहीं करता

but he has certainly abused his position: for himself or for any other person,—

अगर एनी अदर परसन लिखा होता तो उसको कुछ सजा नहीं होती लेकिन और एनी अदर परसन, जैसे मूंदड़ा को फ़ायदा हुआ, जो टेंडर करता है उसको फ़ायदा हो जाय, अफ़सर को कोई फ़ायदा नहीं, ऐसी सूरत में एक इन्वॉलेंट अफ़सर इस क़ानून की जद में आ सकता है और उसको सात साल की सजा दी जा सकती है।

मैं भानरेबुल मिनिस्टर की ख़िदमत में एक हाई कोर्ट की रूलिंग भी पेश कलंगा जिसके कि अन्दर एक अफ़सर ने नेकनीयती के साथ आर्डर दे दिया, उसको एरर ग्राफ़ जजमेंट करार दे दिया। फ़ायदा किसी ऐसे शख्स को हुआ जिसमें कि अफ़सर इंटरेस्टेड नहीं था लेकिन ताहम उसको सजा हो गई। एक बड़े अफ़सर को सजा हो गई। क्रिमिनल रिवीजन में गया। हाईकोर्ट ने यह कहा :

Held that in order to prove that the person is guilty of criminal misconduct, it must be shown that he as a

public servant took undue advantage of his official position, profit or something for gain in a corrupt or illegal manner for himself or for some other person ...” Other person refers to a person other than the one in whose favour the order is passed.

मैं उस सारी कलिंग को पढ़ कर नहीं सुनाया चाहता हूँ। उसका मुलाहिजा करने से पूरा पता लग जायगा। वह राम सिंह बर्सेस दी स्टेट आफ पेप्सू का केस है। यह करार दिया गया कि यह साबित करने के लिये कि वह शक्स क्रिमिनल मिसकंडक्ट का गिल्टी है, यह साबित करना होगा कि उस पब्लिक सर्वेंट ने अपनी आफिशियल पोखीशन का अनइयु ऐडवांटेज लिया या एक करप्ट और इल्लीगल मैनर में अपने लिये या किसी दूसरे शक्स के लिये प्राफिट लिया। इसलिये मैं चाहता हूँ कि दफा ५ डी ने यह वर्ड्स जिनमे मंस री *Mens re* मौजूद है, Dishonestly or fraudulently जोड़ दिये जायें ताकि किमी ईमानदार भादमी को सिर्फ एरर आफ जजमेंट के लिये सजा न हो जाय। इस मौजूदा अर्थोंडिंग बिल के अन्दर यह नुक्त मौजूद है और हमसे ऐसा अफसर सजा पा सकता है जो कि वाकई बिलकुल बेगुनाह हो और इसलिये मैं आपसे अर्ज करना चाहता हूँ कि आप इसको तरमीम कर लें। या फोर एन अदर पर नन के बाद in whom he is interested जोड़ दिये जायें।

दूसरी चीज जो इससे कम अट्रम नहीं है वह क्लाइ ३ है और उसकी तरफ भी मैं हाउस की सबज्जह दिलाया चाहता हूँ। मैं जानता हूँ कि जो मैं क्रिमीनलिज्म इसके मुतल्लिक करूँगा वह शायद भान-रेबुल मिनिस्टर और कुछ मेम्बरान साहब को पसन्द न हो लेकिन मैं समझता हूँ कि अफसर में उसको क्रिटिसाइज न करूँ तो

मैं अपने अर्ज को ठीक से भदा नहीं करूँगा। वह इस तरह से है :

“Notwithstanding anything contrary to an offence punishable under section 2, the fact that the accused person or any other person in his behalf is in possession of something for which the accused person cannot account for properly by the pecuniary resources and by the known sources of income and on which proof the court shall presume that unless the contrary is proved the accused person is guilty of criminal misconduct in the discharge of his official duty, the conviction therefore shall not be invalid by reason only that it is based solely on such presumption”

इसका सीधा मतलब यह हुआ कि मान लीजिये मैं कोई जर्म करूँ और वह छिपा रहे, मैं उस रुपये को इस तरीके से इस्तेमाल करूँ कि भदामत को पता न नम मके तो मैं बिलकुल मेफ हूँ लेकिन अगर मेरे पास इतनी जायदाद मौजूद हो कि जिसके लिये मैं एकाउंट फौर नहीं कर सका तो सिर्फ यह चीज कि मेरे पास इतनी जायदाद है, यह काफी है कि मुझे को मुजरिम करार दिया जाय। मैंने इस माटे इंडियन एक्टिविज्म ऐक्ट में इस किस्म का कोई वाएलेंट प्रीजम्पशन उन हालान में नहीं देखा और यह बिलकुल अनअस्ट प्रीजम्पशन है।

मुझे यह कइता है कि हमने एक एमरजेंसी लॉ बनाया था कि जिस अफसर को जो तनख्वाह मिलनी है उसमें अगर इनना ज्यादा उराके पाम हो जाय तो यह प्रीज्यूम कर लिया जाय कि इसने बेईमानी से रुपया कमाया है, मैं भदब से अर्ज करूँगा कि यह प्रीजम्पशन बहुत वाएलेंट है और बहुत से हालान में सिवाय इसके कि बेईसाफी हो और कुछ नहीं हो सकता। दिल्ली में इम्पीरियल होटल में २५ जनवरी को किसी अफसर को एक शक्स ने एक लाख रुपया दिया ऐसा किसी पर मुकदमा चलाया जाता है, लेकिन साबित यह होता है कि २५ जनवरी

### [पंजित ठाकुर दास भार्गव]

को वह शस्त्र संवत में बैठा था, दिल्ली में नहीं था और किसी होटल में नहीं था और वे दोनों व्यक्ति मिल ही नहीं सकते, तो भी पुलिस वाले यह कहें कि उसके पास रिश्वत का रुपया है और मजिस्ट्रेट यह कहे कि इस शस्त्र के पास रुपया ज्यादा है और जिसका कि वह हिसाब नहीं दे सकता तो उसको सजा हो जायगी हालांकि इतरगासा बिल्कुल झूठा है और उस पर झूठा मुकदमा चलाया गया है। सिर्फ़ इस बिना पर कि उसके पास रुपया ज्यादा है और जिसका कि वह एकाउंट फ़ौर नहीं कर सकता इसलिये उसको सजा दे दी जाय, यह बिल्कुल अन-जस्ट है। कोर्ट यह प्रीज्यूम कर सकती है कि इतना रुपया उसके पास कहाँ से आया अगर उमने रिश्वत नहीं ली। इस तरह का कोर्ट प्रीज्यूम निकाल सकता है। लेकिन अगर सारी शाहदात डिमांडेबली झूठी हो तो भी एक शस्त्र को इसलिये पकड़ लिया जाये कि उसके पाम दौलत है, यह दुस्त नहीं है। ऐसे शस्त्र को सजा देना दुस्त नहीं होगा। यह तो वही हुआ जैसी कि हमारे यहां हमेशा मिसाल दी जाती है कि "अंधेर नगरी चौपट राजा, टके सेर भाजी टके सेर साजा"। मैं जानता हूँ और आनरेबिल मिनिस्टर माहब भी जानते होंगे कि बहुत से ऐसे आफिसर हैं जो कि अपनी बीवी वगैरह के नाम से स्पेकुलेशन करते हैं और वह रुपया भी कमा लेते हैं। लेकिन अगर उनमें पूछा जाये तो वे कभी नहीं कहेंगे कि उन्होंने स्पेकुलेशन किया था। ऐसे शस्त्र भी इसकी जद में आ सकते हैं। इसी तरह से अगर किसी शस्त्र ने बिरसे में हीरे, जवाहरात, या मोने के जेवरात पाये हैं तो उसके लिये भी यह साबित करना गैर-मुमकिन होगा कि वह उसके पास कहाँ से आया। उसके लिये उसे साबित करना नामुमकिन होगा। मैं चाहता हूँ कि पब्लिक सरबेंट की रेपुटेशन हिन्दू विद्यो की रेपुटेशन की तरह होनी चाहिये।

मैं चाहता हूँ कि वह ससपीशन से ऊपर हो। लेकिन कई हालातों में वह ऐसी हालत में होगा कि वह इस कानून की जद में पड़ जायेगा। हालांकि वह बेगुनाह होगा। हम सब रिश्वतखोरी के खिलाफ हैं। आपने इसके लिये एक साल की सजा लिखी है। अगर आप इससे भी ज्यादा सजा तय करके लें तो मैं उसके हक में होता। लेकिन मैं यह नहीं चाहता कि आप किसी बेगुनाह शस्त्र को ऐसी हालत में रखें कि उसे सजा पाने का इमकान हो।

श्री रघुबीर लहाब (बदायूँ) : लेकिन एक पब्लिक सरबेंट दूसरा काम कैसे कर सकता है जिससे कि उसे रुपया पैदा हो सके ?

पंजित ठाकुर दास भार्गव . आप उसे डिपार्टमेंटल मजा दीजिये। लेकिन उसको आप किस तरह से इस जुर्म में गजा दे सकते हैं। इसके मुताबिक तो अगर किसी के पास रुपया है और वह उमका हिमाब नहीं दे सकता तो वह भुजरिम बन जाता है। उसने कोई क्रिमिनल मिसकंडक्ट नहीं किया है। इसका तो मतलब यह है कि एक शस्त्र ऐसा रुपया अपने पाम न रखे जिसका कि वह हिमाब न दे सके।

हमने इस कानून का एमरजेंसी में बनाया था। उस वक्त ५ करोड़ ६५ लाख की तहकीकात हो रही थी। आज कोई एमरजेंसी नहीं है। आज भी यह कानून लाया गया है यह इम्प्रापर है और इसमें बेगुनाह आदमी फँस सकता है। मैं नहीं चाहता कि एक ऐसा आदमी जिसका कि कोई कसूर न हो वह सजा पा जाये। यह मुनासिब नहीं है। अगर आप शाहदात से साबित नहीं कर सकते तो क्या बजह है कि आप उसको इस जुर्म में मुनाहवार करार दें। वह आदमी कहाँ से रुपया ले आया है,

इसकी आप तहकीकात नहीं करते। अगर किसी उकैती का मामला, उसके बहाने नहीं निकलता तो उस को उस जुर्म के लिये कैसे बिम्बेवार उहराया जा सकता है।

श्री रघुवीर सहाय : क्या ऐसा कोई केस हुआ है आपके इल्म में ?

पंडित ठाकुर दास भार्गव : एक केस नहीं बल्कि कई केसेज में ऐसे लोगों के साथ बेइन्साफी हुई है। मैं ने एक हार्डकोर्ट का जजमेंट पेश किया है। श्री भी कई हार्डकोर्ट के जजेज ने यह रिमार्क किया है कि यह कानून गलत है। यह सा दुस्त नहीं है। हमने इसको किसी इमरजेंसी में बनाया था। मैं भी इसको बनाने में पार्टी था। जब मैं अपनी गलती का बतला रहा हू। मैंने खुद इसमें उम वक्त प्रमॉन्ट पेश किया था। लेकिन मैं जान गया हू कि यह गलती थी। मैं आज उसका ऐतराफ करता हू। अगर मेरा कहना जायिब हो तो इसको खत्म कीजिये वरना नहीं।

श्री रघुवीर सहाय : आपने यह कहा कि करप्शन कम हो गया है।

पंडित ठाकुर दास भार्गव : मैंने यह प्रमं नहीं किया। श्री मेरे लायक दोस्त मुझे माफ करेगे। वह अपने खयालात को मुझ से क्यों वाबस्ता करते हैं। मैं तो उनसे भी भागे जाने को तैयार हू। मेरे दोस्त ने यह तजवीज बतलायी है कि एजू-केशन बी जाये। मैं श्री तजवीज बतलाऊंगा कि आप करप्शन को किस तरह से खत्म करें। मैं किसी पब्लिक सरवेंट के करप्शन को बरदास्त करने को तैयार नहीं हू। मैं यह नहीं चाहता कि करप्ट अफसर को सजा न मिले। लेकिन ऐसा जुर्म बना देना कि जिसमें बेगुनाह भी फंस जायें मुनासिब नहीं है। जो कुछ मेरा प्रीपोजन है उसको

आप उसके मैरिट पर देखें। मेरी प्रमं यह है कि जब वकत आ गया है कि इस बेइन्साफी को हटाया जाये।

आपने जो ए० श्री बी० दफा ५ में रखे हैं वह तो ठीक है। लेकिन सी० श्री बी० में तो इंडीवीजुअल प्रेसुमिषन है, किम-नल बीच भाव टूट है। इसके लिये पहले से वकत ४०५ से ४०६ तक मीजूर है। सी० श्री बी० के लिये Presumption की जरूरत नहीं है। इसलिये जो कि आपका प्रावीजन रिखत देने वाले के लिये है वह तो दुस्त है। लेकिन सी० श्री बी० को रखना मुनासिब नहीं है। ए० श्री बी० में तो इंडीवीजुअल प्राइवरी का केस होता है। जो प्रादमी दस बीम दफा रिखन ले चुका है उसके लिये वह कानून ठीक है। लेकिन सी० श्री बी० तो एप्साई नहीं करता। जो प्रीजम्पशन है वह इसमें एप्साई नहीं करता। इसलिये मैं चाहता हू कि पेरेंट ऐक्ट में मे इस बीच को निकालने के लिये गवर्नमेंट जल्द से जल्द एक बिल लाये वरना अगर कोई प्राद्वेट मेम्बर इस किस्म का बिल लायेगा तो गवर्नमेंट कहेगी कि हम ऐसा बिल लाने को तैयार है। मैं चाहता हू कि आप ही ऐसा बिल लायें श्री आप ही इसको दुस्त करे अगर आप मुझ से एबी करते हो।

इसके भागे जो प्रादमी रिखत देता है उसको आप सजा देना नहीं चाहते। जनाब वाला मैं रिखत देने वालो को दो श्रेणियों में रखना चाहता हू। एक केस तो वह है कि जब अफसर लालच की वजह से किसी प्रादमी से रिखत एक्सटार्ट करे। श्री वह प्रादमी इस वजह से रिखत देने पर मजबूर हो कि अगर वह नहीं देगा तो उसके साथ बेइन्साफी होगी। दूसरा क्लास वह है, जिसको आप नजरन्दाज नहीं कर सकते, जहां कि एक शक्स अपना काम निकालने के लिये लालच देकर अफसर को

## [पंजित ठाहुर बाबु भावब]

रिखत देता है और उसको उसके ईमान से डिगाना चाहता है। वहीने कलास वाले, जिससे कि रिखत एकटाटे की जाती है, उसके बयान को यकीन किया जाये। लेकिन जो दूसरे कलास का घादमी है, यानी जो कि अपना काम निकालने के लिये अफसर को रिखत देकर उसका ईमान डिगाना चाहता है, मैं नहीं चाहता कि आप कहें कि वह सजा का मुस्तहक नहीं है। अगर आप ऐक्ट २ सन् १९४७ के सिलसिले में सरदार पटेल की स्पीच तो आपको मासूम होना कि उन्होंने कहा है कि हम यह नहीं चाहते कि ऐसे मुजरिम के साथ हमदर्दी की जाये जो कि एक्टिंग करता है। आपने एकसप्लेनेशन दिया है कि अगर रिखत देने वाले को हम मुजरिम ठहरावें तो बहुत से केसेज फेल हो जायेंगे क्योंकि वह घादमी गवाही नहीं देगा। इसलिये मैं इस हद तक तो जाने को तैयार नहीं हू कि हर ऐसे शख्स को जिसने रिखत दी है सजा का मुस्तहक समझा जाये। लेकिन मैं चाहता हूँ कि आप दोनों क्लासेज में तमीज करें। एक तो वह जिससे रिखत एकटाटे की गयी है और दूसरा वह जिसने अपना काम निकालने के लिये अफसर को रिखत दी है और उसके ईमान को डिगाने की कोशिश की है। ऐसे शख्स के साथ कोई हमदर्दी नहीं दिखाई जानी चाहिये। मैं चाहता हूँ कि ऐसे लोगों को सजा दी जाये। आज जा मेल्शन आपने रखे हैं उनमें कुछ लीगल नुक्स भी नजर आता है। आपने कहा है कि जो शख्स यह बयान करे :

"that he agreed to offer or offered any gratification".

यह जो स्टेटमेंट है वह दफा १६५ए में नहीं आता। उसमें लिखा है कि जो अडैटमेंट करेगा वह सजावार करार दिया जायेगा। वह कहना कि मैं ने दिया या मैं एभी हुआ देने के लिये यह बयान बाई

इसेल्फ कोई एवेटमेंट नहीं है। इसलिये अगर सही मानों में इसको धवा किया गया तो यह जुर्म नहीं बनता। यह बयान इस काबिल नहीं होगा कि हम दफा १६५ए के चार्ज को सबस्टैंसियेट कर सकें। सिर्फ इतना कहने से यह बयान दफा १६५ए में नहीं आता। वह बेमानी है। आप इस बेमानी चीज को शायद इसलिये रख रहे हैं कि अगर वह ऐसा बयान नहीं देगा तो जुर्म नहीं बनेगा। लेकिन जैसा कि मेरे साथक दोस्त सरदार साहब ने फरमाया कि ऐसे बयान से १६५ का जुर्म नहीं बनता लेकिन अगर उसका बयान झूठा साबित हुआ तो उस पर दफा १६३ जरूर लागू होगा। वह दुस्त है। अगर वह झूठा बयान देगा तो जरूर सजा का मुस्तहक होगा।

इन के अन्दर धानरेबिा मिनिस्टर साहब ने ट्रेप सिस्टम का जिक्र किया। मैं इसका पहले भी कई बार जिक्र कर चुका हूँ। मैं अदब से अर्ज करना चाहता हूँ कि जितनी जल्दी आप इसको डिमिफ्टीन्स कर उतना ही एडमिनिस्ट्रेशन धाव जस्टिस के लिये अच्छा होगा। मदास हाईकोर्ट ने एक शख्स को जिसको ट्रेप सिस्टम में भेजा गया था गुनाहगार करार दे दिया क्योंकि उसमें अडैटमेंट का जुर्म बनता था। इसके अलावा मैं अपने तजुबों से कहना चाहता हूँ कि जो घादमी आप ट्रेप के बान्ने इस्तेमाल करते हैं वे इन कवर अनस्कूपुलस होते हैं उनसे आप जो चाहे बयान करवा सकते हैं। जो बयान वे करते हैं उसके डिफेंस में एक्जुड नीसियों दफा यह कहता है कि यह रुपया भुनवाने के लिये लाया था, चावल के लिये लाया था और मेरे पास रख दिया। मैं कहता हूँ कि एक ईमानदार अफसर है। लेकिन अगर कोई आ कर उसकी जेब में रुपया डाल देता है तो उनको लासख धा सकता है। तो ट्रेप में

इस तरह के तरीके इस्तेमाल किये जाते हैं वही कि आपस नहीं हैं। इस सिस्टम को बहुत से हार्डकोर्ट जजों ने बहुत ही बराबर भ्रष्टाचार में कंटेम किया है।

मे निहायत भ्रष्ट से भ्रष्ट करना चाहता हूँ कि इस सिस्टम को जितनी जल्दी खत्म कर दिया जाय, उतना ही अच्छा है।

इस के बाद मैं यह कहना चाहता हूँ कि आप चाहें जितने कानून बनाते जायें—सब्त से सब्त कानून बनाते चले जायें, लेकिन करप्शन बाध नहीं होगी। इसकी बजाह वह कार्यवाही है, जो कि हम ने अपने हाथों से की और हम को अब यह देखना चाहिये कि उस का रिजल्ट क्या हुआ है। हम ने अपने कांस्टीच्युशन में दफा ३११ रखी और विनायत वालों की नकल करते हुये अपने पब्लिक सरवेंट्स को इतने ज्यादा हकूक और सेफगार्ड्स दिये कि वे आज इनने महफूज हैं कि कोई उन को छेड़ नहीं सकता है। मुझे याद है कि एक बार एक मिनिस्टर साहब ने फरमाया कि एक मिनिस्टर होते हुये मैक्सिमम मेरी रैसपामिनिबिटी है और मैक्सिमम ही इम्पार्टिस हैं। आज एक मिनिस्टर को यह मालूम है कि फलां शब्द—फलां अफसर—ने यह जूम किया है या वह करप्ट है, लेकिन वह उस के खिलाफ कुछ भी नहीं कर सकता है। अगर यहा पर मैं इस सिन्सिजे मे मिनिस्टरों में सब से आला मिनिस्टर को राय को कोट करता हूँ, तो मे समझता हूँ कि मैं किसी राज का अफ्रवा नहीं कर रहा हूँ। मुझे मालूम नहीं कि उन को यह बात बाध है या नहीं। मैं ने भ्रष्ट किया कि "सारा हाउस—सारी दुनिया—जानता है कि आप के फ्रमा सैक्रेटरी आला से आला अफसर, करप्ट हैं, लेकिन आप और सरदार पटेल उन का कुछ बिबाद नहीं सकते। क्या आपको यह बात मालूम ही नहीं है

या आप इस बारे में इन्क्वीरी है?" मैंने बड़ी जुरत कर के उन से यह सीधा सवाल पूछा, क्योंकि मैं फ्रील करता था और लोग भी फ्रील करते थे कि इस मामले को ठीक तरीके से हल नहीं किया जा रहा है। उन ने मुझे जवाब यह मिला कि "मुझ को क्यों जिम्मेदार करार देते हो? तुम सारे क्या जिम्मेदार नहीं हो? तुम ने कांस्टीच्युशन में दफा ३११ नहीं रखी?" मैं भ्रष्ट करना चाहता हूँ कि अब बसत आ गया है कि इस सिन्सिजे में जल्द-अजल्द कोई मुझसिर कार्यवाही को जाय। अब हम यह बर्दास्त नहीं कर सकते कि लोग यह कहते रहें कि फलां अफिसर राशी है, करप्ट है और गवर्नमेंट उसके खिलाफ कुछ भी न कर सके।

सरदार पटेल के जमाने में एक कमेटी बनाई गई थी, जिस का मैं भी एक सदना मेम्बर था और बख्शी टेकचन्द जिम के चेयरमैन बनाये गये थे। उन कमेटी ने इन सब बातों पर गौर किया और अपने सिफारिशान दी। हमारे सामने मारे फिगर्ज आये थे कि कितने केसिज चलाये गये, कितने कामयाब हुये और कितने नाकामयाब हुये, बगैरह बगैरह। मैं चाहता था कि वे सारे फिगर्ज आज भी हमारे सामने आते। यह ठीक है कि हम को बहुत सी रिपोर्ट दी जाती है, लेकिन क्या हम आप की इन सब रिपोर्टों को पढ़ते हैं? इतने कागजात पढ़ना हमारे लिये नामुमकिन है और न ही कोई पढ़ता है। इसलिये इस के मुताल्लिक सब फिगर्ज हम को दिये जाते, तो अच्छा होता। मुझे ताज्जुब न होगा अगर लार्ज नम्बर आफ अफिसर्ज को सजायें दी गई हों, लेकिन सवाल यह है कि ये सजायें कैसे मिलती है। मेरे जेमे और मुझ से बढ़िया बकील नकायस निकालते हैं और ठीक नकायस निकालते हैं। अगर आप क्रिमिनल ला में सजा देते है, तो

[पंडित ठाकुर दास भावेन]

बैनिक्रिट फ्राज़ डाउट एक्ज्यूड को जाता है। एक वकील साहब ने मेहरबानी करमा कर मेरे साथ इस बारे में डिस्कशन किया। उन की राय में—और वह सही राय है और मैं भी फ्री सदी उस राय से एसोशिएट करता हूँ—ऐसे केसिज़ में, जब कि किसी शक्स पर, वह मिनिस्टर हो या कोई भाला अफसर, यह शक किया जाय कि वह राशी है, करप्ट है, तो शक के फायदा मुल्जिम को नहीं मिलना चाहिये, पब्लिक को मिलना चाहिये। आप उस को डिपार्ट-मेंटली डील कर सकते हैं। मद्रास गवर्नमेंट ने एक कमेटी बनाई थी, जिस ने इस सिलसिले में क्लज तैयार किये थे और वे हमारे सामने आये थे। मैं चाहता हूँ कि आप कास्टी-यूशन में तब्दीली कर दें और मिनिस्टर्स को और बड़े से बड़े आफिसर्स को यह अक्लि-बार दें कि जिन आफिसर्स की रेपुटेशन खराब है, अगर हो सके, तो उनके खिलाफ जुडिशल कार्यवाही करे, मुकद्दमा चलाये और अगर ऐसा न हो सके, तो उन को आर्टिकल ३०६ और ३१० (pleasure of President or Governor) को मदेनजर रखते हुये एक-कलम बरखास्त कर दें। मैं तस्लीम करता हूँ कि उन को यह हक देने में बोझी सी आरबिटरेरीनेस हो सकती है और किन्ही ऐसे आफिसर्स को तक्लीफ पहुंच सकती है, जिस को रेपुटेशन खराब है, लेकिन जो ईमानदार है। ममकिन है कि चन्द केसिज़ में बेइन्साफी हो, लेकिन ग्राम तौर पर इस कदम से फायदा ही होगा और आप ठीक रास्ते पर आगे चलेंगे। अगर आप रेपुटेशन के बेसिस पर खराब लोगों को हटाने का हक लेंगे, तो इससे लोगों की संतुष्टि होगी। आर्टिकल ३११ के मुताबिक यह तय किया गया है कि हर एक मामले को जुडिशियली देखा जाय और हर एक मामले का सबूत पेश किया जाय। मैं भर्ज करना चाहता हूँ कि ऐसे केसिज़ में सबूत कैसे मिल सकता है। इन की

नीऐइत ही ऐसी है। दो शक्स ही इन्वाल्ड होते हैं। वे चुपके से अपना काम कर लेंगे। देने वाला दे देगा और लेने वाला लेगा। तो फिर सबूत कहां से आयगा? मैं भर्ज करना चाहता हूँ कि ऐसे जुर्म को साबित करना बड़ा मुश्किल है। अगर ला के मातहत ११० जाबता फीजदारी में किसी को उस की रेपुटेशन की बिना पर बदमाश करार दिया जा सकता है, तो वह रेपुटेशन ही किसी आफिसर के खिलाफ कार्यवाही करने के लिये भी काफ़ी समझी जानी चाहिये। इस सिलसिले में मेरी कन्सिट तजवीज़ यह है कि कास्टीयूशन में तब्दीली कर के प्रूव्ड केसिज़ में और बंद रेपुटेशन के मामले में एक-कलम कार्यवाही करने का हक होना चाहिये। पुराने राजाओं के जमाने में और चाहे जितनी बुराइयां हो, लेकिन यह बाकया है कि अगर किसी राजा को यह यकीन होता कि किसी शक्स ने कोई जुर्म किया है, तो उस को फौरन हटा दिया जाता था और उस को असर होता था। आज यह मुमकिन नहीं है। अगर किसी बजह से कास्टीयूशन की तब्दीली बाकई तौर पर जस्टिफाइड है, तो वह सही मौका है। आज हर एक जगह, हर एक की जमान पर, हर एक दफ्तर में करप्शन के अलावा और किसी बात का डिफ़ेंस नहीं है। आज-कल तो करप्शन एक स्ट्रीम की पीछ समझी जाने लगी है। मैं भर्ज करना चाहता हूँ कि अगर यही हालत रही, तो हमारी प्राइवेट, पब्लिक और आफिशल लाइफ़ ऐसी बन जायगी, जिस को बर्बात करना मुश्किल हो जायगा।

मैंने इस सिलसिले में एक बाकया बयान किया है। यह उन बहुत से तरीकों में से एक है, जिस पर अमल करने से हम को कामयाबी मिल सकती है और जो कि कारगर साबित हो सकता है। इस वक्त मौका नहीं है कि मैं उन सब बातों पर बहस



करूं, जिन का पब्लिक सर्वेंट्स से ताल्लुक नहीं है। मैं समझता हूँ कि अगर आप इस तजवीज़ पर अमल करेंगे, तो मुनासिब होगा।

**Shri Tyagi:** While I am in full support of the measure under consideration in the House just now, I must say that enough efforts have been made by the Home Ministry to reduce this evil of corruption in the services, but there are some handicaps which, as my hon. friend Pandit Thakur Das Bhargava just now pointed out, come in the way. They are the hurdles, and therefore, I believe, perhaps the Home Ministry could not go to the extent to which they would otherwise desire to do. Therefore, my submission is that they must first try to remove those hurdles.

I am not in favour of doing the slightest harm to the morale of the services. I appreciate, and I hope it will generally be appreciated, that the services are the backbone of the administration and the main instrument through which democracy operates. Therefore, we should see to it that their morale is high; we should not demoralise them to the extent of their being always afraid of something or the other.

High morals, good morals, cannot always be hurled at people. The best means to raise morale is the means of inspiration. We can inspire morals, but morals cannot be hurled at people. Therefore, I submit we should not always depend for such a big mission on Acts or on legal measure alone, because these are hurling good morals, just hurling a hammer against corruption, but that is not the only way. It does serve the purpose to some extent, but the laws of the land are really not responsible for the morals of the country. They are only a little check, and I think they do a little fraction of the service. The real thing is the social conscience of the people. In fact, that is the essence. It is that on which we

can depend. These laws are only helpful to some extent.

The air in the country today is of corruption, and this measure would just control the activities of an insignificant proportion of the population of the country, and would not help much, because really speaking it is the market morality we are concerned with.

For instance, I observed a child buying a balloon from a balloon-seller in the street. He was a little, young child and he had two anna pieces. He wanted to know how much the man would charge for a red balloon. The vendor said he would charge six paises. He wanted only six paises or 1½ annas, but the child did not know arithmetic and said: "I cannot give you six paises, I can give you two one anna pieces". The vendor said all right and took it.

We should come out with a larger measure to stop this bargaining in the market. May be it is a little revolutionary measure, but if we were to enact a law that no shop-keeper will ever be allowed to bargain prices, that everybody must sell at fixed, notified prices, that will perhaps do a great deal, because all our morality flows from the market. Of course, it will help everybody because from childhood people will learn that there is only one word and no bargaining about it. That will give us the first lesson in high morals.

In Germany I came across a complaint. A friend said that when he went to India, from the air port—I do not know which air port it was—he bought an ivory elephant for Rs. 50 and when he came back he found that another friend had bought a similar one, the same type, same size, for more than Rs. 200, and he asked: "What is all this?" I was ashamed really.

I feel that perhaps we should have a measure which can in a practical

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way affect and control our market morality, but we are not touching that. Factually speaking, all bad morals flow from markets. Even revolution started from the markets. We started with hartals of shop-keepers. That is the place where everybody comes, from where things get propagated. I, therefore, suggest that the Home Ministry might examine if they can stop this—offering a thing at Rs. 200 and selling it for Rs. 50 after a little bargaining and haggling. This thing is being permitted as if it is the legitimate right of the shop-keeper to try to swindle anybody who comes to buy. That should be stopped. There are many other such measures whereby we can change the air in the country

If it is hot weather, one must perspire. It is no use air-conditioning this House. You can air-condition this House, but that will only be temporary and in this House alone. The whole country's atmosphere cannot be changed by means of air-conditioning. We have to resort to such measures whereby the morale of the whole nation can be raised. That is the panacea for this evil.

I again repeat that it is the services who are carrying on the administration and we must be very careful—and I plead with the Minister—to see to it that nothing is done which will upset the morale of the services or their reputation, because there is one clause to which I also take exception. I do not know, but it may be examined whether it will be helpful if it is passed. If it is passed, I hope the Ministry will take care to see that it is not misused. It is clause 3(b) in which a person who offers bribe makes a statement in a court that he offered bribe, and he will go untouched.

**Shri Ranga (Tenali):** That used to be the case in the past; in between they brought him also within the mischief of the Act.

**Shri Tyagi:** That is true. As my friend Pandit Thakur Das Bhargava

has said, such persons are of two types. One is a man whose son or other relative is going to be implicated in some dacoity and the policeman says: "I can release him". It is a sort of extortion, because the man is in trouble, and therefore to give him relief, the officer just extorts him. Another bribe is that for earning monetary benefit a person himself comes—say, for a permit, a licence or some thing like that. He pays bribe in such cases. There may be many blackmailers who blackmail officers and the officers would not know what to do in such cases. So, they must be protected against this. Any time any case can be made out and false witnesses can be produced, because they know they will not be touched by the law. They can make false statements, complicate the matter and the officer would be convicted. Therefore, if this clause is passed, it must be used very carefully

With a little experience of governmental machinery, I must submit that most of the work can be done administratively. Only in very rare cases a person need be sent to the court. Mostly all these cases of corruption should be dealt with in the Ministry itself departmentally and that can be done easily. For that purpose, you have to change your rules of conduct of public services. For instance, according to the Constitution as has been pointed out, there is a requirement that nobody can be punished, dismissed or demoted or any severe punishment given to any government officer unless he is given full opportunity of defending himself. The Home Ministry have issued a set of rules with regard to it, on account of which I myself came across great difficulties many times. There was a case where four or five persons were involved in the sale of *haldu* wood and the loss was about Rs. 15 lakhs or Rs. 16 lakhs. The case came to me. A court of enquiry was appointed and the court said, "No doubt they have done it, but we cannot find any

evidence and therefore nothing can be done." I found that there were difficulties due to the regulations. Of course there was another court of enquiry, something else was done and the people were ultimately duly punished. Otherwise, on the first report, I was myself feeling handicapped. Such cases are numerous.

I want to give the House the benefit of a little bit of the experience I gained. Sometimes on account of some irregularity in your departmental investigation, they themselves prefer to go to court. There were two instances. I had once given one instance to the Home Minister. For 6 or 7 years they were indulging in litigation with Government, they were corrupt officers and they went to the court. They were suspended, but still they are drawing their suspension allowance. That is what I object to. Anybody who is convicted or dismissed or against whom departmental enquiry is being held should not be given any suspension or sustenance allowance if the officers are convinced that the man is really guilty of corruption. Under the present rules, if a person is suspended for corruption or any other fault, he is given an allowance of 50 per cent of his pay. An officer getting about Rs. 2,000 easily manages to get Rs. 1,000 monthly and he can go on litigating for tens of years. The Home Ministry should look into it. I think perhaps there are in all more than 2 lakhs of cases pending in the courts. This is really miserable state of affairs. There are a number of cases pending in the High Courts. I have not got the figures, but in one High Court itself there may be 20 lakh or 20 thousand cases.

The Minister of State in the Ministry of Home Affairs (Shri Datar): There can never be 20 lakh cases in any court.

Shri Mohiuddin (Secunderbad): Are they all appeals against Government decisions?

Shri Tyagi: I am not talking of corruption cases alone; I am talking of the total litigation in the country.

I do not know what the figures; they may be exaggerated. Even if the number of cases pending is in thousands, for 10 or 15 years a case is not finalised and is transferred from one court to another and so on. This is also a state of affairs which has to be looked into. According to my own knowledge of corruption cases, for seven years or more, two or three Government employees litigated with the Government because they were dismissed or some departmental action was taken against them. The case was going on and I could not help it, because it was in the court. There may be many such cases.

Another difficulty I may point out in departmental action is that the rules made by the Home Ministry are also slightly defective in my opinion. My hon. friend should revise them in the light of his own experience. There is one rule according to which when there is a charge against any person, a charge-sheet is given. I can well understand it; he must know what is the charge. But along with the charge-sheet you have to give a detailed history of the offence. I do not know whether it is in the civil side also, but on the other side of which I have some experience, a court of enquiry is appointed to look into the charge-sheet and collect evidence, in the same manner as a departmental enquiry is made on the civil side. After the court of enquiry is satisfied that the man is really at fault, they put up their proposals to the Ministry and they themselves recommend a punishment. Then the Government is required to give that person a charge-sheet again and the same procedure starts. He comes out with his defence and like this months are taken. I think it is within the hands of the Home Ministry to give relief in this matter.

Another information I may give to the House is that the officers who are appointed to conduct these enquiries are really employed in some other important job in the Government and it is not possible for them to devote so much time. Every enquiry becomes

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a huge affair and takes two to three months. Witnesses do not come and the departmental enquiry also tends to become court-like. Summons are issued; summons are not served and there is postponement. The same procedure is adopted by the departmental courts of enquiry as well, namely, cross-examination, etc. These courts of enquiry become more or less regular courts and their decisions are also delayed as the decisions of regular courts. If it is possible to bring about some simplification in the investigation, it must be looked into. The officers who are appointed to make the enquiry have to accommodate their own duties also in the Ministry. So, only on a Saturday or Sunday they go to the spot to make enquiries. They do it according to their own personal leisure with the result that investigations are delayed and sometimes the evidence is also lost. I would suggest that the Home Ministry appoint some kind of standing tribunals, so that the cases may be immediately and swiftly decided and quick justice may be rendered. These are the methods by which the Home Ministry might draw much better advantage than this law. I still plead that the cases mostly need not be sent to the court.

Another difficulty is this. Senior officers with whom I had contacts told me that the laws of the Government are such that it is not possible to take any action against the junior officers. Action cannot be taken freely against the junior officers. Sometimes, even in cases where action is taken, there is some flaw here or there; some little ticklish thing is left out here or there, as, for instance, that a show-cause-notice is not served and so on. All these things happen because the method of enquiry is so complicated and every detail has to be looked into. So, officers have to be specially trained for this purpose. There are so many laws and by-laws and rules and it is not possible for every officer to know

all these details. So, officers have to be specially trained. It is only then that there can be a perfect enquiry. Otherwise, in cases where punishment is given, the man goes to court and says that the enquiry was an irregular enquiry, such and such a notice was not served, and he is then let off by the court, and all the labour is lost.

14 hrs.

Therefore, I would suggest that firstly there must be simplification of procedure. Secondly, the prisons entrusted with these enquiries must be given regular training as to how to enquire into these cases. Thirdly, most of these cases must be dealt with departmentally. That is my special plea. With these words, I support this measure because, after all, it is a step in the right direction. I would, however, say that this should not be worked in a manner which will upset the morale of the services. That must be taken due care of, because the service must be nursed and supported, and they must have self-confidence, and if only confidence is exchanged with them, I am quite sure the senior officers will do the needful.

Mr. Speaker: How long is the Minister likely to take?

Shri Datar: Half an hour.

Mr. Speaker: It is now two O'clock I have to call the Minister at 2-30 P.M. The general discussion will go on till 3 P.M. We shall start the clause-by-clause discussion at 3 P.M. and conclude by 4 P.M. So, hon. Members will confine their remarks to ten minutes each.

Shri Ranga: I do not propose to take very long. I, like many of my other friends, am also in agreement with this measure. I am very glad my hon. friend Shri Tyagi has taken us into his confidence in regard to the manner in which these administrative rules formulated by the

Home Ministry have been worked to the detriment of public interest and to the advantage of the obstructive officers. I sincerely hope that the Home Ministry would give serious consideration to the suggestions that he has made.

At the same time, we all seem to be thinking and working in a kind of a circle. My hon. friends are extremely anxious that the morale of the services should not be affected and that they should be nursed. But I suppose they do not realise, and I hope they would realise, that in that way we would be cushioning the services all the time. The rules, about which Shri Tyagi has complained just now, have tended really to cushion these people very well and to protect them, and to make them more or less a kind of indemnified section of our general public. Therefore, somewhere or other, we have got to draw the line.

One thing is clear, and there is no doubt whatsoever that all are interested in protecting the morale of the administration, and not only in that, but in expecting that that morale should be as high as possible.

**Shri V. P. Nayar (Quilon):** Caesar's wife.

**Shri Ranga:** That is one of the grounds on which the high salaries of the highly paid officers have been justified till now. Therefore, let us not overwork that particular argument.

Even at this juncture, what is most necessary for us all to realise is that the number of these public servants is rising every year, and in course of time, thanks to the planning mentality and attitude of our people and our Government, their numbers will go on increasing still further.

14.04 hrs.

[**MR. DEPUTY-SPEAKER** in the Chair]

And their salaries also will go on increasing. So, why should we be so

very particular now about maintaining their morale? It is not as if this Bill is going to weaken their morale. That is exactly where I am pained to have to disagree with my hon. friend Pandit Thakur Das Bhargava when he says that these people are going to be harassed. Who is being harassed today? Anybody who goes about the country would be able to see that it is not the public who are harassing the officers, but it is the officers who are harassing the public. Why should we be afraid that some members from the public would go to these people and make it a point to tempt them to be corrupt and then get them into trouble with law? On the other hand, it is these officers who are expected to administer the law, and who are expected to help us to see that these laws are put to good use, who are continuously going round the laws and breaking the laws also without running the risk of being hauled up before the courts.

So, I am extremely anxious that two things will have to be done. The Home Ministry will have to appoint a special committee or a special commission to examine very carefully, in the light of their own experience here as well as in the Home Ministries of the States, how these administrative services have been behaving *vis-a-vis* the public, *vis-a-vis* the whole of Government and their own duties.

Secondly, let them also conduct some sample surveys in certain areas and in certain departments in order to find out the extent to which this evil of corruption is existing, and whether it is spreading, whether it is on the increase or decrease and so on. If they do these two things, then the ground will be ready to enable them to have a careful review of their own regulations concerning the conduct of these officers and employees, and how they are to be hauled up, how they are to be punished and so on. That kind of enquiry is also very badly needed.

Besides these three steps that they have to take I am anxious that they should also take into consideration whether their special vigilance staff

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have been satisfactorily working, whether the time has not come when they should begin to examine the limits to which they can trust the ordinary police to help them to put down corruption. It is a fact that wherever prohibition has been in force, the worst offenders are the police officials themselves, who are expected to catch hold of the people who drink or who carry on illicit distillation. How are we to catch hold of these police officials if we are to depend upon those very people to catch hold of themselves? So, this has got to be examined.

I am glad that the scope of this Bill is being extended to cover the employees in the various commercial organisations which are worked directly under Government or indirectly through the aid of Government or with the blessings of Government. I am also glad that the *status quo ante* is proposed to be resorted, namely to relieve the people who give information to Government that they have been obliged to give bribes or various other kinds of satisfactions to the officer in order to get lawful redress from these officers, or to give exemption to these people from the rigours of the law. Even at the time when it was proposed that these people also should be treated as criminals, I protested against it and warned Government that under such circumstances, it would not be possible for them to get any kind of evidence at all, because the general public who are obliged to give some kind of satisfaction to many of these corrupt officials are not themselves criminally-minded, and they have had no other option but to give this kind of satisfaction to these officials. Otherwise, they would not get satisfaction from these people. What was happening in those days when we had controls? Almost every aspect of our social and economic life was being controlled by Government and their laws, and necessarily, larger and larger slices of the general public were obliged to go to the officials and get some kind of

redress, some kind of relief, or some kind of assistance, that is, legitimate assistance, which they could not get unless they were prepared to satisfy the officials with money or something else.

My hon. friend Pandit Thakur Das Bhargava seems to be under the impression that we have reached normalcy. But I do not find any evidence of normalcy anywhere. On the other hand, more and more aspects of our own social and economic life are coming under the control of the State Governments as well as the Central Government directly or indirectly because of this planned economy, and more and more aspects of our social life are bound to come under the control of governmental activities. Therefore, there can be no such thing as normalcy for some years to come until this planned economy is achieved and some stabilisation of our social life is also achieved. Therefore, I am anxious that the general public ought not to be penalised, and for that very reason, I would say that this exemption that is sought to be given in this Bill for those unfortunate people who are obliged to give some kind of gratification to these officers, from being themselves hauled up in their turn before the criminal courts of law should be welcomed and not opposed as was done by my hon. friend Pandit Thakur Das Bhargava.

Many other things can be said, but there is not time enough to expatiate upon all these things. I would like to close with this general remark that I am extremely unhappy that although it is more than ten years since we have become free, we do not seem to be anywhere near either limiting or liquidating this terrible evil of corruption in the administrative ranks.

Shri Naushir Bharucha (East Khadesh): I welcome this Bill as a step in the right direction. In doing so, one must also pay a tribute to the integrity and industry of the officers in the employ of the Government.

When one incident of corruption comes to the notice of the House, there is usually a tendency to generalise from that and to paint the entire officialdom as corrupt. I do not take that view, but still I think it is desirable that the provisions of this Bill should be extended to include those officers in the so-called autonomous bodies which we are creating, since they are handling transactions running into hundreds of crores of rupees.

It appears to me that Government are not really serious in stamping out corruption where it exists. When they talk of suppressing corruption, Government roar like a lion but when it comes to action, they act like a timid lamb. This Bill is welcome. But it does not go far enough. In the first place, there are inherent difficulties in detecting corruption, particularly in the matter of monetary bribes. The only two persons vitally interested in corruption are the bribe-giver and the bribe-taker, and both are penalised as offenders. Thereby, we completely cut out the only possible main source of information that we might otherwise get.

I am not quite prepared to say it categorically, but it appears to me that the time is fast coming when our legislation must provide, much against our will, that the bribe giver must have considerable immunity, if he is going to be a good source of evidence against the bribe-taker. Today as the law stands, it is impossible for any person to come forward and say that he gave a bribe to a particular officer, and the mere fact that some measure of immunity by way of a pardon is given to the bribe-giver is, to my mind, not adequate consideration, and law in that respect may have to be liberalised, much against our will, if this Bill is going to be a practical proposition.

I also do not agree with the Minister in charge that there should not be a provision in this Bill excluding the

application of the Probation of Offenders Act. As the House knows, we are shortly going to enact a law in which every offence, except that for which death sentence is awarded or punishment of transportation for life or life imprisonment is awarded, is going to be subject to the provisions under which even a habitual offender can be released on probation. I ask: what is the use of taking up the time of this House in enacting legislation providing minimum imprisonment as we do here and, on the other hand, enacting another legislation wiping out the effect of that? The hon. Minister in charge has said that corruption is a grave offence and we can trust the Magistrates to look into it and award adequate sentence. But the Minister also says in the Notes on clauses that 'experience has shown that there is a tendency among the courts to deal too leniently with public servants convicted under the Prevention of Corruption Act'. Which voice of the Minister shall I believe—the one in the course of his speech while moving for consideration of the Bill or the notes or clauses which he has prepared? The Minister is of the view that 'even where imprisonment is awarded, the period is frequently too small to have adequate punitive or deterrent effect and the amounts of fine imposed are frequently grossly incommensurate...'

Therefore, if in the Notes on clauses the Minister cannot trust the magistracy, I submit it is very necessary to include a provision in this Bill which will exclude the application of any law which relates to release of offenders on admonition or on probation.

To my mind, there are five ways in which this particular amendment to criminal law might be made more effective. First, it is not enough to wait until you catch red-handed an officer who is corrupt. I am of the opinion that law should be in the direction of compelling certain government officers around whom an aroma of corruption exists to disclose

[Shri Naushir Bharucha]

their wealth to a particular high government officer—disclosure of wealth by legislation. I do not say that every officer must be made to disclose his wealth, but such officer around whom an aroma of corruption exists. This aroma of corruption does not come by itself. People will not falsely accuse an officer of corruption; they may say that he is short-tempered, inefficient, careless, negligent etc, but they will not say that he is corrupt unless he is so. I therefore submit that law should be made in the direction of compelling such of the officers as in the opinion of Government have collected around them a notoriety of corruption, to disclose their wealth. The onus must be upon them to say how they acquired every item of wealth.

Secondly, certain immunities would have to be granted to the bribe-giver who is the only source of evidence, important evidence at that. Thirdly, we should exclude application of any statute which releases people on probation or minimises the effect of this legislation. Fourthly, simplify the procedure about inquiry. That can be done. Shri Tyagi said that our inquiries were degenerating into courts; he does not know that legally these are known as 'domestic courts' or 'domestic tribunals'. But the procedure can be very much simplified and it should be done. Lastly, I submit that so long as people at the higher level keep on accepting political contributions from companies it becomes greatly difficult for them to preach morality and say that they are not corrupt.

These are the lines on which Government must proceed. Unless they proceed boldly, particularly in the matter of compelling certain officers to disclose the sources of their wealth at least in cases where a notoriety of corruption exists—to my mind, there is no practical method of tackling corruption.

श्री बांकड़े (बिलासपुर) : उपाध्यक्ष महोदय, यह जो विधेयक सदन के सामने आया है, उससे सदन को सन्तोष है और मैं समझता हूँ कि यहाँ की जो जनता है, उसे भी सन्तोष होगा कि भ्रष्टाचार और घूसखोरी को दबाने के लिये सरकार कितनी प्रयत्नशील है। परन्तु जिस तरीके के सरकार भ्रष्टाचार को दबाना चाहती है और उसका उन्मूलन करना चाहती है, वह तरीका कहीं तक कामयाब होगा, इसमें शर्भी भी सन्देह है। १९५३ या १९५४ में इसी सदन में जब घूस देने वाले और लेने वाले दोनों को अपराधी घोषित किया गया, तभी हम में से कई सदस्यों ने कहा था कि घूस देने वाले को यदि हम कानूनी दंड-पेच में या कानून के गिकजे से बचा सके, तभी जाकर हम घूस लेने वाले को पकड़ सकने हैं। इस सदन में यह विधेयक देर में आया है, लेकिन दुरुस्त आया है। शर्भी भी घूस देने वालों को जो प्रोटेक्शन या जो बचाव मिल रहा है, मैं समझता हूँ कि वह काफी नहीं है। उनको और भी ज्यादा बचाव देने की आवश्यकता है। मैं समझता हूँ कि जो व्यक्ति घूस लेने के केस की सूचना भी दे, चाहे वह कोई अधिकारी हो या सर्वाइजेंट हो, उसके प्रमोशन—नरक्की—के लिये या कोई इनाम देने के लिये सरकार को कोई न कोई नया तरीका अपनाना चाहिये। अगर कोई चाहे, तो किमी भी कोर्ट या दफ्तर में प्राथ, एक, दो घंटे के बाद ही उसको यह सूचना प्राप्त हो सकती है कि अमुक अफसर को अमुक प्राइमी ने कितने पैसे दिये हैं और किस लिये दिये हैं।

उसको फौरन खबर मिल जाती है क्योंकि आज के जमाने में, सम्मता के इस जमाने में कानून के इतने ढाँच पेच हो गये हैं कि आप कितना सख्त भी क्यों न कानून बना लें लोग उससे बचने का तरीका ढूँढ ही लेते



हैं और बच ही निकलते हैं। लोग घूस देकर ही रहते हैं और अपना काम निकलवा कर ही रहते हैं। आपको देखना यह होगा कि जो इन्फार्मेट है, जो सूचना देने वाला है, उसकी आप किस तरह से मदद कर सकते हैं। आपने केन्द्र के प्रत्येक मंत्रालय में एक बिजिलेंस सेक्शन खोल रखा है और एक बिजिलेंस प्रफिसर नियुक्त कर रखा है। हमें कुछ भी पता नहीं कि इन बिजिलेंस प्रफिसर्स ने साथ में कितने मामले पकड़े, कितने मामलों को कोर्ट में पेश किया, कितनों की सजा हुई, कितने प्रफिसर्स को डिमोट किया गया, कितनों को डिसमिस किया गया। आपको चाहिये था कि आप इन सब आंकड़ों को हमारे सामने प्रस्तुत करते। इसके बिना हम कैसे यह कह सकते हैं कि जो प्रिवेंशन आफ कोरप्शन एक्ट हमने बनाया है वह सफल रहा है। मैं आशा करता हूँ कि जब मंत्रालयों के अनुदानों पर विचार किया जायेगा उस वक्त ये सब आंकड़े हमारे सामने प्रस्तुत कर दिये जायेंगे। आप विधेयक को तो पेश कर देते हैं लेकिन हमें पूरी जानकारी नहीं देते हैं। इनके बिना इस बात का पता लगाना कि हमें कितनी सफलता मिली है या कितनी नहीं मिली है, मुश्किल हो जाता है। मैं चाहूँगा कि आप हमें बतलायें कि अब तक जब मे प्रिवेंशन आफ कोरप्शन एक्ट बना है कितने प्रथम श्रेणी के पदाधिकारी, कितने द्वितीय श्रेणी के पदाधिकारी, कितने तृतीय श्रेणी के पदाधिकारी और कितने चतुर्थ श्रेणी के पदाधिकारी पकड़े गये हैं, कितनों को सजा हुई है, कितनों को नौकरी से बर्खास्त किया गया है, कितनों को डिमोट किया गया है और कितनों को दूसरी तरह की सजायें दी गई हैं। यह सारा ब्योरा हमारे सामने आना चाहिये था और तब जाकर इस सदन के सदस्यों को सन्तोष होता।

आपने स्पेशल ट्रिब्यूनल या स्पेशल मैजिस्ट्रेट मामलों को निबटाने के लिये रखे हैं। लेकिन बत्ता भी किस तरह से कैसे जाते

हैं और साल में कितने कैसे जाते हैं। एक मामली कांस्टेबल का मामला पकड़ा जाता है या पटवारी का मामला पकड़ा जाता है या लेखपाल का मामला पकड़ा लिया जाता है जिसने कि दो रुपये की घूस ली होती है। साल भर मामला चलता रहता है और बाद में पांच रुपया जुर्माना हो जाता है। इस पर सरकार का कितना ही खर्च हो जाता है। पांच हजार उमने कमा लिया होना है लेकिन जुर्माना दो रुपया ही होता है। अदालत द्वारा दी गई सजा का उस पर कोई असर नहीं होता है। इस तरह से भी होता है कि जब बड़े अप्रसर कहीं जाते हैं तो उनके स्वागत के लिये, उनकी तैयारी में या उनको अपने यहां रखने में जो मबाडिनेट अप्रसर होते हैं उनको काफी खर्च करना पड़ता है और ये बिना घूस लिये ऐम नहीं कर सकते हैं। आई० जी० जाता है, डी० आई० जी० या डी० एस० पी० जाता है तो धानेदार को उसकी कई तरह से आबमगत करनी पड़नी है। उनके लिये पहले तो दो बकरे चाहिये, दो चार फिहस्की की बोटलें चाहिये, बढ़िया चावल और गेहूं चाहिये। ये सब चीजें वह अपनी तनस्वाह में से कैसे जुटा सकता है। इसका नतीजा यह होता है कि उसको जबर्दस्ती घूम लेनी पड़ती है या बारीक चावल गेहूं या रुपया लेना पड़ता है। अगर वह उनका स्वागत मत्कार नहीं करता है तो उसकी पनिसमेंट एरिया में ट्रामफर कर दी जाती है, किमी न किमी तरह से उसको एंटेगल किया जाता है। अगर वह ईमानदार रहने की कोशिश करता है, तो इस तरह की पनिसमेंट उसको मिलती है। यह भी एक बड़ा भारी भ्रष्टाचार है। जो आदमी उसको भ्रष्ट करता है, उसी आदमी को आप उसके खिलाफ जाब करने के लिये नियुक्त कर देते हैं। अगर एक सब-इंस्पेक्टर घूस लेता है तो होता यह है कि जो उसका इमिडियेट सुपीरियर होता है, सर्किल इंस्पेक्टर होता है, जो कि सामीदार होता है, उनी को इन्वायरी के लिये भेज दिया जाता है। इन तरह से

[श्री बांगडे]

कैसे ब्रूसबोरी को रोका जा सकता है। मैं चाहता हूँ कि जिस जिले में अत्याचार हो तो उस जिले को छोड़ कर वहाँ से तीन सौ या चार सौ मील दूर किसी दूसरे जिले के अफसर को या किसी दूसरे डिपार्टमेंट के अफसर को, निष्पक्ष अफसर को, बांच के लिये भेजा जाये। अगर आप ऐसा करेंगे तो ब्रूसबोरी काफी हद तक कम हो सकेगी।

आजकल देखा जाता है कि जो छोटे तबके के कर्मचारी हैं, चतुर्थ श्रेणी के कर्मचारी हैं या लिपिक हैं, उनको हम ब्रूसबोरी में अफसर पकड़ते हैं। इसका कारण यह है कि उनको पकड़ना आसान होता है। उनकी तनस्वाहें कम होती हैं। केन्द्रीय सरकार के जो कर्मचारी हैं उनके वेतन तो मैं समझता हूँ, रीजनेबल हैं, राज्य सरकारों के कर्मचारियों से काफी अधिक हैं। लेकिन जो राज्य सरकारों के कर्मचारी हैं, उनके वेतन बहुत कम हैं। कोई ७५ रुपया उनको महंगाई भत्ता मिला कर माहवार मिलता है। वे लोग मैट्रिकुलेट या प्रेज्युएट होते हैं लेकिन तनस्वाह बहुत कम मिलती है। आजकल एक मजदूर को भी दो या तीन रुपया रोजाना मिल जाता है। जब इन लोगों को कम तनस्वाह मिलती है तो विवश हो कर उनको ब्रूस लेनी पड़ती है। इस वास्ते जब तक आप तृतीय श्रेणी के जो राज्य सरकारों के कर्मचारी हैं उनका वेतन नहीं बढ़ाये तब तक मैं समझता हूँ वे सरकार से पैसा तो नहीं लेंगे हमारी जनता से अवश्य परोक्ष रूप में ले लेंगे। चतुर्थ श्रेणी के कर्मचारी को मैं छोड़ देता हूँ। इन लोगों को अपने परिवार वालों को पालना होता है, अपनी जीविका चम्कानी होती है, अपना स्टैंडर्ड माफ सिविल मेंटन करना होता है। ये लोग चपड़ासियों की तरह से नहीं रह सकते हैं। उन्हें सूट चाहियें, बूट चाहियें, सिनेमा देखने के लिये पैसे चाहियें। पढ़े लिखे होने के कारण उनको पैसा ही वास्तावरण चाहिये। इन सब कामों

के लिये उनको पैसा चाहिये की कि या तो गवर्नमेंट दे सकती है या वे परोक्ष रूप से पब्लिक से लेंगे। इस वास्ते मैं समझता हूँ कि जो तृतीय श्रेणी के कर्मचारी हैं, जो लिपिक वर्ग के कर्मचारी हैं, उनके वेतन बढ़ाये जाने चाहियें।

एक बात और कह कर मैं समाप्त करता हूँ। आप यह नहीं देखा जाता है कि जो सरकारी कर्मचारी हैं उनके पास चल और भ्रमण सम्पत्ति कहाँ से आती है। इसका ब्योरा मंगवाने में हिचकिचाहट की जाती है। अमुक अफसर ने, अमुक पदाधिकारी ने, या अमुक कर्मचारी ने कितना रुपया या कितनी चल और भ्रमण सम्पत्ति कहाँ से प्राप्त की है और किस तरह से प्राप्त की है, इसका ब्योरा न सबन को दिया जाता है और न सरकार के ही पास होता है। सरकारी अफसर बहुत चालाक होते हैं। वे इस सम्पत्ति को या तो अपनी औरत के नाम कर देते हैं, या बहन के नाम कर देते हैं, या भतीजे के नाम कर देते हैं या दूसरे सम्बन्धियों के नाम उसको लिखा देते हैं। ऐसा करने से वे कानून के सिक्के से बच निकलने में सफल हो जाते हैं। मैं चाहूँगा कि इस बारे में कड़ाई बरती जाये।

ब्रूसबोरी के सम्बन्ध में आप कानून तो बना देते हैं और उसमें पनिसमेंट की व्यवस्था भी कर देते हैं। परन्तु गवर्नमेंट की मशीनरी को हमें कड़ा बनाना होगा। भारत कोड को, बकिंग बैंक को भी साथ ही साथ हमको एकसीसरेंट करना होगा। जब तक हम ऐसा नहीं करेंगे ब्रूसबोरी का दमन नहीं हो सकता।

श्री सबराज सिंह (फिरोजाबाद) :  
उपाध्यक्ष महोदय, यहाँ तक इस विधेयक के उद्देश्यों का सम्बन्ध है, इनके साथ किसी को कोई मतभेद नहीं हो सकता। मैं सोचता हूँ कि जिन उद्देश्यों को ले कर इस विधेयक को यहाँ पेश किया गया है उन उद्देश्यों पर

अमल करने का तथा उनको प्राप्त करने का यदि ईमानदारी से पासन किया गया होता तो जिसको हम भ्रष्टाचार कहते हैं, वह कमी का खत्म हो गया होता। जल्दत इस बात की भी कि कानून पर कड़ाई से अमल किया जाता और यदि हमारी इच्छा ऐसी रहती कि भ्रष्टाचार को खत्म करना है तो भ्रष्टाचार दूर हो गया होता। लेकिन भ्राज होता यह है कि हम दूसरों की तरफ देख कर यह कहते हैं कि यह भ्रष्ट है लेकिन क्या हम यह सोच सकते हैं कि हम में और प.प में ही कितने भ्रष्ट लोग हैं जिसकी वजह से भ्रष्टाचारी अफसर जो हैं उनको सजा दिसाने में हम समर्थ नहीं होते हैं। प्राप अवर जांच करना चाहें तो जांच के बाद प्रापको पता चलेगा कि १९४७ के बाद जो लोग इस जनतंत्री सरकार में बड़े बड़े पदों पर काम करते हैं या मिनिस्टर रह चुके हैं और हैं उनकी हैसियत किस तरह ने बढ़ी है इस सब का प्रापको पता लग जायेगा। मुझे ताज्जुब नहीं होगा कि ये झाकड़े जो हैं ये काफी सँकड़ो निकलेंगे अगर इनको पूरे हिन्दुस्तान के पैमाने पर लिया जायेगा। जब हम लोगों में से, चुने हुये लोगों में से, इस तरह के भ्रष्टाचारी पैदा हो सकते हैं और छनांग मार कर बढ़ सकते हैं और कानून की हिमायत भी हासिल हो सकती है तो दूसरे भ्रष्टाचारी लोगों को पकड़ने के लिये या भ्रष्टाचार को रोकने के लिये हम कैसे सफल हो सकते हैं। हमें यह सही बतलाया गया है कि कौन कौन से ऐसे अफसर थे जिन्होंने भूसखोरी की है और उनको क्या क्या सजायें दी गई हैं। इस सब के बिना मुझे ताज्जुब है कि इस उद्देश्य को प्राप्त करने में हम किस तरह से सफल हो सकते हैं। इस उद्देश्य की सफलता के लिये यह आवश्यक है कि हम अपने दृष्टिकोण को बदलें। यह कहना कि हिन्दुस्तान की जनता भ्रष्ट है जिनमें से कि अफसर लोग प्राते हैं क्योंकि जनता में से ही वे लोग प्राते हैं, ठीक नहीं है, वे इसको नहीं मानता हैं।

हम लोगों को जनता का नेतृत्व करना चाहिये लेकिन हम नेतृत्व नहीं करते हैं। हमेशा यह दलील दी जाती है कि जनता भ्रष्ट है इसलिये ये लोग भी भ्रष्ट हैं। मैं इस बात को भी मानने के लिये तैयार नहीं हूँ कि जनता में कुछ लोग जो भ्रष्ट हैं, वे किसी अफसर के ईमान को डिगा सकते हैं। हमारे बीच में ऐसे अफसर हैं जिनके ईमान को डिगाने की कोशिश की गई है लेकिन जिन का ईमान डिगा नहीं है। इस वास्ते इस बिना पर यह कहना कि अफसरों का ईमान इस वजह से डिगा दिया जाता है क्योंकि जनता में भ्रष्टाचार है और जनता में से ही ये लोग प्राते हैं, इसलिये वे भ्रष्ट हैं, मैं इसे कमी मानने के लिये तैयार नहीं हूँ।

उपाध्यक्ष महोदय, इस सदन में शायद ही कोई ऐसा विधेयक प्राया होगा जिसके कि उपर एक मत से लोगों ने अपनी सहमति प्रकट की हो और उनका स्वागत किया हो। हमारी सरकार को इस तरह के कदम उठाने चाहिये जिससे अफसरों के दृष्टिकोण में परिवर्तन प्राये। मैं अपने माननीय मित्र भार्गव जी से पूरी तरह सहमत हूँ। हमने अपने विधान में इस तरह के कुछ अधिकार दे रखे हैं और उनको हमारे मिनिस्टर साहब भी नहीं निकाल सकते। वे जानते हैं कि हमारे खिलाफ कोई कार्यवाही नहीं की जा सकती है। हम हमेंगा के लिये यथा बने रहेंगे।

अभी मूदड़ा शेरम का एक बहुत महत्वपूर्ण केस सामने प्राया है और उसकी रिपोर्ट संसद् के सामने शीघ्र हो जाने वाली है और उस अवसर पर उसको इस पर पूरी तरह से विचार करने का अवसर मिलेगा। उन अफसरान के खिलाफ जिनको कि इस मूदड़ा शेरम के सिलसिले में जिम्मेवार ठहराया गया है, उपयुक्त अवसर प्राते पर हम देखेंगे कि उनके खिलाफ क्या कार्यवाही कर सकते हैं। बूकि अभी यह रिपोर्ट हमारे सामने

### [श्री ब्रजराज सिंह]

घाई नहीं है इसलिये मैं आज उस सम्बन्ध में अधिक नहीं कहूंगा।

मैं निवेदन करना चाहता हूँ कि जहाँ तक इस विधेयक के उद्देश्य का सवाल है वह बहुत सुन्दर है लेकिन इसका पालन करने के लिये सरकार ने अभी तक क्या कार्यवाही की और इस विधेयक के पास ही जाने से कानून बन जाने से हमारी सरकारी सेवाओं में जो भ्रष्टाचार फैला हुआ है वह कितना कम होगा, यह देखने की बात है।

मैं एक बात की तरफ़ मंत्री महोदय का ध्यान दिलाना चाहूंगा। क्लास ३ में जो यह वर्ग लगी हुई है मैं समझता हूँ कि वह तिनकुल ही श्रवत है। आपने पहले यह कहा कि एक साल से कम सजा उसको स्पेशल जज या मजिस्ट्रेट न करे। आप यह कहना चाहते हैं कि कोई स्पेशल मरकमस्टान्सेज हो जिनकी कि वजह से वह अगर चाहे तो वह सजा भी और जुर्माना भी न करे लेकिन उसे लिखना पड़ेगा कि स्पेशल सरकमस्टान्सेज की वजह से ऐसा करना पड़ा। मैं निवेदन करना चाहता हूँ कि आप यह मत भूल जाइये कि जो भ्रष्टाचार उनके सामने जायेंगे उनका ट्राएल होगा, मुकद्दमा चलेगा। वह प्राक्तर एक वर्ग के लोग हैं। हम हमसे इंकार नहीं कर सकते कि इस देश में एक वर्ग संघर्ष चल रहा है, मजिस्ट्रेट भी वहाँ होते हैं दूसरे लोग भी होते हैं, अगर आप यह अधिकार दे देते हैं तो मुझे शक है कि मजिस्ट्रेट इस तरह के स्पेशल सरकमस्टान्सेज निकालने के लिये तैयार हो जायेंगे और स्पेशल कंसिडरेशन करके कह देंगे कि हम एक साल की सजा देने के लिये तैयार नहीं हैं। अगर आपको यह शक है कि इसमें बहुत से निर्दोष व्यक्ति फंस सकते हैं तो आप इसे १, २ साल ट्रायल करके देख सकते हैं। आप यह कह सकते हैं कि १ साल की सजा देना किसी मजिस्ट्रेट के लिये आवश्यक होगा। जब किसी भ्रष्ट

सरकारी अधिकारी का मुकद्दमा सामने धावे और उसका दोष सिद्ध हो जाये तो उसे एक साल से कम सजा नहीं होगी, इस तरह की व्यवस्था प्राप १, २ साल के लिये करके ट्राएल कर सकते हैं। अगर इस बीच प्राप देखते हैं कि बहुत से निर्दोष व्यक्ति फंस गये तो प्राप इस तरह का प्रोवाइडो ला सकते हैं लेकिन शुरू में जब प्राप सरकारी नौकरियों में से भ्रष्टाचार का उन्मूलन करने के लिये कड़ा कदम उठाना चाहते हैं तो प्रापको इसमें इस तरह का प्रोवाइडो बाधना चाहिये कि दोष प्रमाणित होने पर जज अथवा मजिस्ट्रेट एक साल से कम की सजा न करे। प्राप जो हमारी परिस्थितिवा हैं उनको देखते हुये यह बहुत जरूरी हो जाता है कि हम भ्रष्ट अधिकारियों के खिलाफ़ मजिस्ट्रेट का बर्नाब करे ताकि दूसरों को उमसे नसीहत मिले और इस भ्रष्टाचार का हमारे देश और समाज में से उन्मूलन हो। यह ठीक है कि आपको इस बात की चिन्ता है कि कहीं किसी निर्दोष व्यक्ति को सजा न हो जाय। उसके लिये हमारा जो क्राइमदारी कानून है उसमें साफ़ तौर पर निश्चा हुआ है कि बेनिफिट प्राफ़ डाउट हमेशा ऐक्यूज्ड को मिलेगा। लेकिन प्राप जो हालत हमारे देश में हैं और ऊपर से ले कर नीचे तक हमारे वहाँ पर जो भ्रष्टाचार फैला हुआ है उसको खत्म करने के लिये सख्त कदम उठाने की आवश्यकता है। हम देखते हैं कि सरकारी भ्रष्टाचार जिनको कि ५०० रुपये या १००० रुपये तक बर्नाह मिलती है, कहीं कहीं पर उनके पास लाखों रुपये की सम्पत्ति इकट्ठा हो जाया करती है। इसको रोकने के लिये यह बहुत जरूरी हो जाता है कि हम सख्त कदम उठावें और वहाँ भी कोई छापी ही उस छापी को हम दूर कर दें। इन सबों के साथ मैं इस विधेयक के उद्देश्यों का स्वागत करता हूँ और प्राशा करता हूँ कि इसमें जो कथियाँ दिखाई पड़ती हैं, उनकी तरफ़ ध्यान देनेवाला और

के एक ऐसा क़ानून बनायेंगे ताकि वे सरकारी अधिकारी जो कि भ्रष्ट हैं उनके दिमागो में यह बात बैठ जायेगी कि अगर वे पकड़ लिये गये तो वे बरीर सज़ा पाये नहीं बचेंगे ।

**Shri Datar:** Mr. Deputy Speaker, I was extremely happy to find that there has been a unanimous chorus of approval of the provisions of this Bill though my hon. friends opposite had to say that the support has been offered more or less in a spirit of reluctance or in a spirit of what they call despair. May I clear that atmosphere here?

So far as the law of corruption is concerned, the Government are extremely anxious that all corruption should be rooted out wherever it exists and for that purpose I would assure my hon. friend Shri Nayar that Government have been tackling this problem on all the different fronts. Therefore, he need not be pessimistic that Government are only trying to tighten the law so far as the letter of the law is concerned. May I tell him in all earnestness that Government are anxious that all corruption is rooted out or eradicated and therefore it is not merely the letter of the law but the spirit of the law that is very important.

This question has to be considered from a number of points of view. One is naturally the tightening of the law. The second is the administrative machinery. So far as this machinery is concerned, it has to work with two objectives. One is, that all chances of corruption and all temptations for corruption should be removed as early as possible even before corruption takes place. That is what is called vigilance—a vigilance division—of the activities undertaken by Government in this respect.

Then, assuming that there are cases of corruption, naturally those cases have to be fully investigated into and thereafter, wherever it is found that corruption has been proved and that a certain further action has to be taken

either by way of a departmental proceeding or by way of approaching the criminal court through prosecution, that action has to be taken. In all these things, I have pointed out the various fronts on which this problem has to be attacked.

Here, we are concerned with the question of tightening up of the law though, incidentally, the Members are entitled to ask what we have done. I am prepared to satisfy this House by saying that Government have been extremely anxious, serious and keen that corruption is not merely controlled but eradicated to the fullest extent possible

Before I deal with the various points and answer them to the extent that is necessary at this stage, may I refer to the speech made by Shri Tyagi who made out a very important point. It is true that on the one hand we have to eradicate corruption wherever it exists. Secondly, we have also to consider what would be the effect of an unrestrained criticism regarding corruption, even where there may not be any corruption at all. I would request the hon. Members opposite, especially Shri V. P. Nayar and others, to realise that it would not be proper to say that corruption is at all stages and exists to a very large extent than what we ordinarily believe.

I would point out here that as we go down, there is corruption to a certain extent, but so far as the higher officials are concerned, I should say that they are free from corruption. (Interruption).

**Mr. Deputy-Speaker:** The Minister has to make his speech. The hon. Members have already expressed their views. Let the hon. Minister proceed.

**Shri Datar:** There was not a word of interruption from me when the hon. Members opposite spoke.

**Shri V. P. Nayar:** The Minister must be informed. I said that there is corruption in the higher ranks as

[Shri V. P. Nayar]

well as in the lower ranks. I also said that I would not venture to say that there is corruption everywhere.

Shri Datar: I am very glad that the hon. Member says that corruption is not to such a higher degree in the higher levels as it is in the lower levels. So far as that question is concerned, it is a question of degree as to what extent corruption is there in the higher and lower rungs. He further stated, in collaboration of his particular point, and I am afraid without any material, that Government have been soft towards their officers. Government have never been soft at all. Whenever there is any action, departmental or criminal, Government always takes action, irrespective of the person, whether he belongs to the lower cadres or whether he belongs to the higher rungs of the governmental machinery. Therefore, it was extremely good on the part of Shri Tyagiji to have pointed out a very important circumstance. He stated that it is true that wherever there is corruption, that has to be eradicated and, secondly, strong and stern action has to be taken against the guilty person. But that does not mean, as he rightly pointed out, that we should go on criticising the officials or the Government servants as a class. That would certainly lead to a sense of demoralisation. Therefore, Government are anxious that, without having anything that would lead to demoralisation, we should take every step for purifying the whole administrative machinery.

That is the object, so far as Government is concerned; and I might assure my hon. friends opposite, and also some on this side, that Government have been taking vigilant action and they are anxious to see that cases of corruption are disposed of as early as possible.

Some hon. Members today suggested that department proceedings go on for an inordinate length of time. That is not correct. Ordinarily, all

these proceedings are finished as early as possible, between 3-6 months. Only in exceptional cases, especially on account of certain impediments caused to the immediate disposal of such a case by the other side, that is, by the accused, a long period is taken. Ordinarily, the matter is disposed of as early as possible.

Coming back to the various points that the hon. Members have raised, may I point out that it is our desire to see that the law is as it ought to be, namely, that the law must be strong and it ought to be open to the Government to take proper action so far as legal provisions are concerned? For that purpose, we have brought in certain provisions. May I point out that immediately after or about the time of the transfer of power, in 1947 itself the Central Assembly passed a law, known as the Prevention of Corruption Act.

So far as this Act is concerned, two points may be noted. One was, apart from the provisions we had in the Indian Penal Code which deal with corruption without necessarily defining corruption—that should be noted; corruption is not defined there—we had other enactments. Although we have a number of variants of corruption, corruption itself was not defined in the Indian Penal Code. But there were certain circumstances. There were cases where certain action was taken or there were certain cases where it was found that the fruits of corruption was in the enjoyment of the accused or guilty person. Therefore, a general offence was created, known as criminal misconduct. That is part No. 1. An improvement in the law was made round about 1952.

Secondly, I would also like to refer to another point in this connection. My senior friend, Shri Thakur Das Bhargava stated that the presumption that has been introduced in this law

was going to be only for a short period or for an emergency, as it is called and that presumption in the Prevention of Corruption Act should not remain in the form in which it is. Now, may I point out that decision was taken after full consideration. Even now there are circumstances where we come across wealth or resources that a particular officer has with him which cannot be explained by a reference to his legitimate activities or his legitimate earnings. We are still in the midst of a period of time where there is corruption here and there, and corruption has got to be rooted out. For that purpose, that particular presumption which was laid down has to be maintained, and it is necessary.

Without doing any injustice to the other person, it is open to him to show how he acquired that particular money. For example, if his pay is so small, suppose a few hundreds, and the property that he has is not in terms of thousands but sometimes in terms of lakhs, then naturally it does raise a serious suspicion and it is his duty to explain how he acquired it. In this case, we think *prima facie* there are circumstances which cast a serious degree of doubt upon his conduct. Therefore, he is called upon to explain, merely because he has disproportionate wealth to his credit. So, he has to be proceeded against.

There might be legitimate sources of earnings or acquisition of property. Then it is open to him to show and then that presumption will be fully backed or, in terms of law, will be fully rebutted. Hon. Members will kindly note that we have laid down the circumstances or the requirements of a particular case before such a presumption has to be drawn by the court. The conditions are still there. Therefore, there is very great need for having such a presumption under the stated circumstances, as laid down in this Act.

Proceeding further, so far as this law is concerned, we found that there were certain deficiencies in the law.

The law requires further tightening up and, as I explained yesterday, it ought to be tightened up on the lines that I have pointed out here.

One or two hon. Members suggested that the minimum punishment ought to be two years in the case of conviction of a Government servant or a public servant. May I point out that one year has been considered as fairly heavy sentence, so far as imprisonment is concerned? In such cases, Government are of the view, administration has to be carried on strongly but not necessarily in a spirit of vindictiveness. In answering some of the points I have always felt that if, for example, to check a particular evil we have to take recourse to certain measures, then is it necessary for us to take any measures that we like? I should like to point out that it is not so. A Government, a civilised government and a democratic government, have to follow civilised methods to the extent it is possible.

An hon. Member—I believe Shri Ranga—just now suggested that we should have a very quick procedure for the disposal of these cases. Mr. Tyagi also contended that the procedure should be at least quickened and a number of stages should be eliminated. May I point out that there are certain difficulties which stand in the face? As I stated we are a civilised and democratic government. We have to follow certain methods which partake of these two qualities of a government. Now, is it possible summarily to come to the conclusion when a case is started or when an enquiry is started? It may be a *prima facie* case, and sometimes it might be strong also. One of the fundamental principles of fairplay and justice is that the other man should be given an opportunity to have his say in regard to the charge against him. You are aware that in the Constitution itself it has been laid down that he must have an opportunity to meet the charge against him. Article 311 (2)

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in particular has to be noted in this connection.

Shri Tyagi complained, and to a certain extent rightly complained, that the procedure was sometimes complicated. But, in order to do justice to the other party, we have to go through such a procedure which is complicated to a certain extent, but which we are trying to simplify to the extent possible. For example, it was pointed out that the enquiry took long and that the officer who was appointed, is an executive officer, sometimes had to go through a training for holding an enquiry. All these objections have been taken into account. May I point out, here that so far as such offences or such departmental actions at Delhi are concerned, we have got a Special officer appointed for this purpose. Since the appointment of such a Special officer, the whole matter is being disposed of as early as possible, within the shortest period, without necessarily undermining the principles that I have pointed out fairplay and equity to the other party. One of the principles is that you have to do justice even to the devil assuming that he is a devil. Therefore, we are bound by these rules and to a certain extent, they are fair rules also.

Then it was pointed out by Shri Tyagi that no subsistence allowance, etc should be given as soon as a man is suspended. Suspension, you will find, is the first stage of action by the Government after they find that there is *prima facie* case for an enquiry. It is quite likely that in a number of cases this suspension, the *prima facie* case that is before us may be proved to be unfounded. Under these circumstances, something has got to be given and the amount that is given is a small subsistence allowance, about one-fourth of the pay that he is drawing.

Ordinarily, such cases do not take long. But, when they take longer, that is on account of circumstances which are beyond our control. As

early as possible, we take action. In this respect, my hon. friend Shri Raghubir Sahai yesterday also stated that we must do something to finish this matter. I wish he knew the difficulties that we have, being a lawyer himself. He made reference to a particular case, a case of a very high officer who was suspended. An enquiry was held in his case, prosecution was launched and only recently, the highest court of Indian judiciary has confirmed the conviction against him. May I point out here that the time that has elapsed is not due to any action or inaction on the part of the Government. The moment that Government found that there was a *prima facie* case, immediately they ordered an enquiry. An enquiry or investigation has to be done. After, as I stated, they found that the case was *prima facie* fairly strong, they suspended him. May I point out to my hon friend, in all such cases, if there is any delay on the part of the Government in coming to a conclusion then the Government are entitled to be blamed. But, in this case immediately we took action and the man was suspended. Suspension, you will find, is the first overt act that the Government can take after they come to a *prima facie* conclusion that an officer has committed an offence or serious irregularity. Immediately the Committee of enquiry was appointed and the moment the report of the Enquiry officer was before Government, the Government took the next action, namely, dismissing him from service. He was one of the seniormost officers, an I.C.S officer. May I point out to my hon friend Shri V P Nayar in particular that the Government is not a respecter of persons especially when they commit wrong acts? Immediately, the officer was dismissed.

Government found that dismissal was not an adequate remedy so far as the nature of the offence that he had committed was concerned. In such serious cases where there is a serious degree of moral turpitude, the



public ought to know that the Government do take strong action and the other officers ought to know that the Government would not tolerate or condone such action. Therefore, the Government prosecuted the officer. In the Session Court, as you are aware, a small punishment was given to him, not large. The matter was taken up before the High Court and the Government moved for enhancement of the sentence. The High Court came to the conclusion that the sentence ought to be enhanced. Then, naturally, he went up to the Supreme Court and in the highest court of the land, only recently, a few weeks before, that sentence has been confirmed. He has to go to the jail.

If all these points are taken into account, may I point out in all humility, the Government cannot be charged either with a desire to save any officer or with a desire to procrastinate the matter as much as possible. The Government are anxious to take proper steps. I may, in this connection, bring to your notice certain figures which are absolutely eloquent so far as the Government Anti-corruption machinery is concerned. We have got a special machinery in respect of such offences. It is known as the Special Police Establishment. It has 14 branches at present in all the important cities of India because Central Government servants are spread over the whole continent of India. In addition, as I have pointed out, we have a Vigilance Division which deals with the question of keeping a vigilant eye upon the activities of all Government servants and in particular upon those whose conduct is suspicious, who are likely to go astray. That also has brought in very good results.

**Shri D. C. Sharma (Gurdaspur):** Are we sure that the officers of the Special Police Establishment and the Vigilance Division are fair and above board?

**Shri Datar:** They are. If the hon. Member has any allegation or any

suspicion, let him give it to me. May I point out here, whenever hon. Members of Parliament make any complaint, we request them to see to it that, at least *prima facie*, the particular contentions or allegations are true. In all these cases, we do make an independent enquiry. Therefore, my hon. friend was entirely wrong in saying that no action was taken whenever any complaint was made or whenever certain circumstances were brought to the notice of the Government. Government are always responsive and whenever any complaints come from Members of Parliament or even from the public, in all such cases where it appears that there is something wrong, Government always make enquiries.

Yesterday, it was contended that figures had not been placed before Parliament. I may point out that every year, we place before Parliament the various figures regarding the activities of the S P E. May I, in this connection, bring to the notice of the House the figures from 1952 to 1957? In 1952, preliminary enquiry was made respect of 337 offences while in 1957, preliminary enquiry was made in respect of 578 cases. Out of these cases, investigation was conducted after preliminary enquiry in as many as 483 cases. After the Government are satisfied that something has got to be done that something has gone wrong, the Government proceed through a departmental enquiry or prosecute the offender or do both. May I point out in this connection that in the year 1957, 282 cases were placed before the court for prosecution. Out of them, 215 have till now been decided, and in 145 cases there has been a conviction. Thus you will find that even so far as prosecution is concerned, Government are taking active steps, and they are being taken not only in respect of the lower classes of officers. Some hon. Members contended that Government take action only against the subordinate staff and do not check or take action against what they call the big fish. Government are entirely uncon-

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cerned whether it is the small fry or the big fish so long as a wrong action has been committed. In all these cases we took proper action in respect of Gazetted officers as well as non-gazetted officers.

15 hrs.

Up to the end of 1957, a number of cases had been enquired into and certain cases had been put in court as well. In the year 1957, 360 preliminary enquiries had been made, and 299 regular cases had been instituted involving a total of 1,037 persons.

In addition to the normal work of the S. P. E., there is also a special branch known as the Enforcement Wing and it deals with certain cases where corruption is to a larger extent going on and has got to be checked. Therefore, there is an Enforcement Wing of the Special Police Establishment which deals with cases relating to import, export cases. There also, in addition to the normal figures, 218 cases were there in which preliminary enquiries were made, and 184 regular cases were started involving 545 persons. Naturally these cases under these laws are not only against the Government officers, but against others, businessmen and others who are privy to the act of corruption. These cases are mostly against businessmen involving cheating, forgery and falsification of accounts.

In 1957, 180 gazetted officers and 694 non-gazetted officers were involved in these enquiries. As a result of cases sent up to court for trial, six gazetted officers and 78 non-gazetted officers were convicted by courts; 247 other Government servants were punished departmentally. Of these, 8 gazetted officers and 34 non-gazetted officers were either dismissed or removed from service; 18 gazetted officers and 167 non-gazetted officers were otherwise punished departmentally.

From what I have stated above, you will find that Government are ex-

tremely serious, and they desire to attack this evil on all fronts. I would not accept the proposition certain hon. Members have made that corruption is on the increase. What is on the increase is the exposure of corruption, and wherever it comes to the notice of Government, proper action has been taken.

My friend Shri Tyagi pointed out the proper and salutary principle that ought to guide our action in this respect. May I point out to him that so far as what he called the complicated nature of such cases is concerned, that is also a matter where to the extent possible, consistent with the requirements of fairplay, the matter has been simplified and necessary action taken? But after all, we are guided by certain principles, especially by the provisions of the Constitution, and unless there is a change in the provisions relating to this subject in the Constitution, it is not possible to make short work of the whole procedure. It is not possible, as my friend put it, to dismiss them merely because we come to the conclusion that *prima facie* there is strong suspicion. Strong suspicion is no ground for any action in a court of law, and even where there is no court of law as such, we have got departmental enquiries which have to be based on the spirit of the fundamental principles of justice and equity, though we need not be governed by the technical rules which sometimes hamper justice. Therefore, either through prosecutions or through departmental enquiries, it is open to us to take action, and Government are taking action whenever it is necessary.

The question that my hon. friend Shri Tyagi has raised, as to whether the scope of the departmental enquiries should be enlarged and the scope of prosecution brought down, is a matter which has another side also which should be taken into account. As I have pointed out, in grave or serious cases the matter has got to go to the courts and the officer must be

publicly dealt with, and in proper cases he ought to be punished not merely with certain departmental punishment like dismissal or stoppage of increment etc; if the matter is so serious that in the interests of society and the purity of administration the man must be treated as an offender, as a criminal under the criminal law, he must undergo the punishment either of fine or punishment. The fear of this law is absolutely essential so far as such erring officers are concerned, and therefore Government are anxious that in proper cases there ought to be prosecutions. It is not proper merely to deal with the matter departmentally because the worst that we can do against him would be his dismissal, but if for example he has got a lot of money not earned in a proper way, naturally he would not mind his dismissal, he might not even face the public. In such cases proper action has to be taken because the administration should be pure, because those who have not actually erred but are on the way of erring ought to be warned that in case they carry on such nefarious activities, they are liable not only to departmental action but to punishment under the criminal law, under the penal law, because it is an offence of the worst type

My friend Shri Bharucha made out a point that whenever there are such offenders whose offence has been proved, they ought not to be dealt with leniently. I agree with the principle of what he has stated, viz., that they should not be let off either on admonition or on probation, but the amendment that he has moved has to be put in properly, as this Bill deals with the amendment of certain Acts which prescribe punishment, and therefore I have made a formal amendment to what he has stated.

I think I have dealt with all the points.

**Shri Vajpayee (Balrampur):** On a point of information. Can the hon. Minister give us the total number of cases in which Government servants

have successfully sued members of the public for defamation?

**Shri Datar:** The question of defamation is entirely different from corruption.

**Shri Vajpayee:** No, Sir.

**Shri Datar:** At least so far as this is concerned I have not got those figures. If the hon. Member tables a question, I shall certainly give the information.

**Shri V. P. Nayar:** I raised the point that the law as brought before us does not cover cases of corruption outside those which have in some way or other some connection with the receipt of money. I said that corruption as it commonly understood does not merely consist of such cases, but also includes cases like nepotism, favouritism etc. I just wanted to know whether Government have thought of this. The hon. Minister was just now saying that I made a wild allegation without substantiating it. If that is the position taken up by Government, I can off-hand give him, with your permission, ten or fifteen instances of highly placed officers having used their influence in such a position to fix up their in-laws, their.....

**Mr. Deputy-Speaker:** I will advise him to keep those things in reserve for the present.

**Shri Datar:** I shall touch one more point. It was contended by Shri Shree Narayan Das that trading corporations could be established only by a Central Act. So far as that question is concerned, we have examined it. The position is not as he has stated, but in order to provide against any doubt in this respect, I have given notice of an amendment to a certain extent on the lines that he has suggested, but in other respects we have brought it on the same principle.

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

"That the Bill further to amend the Indian Penal Code, the Prevention of Corruption Act, 1947,

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and the Criminal Law Amendment Act, 1952 be taken into consideration."

The motion was adopted.

Clause 2—(Amendment of section 21, Act 45 of 1860)

Shri Shree Narayan Das (Darbhanga): I beg to move:

(i) Page 1, lines 9 and 10—

for "of a trading corporation established by a Central, Provincial or State Act" substitute:—

"of a trading corporation established by a Central Act or of other trading organisations established by a Central, Provincial or State Act".

(ii) Page 1, line 9—

for "corporation" substitute "organisation"

Shri Datar: So far as clause 2 is concerned, I have two amendments Nos. 23 and 24.

I beg to move:

(i) Page 1, line 9—

for "a trading corporation" substitute "a corporation engaged in any trade or industry which is".

(ii) Page 1, line 14—

for "trading corporation" substitute "corporation engaged in any trade or industry".

Pandit Thakur Das Bhargava: I beg to move:

Page 1, line 8,—

for "officer" substitute "person".

Mr. Deputy-Speaker: All these amendments are before the House.

Pandit Thakur Das Bhargava: The hon. Minister will kindly see that in the definition given in section 21 of the Indian Penal Code, it is said:

"Fourth: Every officer of a Court, of Justice whose duty it is, as such officers, to investigate or report. . ." etc.

The duties are given. Similarly.

"Eighth: Every officer of the Government whose duty it is, as such officer, to prevent offences. . ." etc.

"Ninth: Every officer whose duty it is, as such officer, to take, receive. . ." etc.

Thus, we find that where the word "person" is not used and the word "officer" is used, his duties are defined. In clause (2) it is said:

"Every officer in the service or pay of a local authority or of a trading corporation. . ." etc.

We do not know who an officer is, because there are persons who are not officers as such. Because we do not know the definition of an officer, it is difficult to predicate any officer that he is an officer unless his duties are defined. So, if the duties are defined, there may be no difficulty. Or, you must use the words "persons in the service or pay of a local authority. . ." etc. Something like that must be done; otherwise, this remains equivocal and confusing as to what person is meant by an officer. This is the purpose of my amendment.

Shri Shree Narayan Das: The amendments I have put forward are meant only to clarify certain things contained in clause (2). Item 43 of List I of the Seventh Schedule to the Constitution reads:

"Incorporation, regulation and winding up of trading corporations, including banking, insurance and financial corporations

but not including co-operative societies."

This indicates that no incorporation or regulation of any corporation can be made under any State Act. As it is, clause (2) wants to bring under the purview of the I.P.C., officers or persons in the service of pay of a trading corporation established by a Central, Provincial or State Act. Before the Constitution came into force, some of the States might have established corporations, just as in the native State of Mysore. After the Constitution came into force, no State is entitled to establish any corporation except under a Central Act. I know that there is some State Corporation Act passed by Parliament and under that some corporations have been established by the State Governments. I, therefore think that the wording of this clause should be clarified. At present it appears that the trading corporations set up under a State Act will come within the purview of this. But with the enforcement of the Constitution, no State Government is authorised to establish a corporation. Therefore, in my amendment, I have suggested that the wording of the clause might be changed as:

"of a trading corporation established by a Central Act or of other trading organisations established by a Central, Provincial or State Act".

I think this will make the object of this clause clear.

Besides corporations, as has been given in the explanation, the Central Government has established so many undertakings by some resolution and not under a Central Act, for instance the Khadi Commission. A large number of workers are working under the Khadi Commission. In order to bring those persons under the purview of this Act, I think the wording should be made clear. So far as corporations are concerned, it is clear. But

there are other organisations and undertakings besides public companies and a large number of persons are working in them. Therefore, my idea in putting my amendment is two-fold. One is to make clear that the trading corporations as stated in item 43 of List I, will come under the purview of this Act. Then, there are certain organisations established by the Central Government or the State Governments. They may not be called corporations, but they are State undertakings and the persons working in them should also be brought within the purview of this Act. That is the purpose of my amendment No 9.

The next amendment is an alternative amendment, by which I have suggested the word "organisation" for "corporation". If this is accepted, not only the persons working in the corporations, but those working in all the State undertakings, boards or commissions appointed by the Central Government or the State Governments will come within the purview of the Act. If this amendment is accepted, it will make clear the idea envisaged in this clause.

With these words, I commend my amendments for the acceptance of the House.

Shri Datar: Two points were raised, one by Shri Bhargava and the other by Shri Shree Narayan Das. So far as Shri Bhargava's amendment is concerned, may I point out that in the very section of the Indian Penal Code which we are now amending by addition, the words "Government servant" have been used wherever necessary instead of the definition of "public servant". Secondly, we have a recent ruling of the Supreme Court where it is stated that "officer" includes "person" which he has in view. I need not quote that ruling here. The very point that he has made has been fully met in the judgment of the Supreme Court dated 21st September, 1957. The true test in order to determine whether a person is an officer of the Government is

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whether he is in the service or pay of the Government and whether he is entrusted with the performance of any public duty. Therefore, for the purpose of clarification of any possible ambiguity that might arise, it is better to maintain uniformity of expression, namely, "Government servant" wherever it is. Otherwise, the difficulty is likely to arise that perhaps advantage might be taken of the use of the words 'Government servants' in one place and 'person' in the other. Therefore, we are following this practice.

So far as the other point is concerned, I may point out that in the Constitution there are two different entries. One is entry No. 43 in List I which says:

'Incorporation, regulation and winding up of trading corporations, including banking, insurance....'

In List II also, there is entry No. 32 which reads:

"Incorporation, regulation and winding up of corporations, other than those specified in List I . . ."

Thus, it would be found that there might be corporations which come under a Provincial Act. So far as the Constitution is concerned, it has come into operation only in 1950. But under the earlier Acts, either of the Central Government or of the Provincial Governments, there might be corporations here and there. Under these circumstances, it is not necessary to have the amendment suggested by the hon. Member.

Secondly, the hon. Member has stated that the word 'organisation' should be used. May I point out that the word 'corporation' has a specified meaning? That is the reason why the word 'corporation' has to be retained. Secondly, in law, a corporation is a juridical person. Therefore, an objection is likely to be taken that even though it is a 'government corporation, still, inasmuch as it is a different

person, in law, from Government, this particular penal law might not apply. For these reasons I cannot accept these amendments, though I have accepted some of the points underlying these amendments.

**Shri Dasappa (Bangalore):** What about the officials of the various boards like the Silk Board, the Areca-nut Board and so on?

**Shri Datar:** They do come under the definition. In section 21, the ninth clause reads:

"...and every officer in the service or pay of the Government or remunerated by fees or commission for the performance of any public duty."

That would cover all these cases.

**Mr. Deputy-Speaker:** I shall now put amendments Nos. 9 and 10 by Shri Shree Narayan Das to vote.

**Shri Shree Narayan Das:** I am not pressing them and want to withdraw them.

*The amendments were, by leave, withdrawn.*

**Mr. Deputy-Speaker:** I shall now put amendment No. 8 to vote.

The question is:

Page 1 line 8—

for "officer" substitute "person".

*The motion was negatived.*

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

Page 1, line 9, for 'a trading corporation' substitute 'a corporation engaged in any trade or industry which is'.

*The motion was adopted.*

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

Page 1, line 14, for 'trading corporation' substitute 'corporation engaged in any trade or industry'.

*The motion was adopted.*

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

"That clause 2, as amended, stand part of the Bill".

*The motion was adopted.*

*Clause 2, as amended, was added to the Bill.*

**Clause 3—(Amendment of Act 2 of 1947).**

**Mr. Deputy-Speaker:** So far as the amendments to this clause are concerned, I would like to say that amendment No. 21 is out of order.

**Shri Tangamani (Madurai):** I beg to move:

(i) Page 2, line 4—

after 'commits' insert 'or attempts to commit or abets in committing'.

(ii) Page 2—

after line 20, add:

"(2B) Notwithstanding anything contained in any law for the time being in force, the property of the accused person who has committed the offence of criminal misconduct may be attached by the order of the Special Judge".

(iii) Page 2—

after line 31, add:

"9. Notwithstanding anything contained in any law for the time being in force or any departmental order, an employee giving information leading to the prosecution for criminal misconduct will be adequately protected from departmental or other actions."

**Shri Kasiwal:** I beg to move:

Page 2, lines 10 and 11—

omit 'refrain from imposing a sentence of imprisonment or'.

**Shri Naushir Bharucha:** I beg to move:

Page 2—

after line 20, add:

"(2B) Notwithstanding anything contained in such law, any law dealing with release of offenders on probation or after due admonition and matters connected therewith, shall not apply to any person tried under this Act or to any proceedings thereunder."

**Pandit Thakur Das Bhargava:** I beg to move:

(i) Page 2—

after line 20, insert:

"(a) sub-section (3) of section 5 shall be omitted;"

(ii) Page 2—

after line 20, insert:

'(aa) in sub-section (3) of section 5,

(i) for the words "the Court shall presume unless the contrary is proved" the words "the Court may presume" shall be substituted; and

(ii) the words "and his conviction therefor shall not be invalid by reason only that it is based solely on such presumption" shall be omitted;"

**Shri Raghbir Sahai:** I beg to move:

Page 2, line 8—

add at the end 'or confiscation of property'.

**Shri Jadhav (Malegaon):** I beg to move:

(i) Page 2, lines 6 and 7—

for 'one year' substitute 'two years'.

(ii) Page 2, line 12—

for 'one year' substitute 'two years'.

**Shri Shree Narayan Das:** I beg to move:

(i) Page 2, lines 6 and 7—

for 'one year' substitute 'three years'.

(ii) Page 2, line 7—

for 'seven years' substitute 'ten years'.

**Mr. Deputy-Speaker:** These amendments are now before the House.

**Shri Kasliwal:** My amendment seeks to delete the words 'refrain from imposing a sentence of imprisonment or' from the proviso to the proposed sub-section (2) of section 3. I am unable to understand the appearance of these words in clause 3(a). Yesterday, the Minister spoke at length about the tightening of these corruption laws. Hon Members who have spoken yesterday and today have also spoken in the same strain. Besides, some of them have gone so far as to say that merely tightening these laws is not enough, but that some other steps for the eradication of corruption have also to be taken.

If you will kindly read the notes on clauses, you will find how the inclusion of these words in the proviso is not merely contradictory to the clause itself but is totally against the letter and the spirit of the clause. The note on clause 3(a) says:

"Experience has shown that there is a tendency among the courts to deal too leniently with public servants convicted under the Prevention of Corruption Act ... Sub-clause (a) of clause 3 will result in ensuring that adequate punishment is awarded in cases of proved corruption."

Clause 3(a) reads:

"Any public servant who commits criminal misconduct in the discharge of his duty shall be punishable with imprisonment for a term which shall not be less than one year but which may

extend to seven years and shall also be liable to fine;".

Immediately following this, we have the following proviso:

"Provided that the court may, for any special reasons recorded in writing, refrain from imposing a sentence of imprisonment or impose a sentence of imprisonment of less than one year."

So, you will see that these two things are completely contradictory. Previously, the position was that a sentence of imprisonment extending to seven years or fine or both might be imposed. But now under clause 3(a) while you are providing for a compulsory imprisonment, at the same time, you are taking it away by saying that for any special reasons to be recorded in writing, the court may refrain from imposing the sentence of imprisonment. With all respect to the Minister, I would say that it is ridiculous that on the one hand, he is blowing hot, and on the other, he is blowing cold. For, he is saying that a sentence of imprisonment extending to seven years is compulsory; at the same time, he is also saying that for special reasons to be recorded in writing, the court may refrain from imposing the sentence.

**Shri Tyagi:** Or impose a sentence of one year

**Shri Kasliwal:** That is a different matter, to which I shall come presently. I am referring now to the first part of the proviso.

The second part of the proviso is 'or impose a sentence of imprisonment of less than one year'. I can understand that in a special instance, a sentence of less than one year may be imposed. Supposing there is an old man or a very sick man, the court may say that in view of his health, it will impose a sentence of one day's simple imprisonment or seven days' imprisonment. But if the phrase 'refrain from imposing a sentence of imprisonment' remains, then, he can altogether go scot-free so far as imprisonment is



concerned. If it is the view of the Minister that the laws should be lightened, then there must be the sentence of imprisonment. Let it be even one day; let it be till the rising of the court. The person who is guilty of corruption cannot escape scot-free. Mere imposition of fine will not do. Some kind of social obloquy must be attached to the person guilty of corruption. It is this view which my amendment seeks to clarify. If the hon. Minister accepts the principle of his Bill, he should accept my amendment and delete these words 'refrain from imposing a sentence of imprisonment or'.

**Shri Tyagi:** Yes, yes

**Shri Naushir Bharucha:** I am extremely grateful to the hon. Minister for having said that he is accepting in substance the amendment which I have moved to the effect that the law regarding the release of offenders on probation or after admonition should not be applied to this legislation. I have been able to see a copy of the Government's amendment. There is no difficulty so far as the substance is concerned, but if we simply incorporate the Government amendment in this Act and say that nothing in any law...

**Mr. Deputy-Speaker:** What would be the effect—we shall have to take care of that—if the Bill contains a provision—'Notwithstanding anything contained in any other law'?

**Shri Naushir Bharucha:** That is exactly what I am saying. If we exclude that measure, still that Act would be applicable unless we incorporate here a special clause whereby it is specifically provided that it is excluded and shall not apply. In order to guard against this position, I have framed my amendment accordingly, which says:

"Notwithstanding anything contained in such law etc."

The law here refers to the Probation of Offenders Act. That was why I had drafted my amendment in this way. It is immaterial how the purpose is secured.

**Shri Datar:** Did the hon. Member see my amendment? I am moving amendments Nos 25 and 26. They relate to clause 4. The object is to meet his point of view.

Amendment No. 25 reads.

"In page 2, for lines 32-33, substitute—"4 In the Criminal Law Amendment Act, 1952, in section 8—(a) after sub-section (3), the following sub-section shall be inserted":

Amendment No 25 is as follows.

'In page 2, after line 39, insert—(b) in sub-section (4), insert the following at the end—"and notwithstanding anything contained in any law for the time being in force, no such person shall be released on probation or after due admonition"

**Mr. Deputy-Speaker:** Would there not be a conflict between the 'notwithstanding' here and the same phrase there? Therefore, in that law we shall have to provide—unless specifically excluded in any law

**Shri Datar:** The Bill has to become law still.

**Mr. Deputy-Speaker:** But we shall have to take care of that.

**Shri Naushir Bharucha:** In order to avoid that conflict, I am putting down these words:

"Notwithstanding anything contained in such law"—meaning the Probation of Offenders Act—"any law dealing with release of offenders on probation...shall not apply...."

Therefore, either this may be accepted or, if the Government draft is accepted, as you rightly pointed out, it will have to be incorporated in some clause to avoid conflict of law. It is immaterial how the purpose is achieved because I am satisfied that the substance of my amendment is accepted.

[Shri Naushir Bharucha]

Another point, referred to in the amendment of my hon. friend, Shri Kasliwal, is very important. If we are going to provide for a minimum sentence, what is the sense in saying that if the court thinks, it may refrain from imposing a sentence of imprisonment? The whole thing is absurd. Either be firm about it or leave it to the discretion of the court. In the Notes on clauses, they say that the magistracy cannot be trusted because they are likely to be too lenient. Therefore, the amendment moved by Shri Kasliwal, which is the same as amendment No. 15, should be accepted.

**Shri Tyagi:** We all support it.

**Shri Tangamani:** In moving my amendments, particularly No. 12, I had the purpose of making it a complete thing, because criminal misconduct in the discharge of duty is a new offence defined in section 5 of the Prevention of Corruption Act, because already certain sections in the Indian Penal Code have sought to take away abetment which has again to be brought in. I thought by way of abundant caution attempts to commit criminal misconduct also may be included.

As has already been pointed out criminal misconduct, which is not by definition exhaustive, deals with illegal gratification. It also deals with accepting any valuable thing without consideration and also corrupt and illegal practices.

If the purpose of this legislation, namely, to tighten up the machinery and also bring in more deterrent sentences, is to be accepted, that I suggest that the amendment of Shri Kasliwal for deletion of 'refrain from imposing a sentence of imprisonment or' should be accepted. As pointed out by the previous speaker, if this provision is included there, the very purpose of a deterrent sentence is lost. To add to this deterrent sentence, I have moved amendment No. 18 which reads:

"Notwithstanding anything contained in any law for time being in force, the property of the accused

person who has committed the offence of criminal misconduct may be attached by the order of the Special Judge".

The Special Judge has got magisterial powers by virtue of clause 4 and when trying a person accused of criminal misconduct, he must have the power to attach his property if he is proved guilty.

The last point—which is not the least important—relates to my amendment No. 22 which reads:

"Notwithstanding anything contained in any law for the time being in force or any departmental order, an employee giving information leading to the prosecution for criminal misconduct will be adequately protected from departmental or other actions".

In moving this amendment, I have in mind certain instances which I can cite from the State of Madras. There was a case where certain charges were brought against an important official in one of the river valley projects. The subordinates who brought these charges have finally been placed under suspension. My latest information is that their Services have been dispensed with Yesterday, Shri V. P. Niyar dealt with the corruption inquiry in connection with goods at the Hawrah station. The employee who gave the information, which led to the prosecution of this officer, has now to face the question of suspension. He may have to face a departmental inquiry, while the person against whom he had brought the charge will be the person holding that inquiry. Such instances could be multiplied. I do not want to exonerate those people who really commit an abetment of the offence. Instead of that we must exonerate those good citizens who would like to help in detecting corruption. Then only honest officers would be in a position to go about without suspicion of being watched and the subordinates who want to

bring down corruption will be encouraged. I submit that my amendment is in conformity with the spirit of the amending Bill which has been brought forward and I commend this amendment.

**Pandit Thakur Das Bhargava:** So far as my two amendments, Nos. 19 and 20 are concerned, I shall with your permission read out the first presumption:

"In any trial of an offence punishable under sub-section (2) the fact that the accused person or any other person on his behalf is in possession, for which the accused person cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income may be proved, and on such proof the Court shall presume, unless the contrary is proved, that the accused person is guilty of criminal misconduct in the discharge of his official duty and his conviction therefor shall not be invalid by reason only that it is based solely on such presumption."

If you read the four sections (a), (b), (c) and (d) which form part of the offence of 'criminal misconduct', you will see there are several ingredients which must be proved before a person can be held guilty of such an offence. For instance, it reads, 'habitually accepts or obtains or agrees to accept or attempts to obtain...any gratification'. If there is a presumption and the presumption is proved, then the prosecution need not prove that the accused habitually accepts or obtains any illegal gratification, (c) says 'dishonestly or fraudulently misappropriates or otherwise converts for his own use'. Even this may not be proved. The ingredient in (d) also may not be proved. So that, no bribe may be proved to have been paid or nothing may be proved. The only thing is that he cannot account satisfactorily for his pecuniary resources. If there is a conviction only on this presumption,

the conviction must be maintained. Such a violent presumption out of all proportion to the proved fact cannot even be imagined.

I gave the example and with your permission I say just repeat it though brevity will be violated to some extent. A person may be proved to have been in London on the day the bribe is said to have been passed in Delhi. He may not have obtained anything. Nothing might have been done. Yet the presumption is there. He will be guilty solely on that presumption of criminal misconduct. There may be a departmental enquiry. You may do anything you like. But to prove an offence, some ingredient must be proved. Is the fact that I am unable to account for my wealth is that fact alone enough? It is absurd.

In particular circumstances or emergencies, we have gone off our feet and we make laws which cannot stand the scrutiny of reason. But there must be a limit. I cannot think or any case in which nothing incriminating may be proved and yet I may be guilty of this thing. The time has come when we must see things in their proper perspective.

I have, therefore, proposed that this sub-section may be taken away because in all the other offences we have not got the presumption like this. The possession of stolen property gives rise to certain things. The provision is not like that there. Only for bribery such a violent presumption is there; it is unjustified. Therefore, I have proposed that it may be taken away. If it is not taken away, the other ingredients cannot be of any use. There are individual offences under (c) and (d). I have submitted that if the other circumstances are proved, along with that the court may take this into account. I am agreeable to that. I have, therefore, divided it into two parts alternatively. Instead of 'shall' presume, the word shall be 'may' presume

[Pandit Thakur Das Bhargava.]

Only on this conviction is not possible because presumption, according to the legal maxim, is not proof.

I am sorry the attention of the Hon. Minister has been diverted else is here.

**Mr. Deputy-Speaker:** There is so much commotion and my advice is not heeded.

**An Hon. Member:** The Ministers are moving.

**Pandit Thakur Das Bhargava:** If at this time the hon. Minister cannot agree because he is busy with other matters, I would respectfully ask him to consider this question dispassionately. This should not be in normal times. I do not say that there is no corruption here. I only said that the circumstances that existed in 1947 where there was a bribery of 565 lakhs and 1,100 cases were there and that time had gone. Things are quite different now. We did not object to it then. There is no reason why we should perpetuate that law which on the face of it looks absurd. It may go to a superior court and it may find that this presumption is not *intra vires* the Constitution. I will withdraw the amendment this time if he likes me to do so but I want this to be looked into by him.

There are two other points and others have already drawn your attention. I understand that he is accepting Shri Kasliwal's amendment. I am happy.

**Mr. Deputy-Speaker:** He has not said so. Perhaps the hon. Member is judging from the movements that are taking place.

**Pandit Thakur Das Bhargava:** From his manner, I conclude he is agreeable. I have done cases in court. Only for one rupee five people have gone to the higher courts paying their fees and seen that they were

acquitted. People are still respectable. Imprisonment has still got a social stigma and a man of this sort who has committed this offence should be punished with imprisonment. If an officer or a magistrate does not want to send a person to jail, he gives the order for imprisonment for a day till the court rises. At the same that man has no stigma.

Further in regard to Probation and admonition I do not want to have a law containing notwithstanding of that law. No law should be subordinate to any other law—even this law should not be subordinate to the Probation or admonition law. My submission is this. The proper course is to have a list of such offences where punishment must be given and no admonition or probation will be permissible.

**Mr. Deputy-Speaker:** That is a different thing. The hon. Member is serving some other purpose now.

**Pandit Thakur Das Bhargava:** I am anxious in allied laws there must be something as in this law. I want that certain things must be stigmatised as such and imprisonment given. There is no reason why we should have another law in which we may undo what this Parliament wants to do. I would respectfully ask the Minister to consider this question.

I submitted the same in regard to section 164 also. These are the two offences which I want to be exempted. I would respectfully ask the Government to reconsider this question.

**Shri Raghbir Sahai:** In support of my amendment No. 6 I would only say that I want that these words, namely, "or confiscation of property" should be added at the end of clause 3(a) (2).

I only want that the Act should become deterrent and it may have a

very salutary effect which is the objective both of the Government as well as the Members of this House. Yesterday, while the hon. Member was making his speech, he remarked that the object of this amendment which I have moved would be met by the imposition of a very heavy fine. With regard to the realisation of fine, there is a procedure laid down in the Criminal Procedure Code. With your permission, I would just invite the attention of the House to section 386. It says:

"Whenever an offender has been sentenced to pay a fine, the court passing the sentence may take action for the recovery of the fine in either or both of the following ways."

That is to say, it may issue a warrant for the levy of the amount by attachment and sale of any movable property belonging to the offender. Secondly, it may issue a warrant to the Collector of the district authorising him to realise the amount by execution according to civil process against the movable or immovable property or both of the defaulted.

The proviso to this section is very important. It says:

"Provided that if the court directs that in default of the payment of fine, the offender shall be imprisoned and if such imprisonment of fine, the offender has undergone the whole of such imprisonment in default, no court shall issue such warrant unless by a special reason to be recorded in writing it considers it necessary to do so."

In the light of this specific section, it is obvious that in many circumstances, the offender will circumvent the realisation of the fine. He would like to undergo the sentence of imprisonment in lieu of the payment of fine. I would just observe that the sentence that is imposed in lieu of fine cannot and will not exceed the original sentence.

**Shri Braj Raj Singh:** Only one-fourth.

**Shri Baghulal Sahai:** Only one-fourth. Thank you very much. If the original sentence is one year and according to the hon. Minister the fine imposed is, say, Rs. 5,000, then the court would lay down in its order that in lieu of non-payment of fine, he will undergo three months' imprisonment. One year and three months can be very easily spent in jail and the offender can keep the entire property to himself.

The important object in proposing this amendment is this. The Act may become deterrent a drastic remedy may be taken. It is common knowledge that corruption is rampant. If Government is equally anxious that it should be rooted out, some psychological change should be made in the country. I submit that by introducing these words, the Government will be creating a psychological change. The would be offenders would be terrified that in case they are arrested and put before the courts, the immovable property that they have gained by illegal means would also lapse to the Government. Let that psychological atmosphere be produced. It will be in very rare cases that the court will go to the length of confiscating the entire property.

So, I submit that in view of the reasonableness of this amendment of mine, the Government should consider it favourably.

**श्री श्रीनारायण दत्त ( दरभंगा ) .**

उपाध्यक्ष महोदय, इस मद में ज्ञायद ही कोई ऐसा विधेयक प्राया होगा जिसके ऊपर एक मन में लोगों ने अपनी सहमति प्रकट की हो। जैसे माननीय मंत्री ने अपने भाषण में कहा है कि अभी जो १२५ के कस्टोडियन निवारण कानून में दंड देने की धारा है उस धारा का प्रयोग जिस उद्देश्य से न्यायालय के द्वारा किया जाना चाहिए था, न्यायालय में किया है लेकिन

### [श्री श्रीनारायण दास]

जो उद्देश्य कानून बनाने वालों का था कि सख्त से सख्त सजा दी जाय। ताकि दूसरे लोग भी उस से डर कर के भ्रष्टाचार न करें, उस उद्देश्य की पूर्ति नहीं हुई है। इसीलिए आज सरकार की तरफ से सन् १९४७ के भ्रष्टाचार निवारण कानून की जो दंड देने वाली धारा है, उसको सख्त करने की कोशिश की गई है। यह ठीक है कि दंड देने का जो विधान है, उसको इसी आदर्श को सामने रखकर करना चाहिए।

उपाध्यक्ष महोदय, अभी सदन में लोगों ने बताया कि हमारे देश में भ्रष्टाचार बहुत बढ़ गया है। मैं इस से पूरी तरह सहमत नहीं हूँ। भ्रष्टाचार बढ़ा है या नहीं बढ़ा है इसकी कोई माप नहीं है लेकिन मैं इतना समझता हूँ कि जब से सरकार ने कल्याणकारी कार्य को अपने हाथ में लिया है और हमारी स्टेट केवल एक पुलिस स्टेट होकर नहीं रह गई है, यह कल्याणकारी स्टेट होने जा रही है और हम विभिन्न कार्यों और योजनाओं पर करोड़ों और अरबों रुपये शासन के जरिए खर्च करते हैं, अब ही भ्रष्टाचार बढ़ा है या नहीं बढ़ा है, इसकी तो मुझे जानकारी नहीं है लेकिन यह बात जरूर है कि अब भ्रष्टाचार का मौका बहुत बढ़ गया है। पहले सरकारी कर्मचारियों की तादाद में समझता हूँ कि करीब २ लाख रही होगी जब कि अब सरकारी खजाने से तनख्वाह पाने वाले लोगों की तादाद करोड़ में होगी। आज करोड़ों लोग विभिन्न संस्थानों में, नदी घाटी योजनाओं में और फ्रंटिलाइजर फ़ैक्टरी और न जाने किन किन कामों को जिनको कि सरकार ने अपने प्रबन्ध में लिया है, उन में लगे हुए हैं और इसलिए मैं ने कहा कि अब पहले से भ्रष्टाचार करने का मौका अधिक हो गया है। भ्रष्टाचार करने की प्रवृत्ति जसे पहले ही थी वह अब भी भीजूद है। लोगों में नाजायज तौर से

पैसा कमाने की प्रवृत्ति विद्यमान है। इसलिए सरकारी कर्मचारी चाहे वे कचहरियों में काम करते हों चाहे यहां केंद्रीय सचिवालय में काम करते हों और चाहे किसी योजना में जो कि देश के किसी कोने में चल रही हो, वहां पर काम करते हों, सब जगहों पर कुछ काम करने वालों की प्रवृत्ति एक ही है कि नाजायज तौर से अगर कुछ मिल जाय तो ले लो भले ही समाज उसको बुरा समझता हो। जब से सरकार ने तमाम बड़े-बड़े कामों और छोटे-छोटे कामों को अपने हाथ में लेकर करना शुरू किया है तब से तमाम जनता में यह बात घर कर गई है कि भ्रष्टाचार बढ़ गया है। मेरे खयाल से कांग्रेस ने जब से देश को शासन की बागडोर अपने हाथों में सम्हाली है, भ्रष्टाचार नहीं बढ़ा है। लेकिन चूंकि उसने अपने कार्यक्षेत्र को बहुत अधिक बढ़ा दिया है और जहां पहले कुछ लाख लोग काम करते थे वहां अब करोड़ों लोग काम करते हैं और उस हिसाब से जहां हजार केस अगर होते थे तो अब दसियों हजार और लाख तक की नौबत आ गई है और उस से जनता को यह मालूम होने लगता है कि पहले से भ्रष्टाचार बढ़ गया है। हालांकि यह बात नहीं है। जनता जब यह देखती है कि सरकारारा चलाई जाने वाली छोटी-छोटी योजनाओं में भ्रष्टाचार होता है और बड़ी-बड़ी नदी घाटी योजनाओं में करोड़ों रुपये का अपव्यय हो गया तो उसको चिन्ता होती है और उसका ऐसी चिन्ता करना स्वाभाविक है। इसीलिए जनता चाहती है कि सरकार भ्रष्टाचार निवारण के लिए सख्त से सख्त कानून बनाये। जनता उसका समर्थन करेगी।

16 hrs.

उपाध्यक्ष महोदय : अब सदस्य साहब मुश्तसिर में अपनी बात कह दें क्योंकि हम पहले ही ज्यादा वक्त ले चुके हैं।

श्री श्रीनारायण दास : मैं चाहता हूँ कि इस कानून में जो अधिक से अधिक सात वर्ष की सजा रखी गयी है उसको दस वर्ष कर दिया जाये और कम से कम एक वर्ष है उसकी तीन वर्ष करना चाहिए। इस बात की अहमियत को बतलाने में कुछ समय लगेगा। अगर आप की आज्ञा हो तो मैं कहूँ कुछ।

उपाध्यक्ष महोदय : एक वर्ष का तीन वर्ष और सात का दस वर्ष चाहे हाँ जाये लेकिन चार का पांच न हो जाय। आप अपनी बात कहें।

श्री श्रीनारायण दास : तो मैं यह कह रहा था कि जनता चाहती है कि सम्बन्ध में सख्त से सख्त कानून बने। कुछ वर्ष पहले हमने अपने दंड विधान से विधि का दंड हटा दिया लेकिन कंट्रोल के जमाने में जब ब्लैक मार्केटिंग जोरों से चलता था और भ्रष्टाचार देखने में आता था तो जनता यह कहती थी कि ब्लैक मार्केटियर को पकड़ कर चौराहे पर चालुक लगाये जायें। लोगों का यह खयाल हो गया है कि रिश्बत लेने वाले कानून की पकड़ में नहीं आते हैं और जो भ्रष्टाचार करने वाले हैं वे भ्रष्टाचार करते चले जाते हैं और लोगों को कुछ इस तरह की आशांका है कि सब के सब लोग जो राज काज चलाते हैं वे भ्रष्टाचार में पड़े हुए हैं। इसलिए आज जब मौका प्राया है तो जरूरत इस बात की है कि दंड की धारा को सख्त किया जाय। इस बिल में कम से कम एक वर्ष की सजा दी गयी है और प्रोवाइजो में जब को यह अधिकार दिया गया है कि अगर वह उपयुक्त समझे तो वह सजा भी न दे। मजिस्ट्रेट या जज को कम से कम तीन साल की सजा देनी चाहिए और अगर किसी अवस्था में वह समझे तो कुछ कम भी दे। लेकिन यह नहीं होना चाहिए कि बिल्कुल सजा ही न दे। और माननीय सदस्यों

ने भी कहा है कि यह प्राचीन नहीं होना चाहिए कि जब चाहे तो बिल्कुल ही दंड न दे।

जो सात वर्ष की सजा है मैं चाहता हूँ कि उसको दस वर्ष कर दिया जाये। ऐसे हालात होते हैं कि लोग बैंकों का करोड़ों रुपया गवन कर लेते हैं। ऐसे भ्रष्टाचार को सजा होने पर भी क्लॉस में रखा जाता है, उसको अच्छा खाना और अच्छा कमरा मिलता है। तो वह सोचता है कि अगर मुझे चार पांच साल की सजा हो गयी तो क्या, मैंने अपने घर वालों को एक करोड़ रुपया तो कमाकर दे दिया। इसलिए जहाँ जरूरत हो जज को अधिक दंड देना चाहिए ताकि अपराधी वह न सोच सके कि चलो दो चार साल में भा जायेंगे। इसी विचार से मैंने अपना संशोधन रखा था कि जुर्म करने वाले के मन में यह विचार न आने पावे।

Shri Thakur Das Malhotra (Jammu and Kashmir): Mr. Deputy Speaker, the Bill before the House is a piece of essential legislation and the clause under consideration is still more important, because it is the theme of this Bill that some deterrent punishment should be provided in the legislation for proved corruption. It is in a way a departure from the general policy of criminal law and, I should say, from the confidence in the judicial discretion. But it is incumbent upon us to adopt such legislation.

Unlike several free countries, we are still in the making. We have not only to develop the country in its economic aspect, but we have to build the character of the nation also. There is, of course, no denying of the fact that the public-servant class is a main class in our nation. And rightly or wrongly, there is the impression in the general public that the public service is the best profession in the country. So, a public servant earning about a hundred rupees is considered by the general public as better placed than

[Shri Thakur Das Malhotra]

a man who is earning much more than that amount in any other profession. As such, it has become a duty of the Government, and ours also, to see that the members of such a class set an example to the public at large.

We have to see that if there is any case of corruption, and it is proved and established in a court of law, then there is such effective legislation whereby he gets the most deterrent punishment. It is, therefore, necessary that for such cases the minimum punishment should be provided, as has been provided herein.

But, at the same time, when we adopt a measure which is, as I have said, a departure from the general policy of law, then by putting a certain provision which, not only mitigates, but which can, in some cases, undo what is intended by us, we defeat the very purpose of the measure. The proviso which has been provided in this very Act not only mitigates but almost takes away what is intended by us. So, I have to submit that this proviso should not be there.

16.06 hrs.

[SHRIMATI RENU CHAKRAVARTY in the Chair.]

The other provision which we have to consider is clause 3(a) which, as Pandit Thakur Das Bhargava has pointed out, is a very hard one. In this case we are providing something which may result in great injustice. Just as my friend has stated and advised, we must consider it with a cool head. When we are providing a very hard legislation and when we want to do justice by rooting out corruption, we must see that no more injustice is done to anyone by means of the same legislation.

It is not possible to find out whether the property or the wealth one has got is the result of some unlawful means, or not, but at the same time, it may not be possible for him to

account for it in a court of law; it is not just in all such cases to presume that the property owned by him is acquired unlawfully and therefore it should be the basis for the assessment of the sum of fine to be imposed upon him. Where there are such doubts or such dangers, we must be very cautious in providing anything which may do some injustice. So, I beg to submit, even this provision should be reconsidered and something should be provided, which is a safeguard against the possibility of any such injustice.

There is another point. The Indian Penal Code is an Act of a general nature. It is applicable throughout India, except the State of Jammu and Kashmir. In Jammu and Kashmir State, we have got the Penal Code with the same provisions. That is called Ranbir Penal Code. My submission here is that the Central Acts of a general nature, just as the Indian Penal Code, should be made applicable to all the States. Why should there be any exemption for such Acts? I certainly admit that we have got a Penal Code which is called the Ranbir Code. When we are making a certain provision which is needed, and which is beneficial for the whole country, why should it still not be made applicable to the Jammu and Kashmir State. I beg to submit that the Government should not delay the application of such measures and such Acts to all States. Even in minor aspects, I should say that Jammu and Kashmir State should not be treated as a State different from the other States of India.

I want to cite an instance in this connection. The Sales Tax Act which is also a Central Act, has not been made applicable to the Jammu and Kashmir State just as it has been made applicable to the other States. The result of it is that the people of Jammu and Kashmir State have suffered a loss of thousands and lakhs of rupees only because of that defect in the application of the Sales Tax Act to the Jammu and Kashmir State in a



different way than in other States. My submission is that all these Central Acts which are of a general nature should be made applicable to the Jammu and Kashmir State just as they are made applicable to the other States.

With these words, I support the Bill under consideration.

Mr. Chairman: The hon. Minister.

Shri Jadhav: I have not been given an opportunity to speak. My amendments are there.

Mr. Chairman: You have moved your amendments.

Shri Jadhav: I have not spoken. My amendments are 1 and 2.

Mr. Chairman: The hon. Member will be brief. We have already exceeded the time.

Shri Jadhav: I shall be very brief.

श्री जाधव : मैंने कलाम ३ में अमेंडमेंट १ और २ पेश की हैं। उन के बारे में मुझे कहना है कि जो सजा तब की गई है, वह दो साल से कम नहीं होनी चाहिए—बहु ज्यादा से ज्यादा सख्त होनी चाहिए। पहल अमेंडमेंट के द्वारा मैंने यह सुझाव दिया है और दूसरी अमेंडमेंट कामीक्वेंडियल है। हम कहीं भी जायें, अगर हमारी गवर्नमेंट का कोई जिक्र होता है, तो वह घूसखोरी के बारे में ही होता है—सब से ज्यादा घूसखोरी का कलंक हमारी गवर्नमेंट के ऊपर है। चाहे आप देहात में जायें, चाहे शहर में जायें, कहीं भी जायें, आज घूसखोरी सब से पहल सबाल बन गया है। अभी-अभी कहा गया है कि अजादी के बाद घूसखोरी बढ़ी नहीं है, लेकिन चूकि हमारे महकमे बढ़ गए हैं, इसलिए मालूम होता है कि घूसखोरी ज्यादा बढ़ गई है। लेकिन आज घूसखोरी करीब करीब उन्धान हो गई है। आक्रिस्टिच में जो नीचे वाले लोग हैं, उन पर इस का ज्यादा धारोमधर नहीं है।

मैं कहना चाहता हूँ कि इस की जिम्मेदारी दरख्त जो बड़े आक्रिस्टर हैं, जो राज करने करने हैं, उन पर है। शादी में बरात जाती है, तो अगर बरात के बूल्हा की माँ ही बदन-बलन होगी, तो उस की सहेलियों के बारे में क्या कहा जाय। ऐसी ही बात आज हमारी सरकार की है। अगर हमारे बड़े-बड़े अक्रिस्टर—राज्य सम्भालने वाले लोग—ही करप्ट होंगे, तो फिर करप्शन को दूर करना एक नामुमकिन बात है। इसलिए मैं कहना चाहता हूँ कि सिर्फ लेजिस्लेशन करने से ही काम नहीं चलेगा। लेजिस्लेशन करने में हमारी गवर्नमेंट सब से प्रागे है। दूसरे कन्ट्रीज स्पूटनिक छोड़ते हैं, तो हमारी गवर्नमेंट के कानून के स्पूटनिक बहुत सामने आते हैं, लेकिन उनको एक्शन में लाने की बात होती नहीं है। मैं कहूँगा कि अगर हम को करप्शन और घूसखोरी को रोकना है, तो इस के बारे में इस के लिए हमें ज्यादा से ज्यादा कोशिश करनी पड़ेगी।

अभी-अभी मिनिस्टर साहब ने बताया कि मिबिचाइज्ड नेशनल में ज्यादा कड़ी सजा बड़ी होनी चाहिए, लेकिन आज हमारी जो सोसायटी बन गई है, उसमें करप्शन करना ही मिबिलाइजेशन बन गई है। ऐसे सिबिनाइज्ड सोसाइटी में सजा अगर कड़ी न हो तो कोई असर नहीं होगा। हमारे सामने कुछ फ़िराज पेश किए गए। मैं समझता हूँ कि जो डिटेक्शन किया गया, या जो प्रामीक्यूशन किए गए, वे दरया में बूद जैसे हैं। हमारा जो एडमिनिस्ट्रेशन है, उस पर इसका कुछ असर होने वाला नहीं है।

आखिर में मैं यह फिर कहना चाहता हूँ कि इसके लिए सजा कड़ी से कड़ी होनी चाहिए और अगर सजा कड़ी होगी, तो उसका कुछ असर होगा और करप्शन रोकने के लिए मदद मिलेगी। इतना ही मुझे कहना है।

**Shri Datar:** I shall very briefly reply to the points raised by hon. Members. In the first place, I should like to point out that I am accepting Shri Kasiwal's amendment No. 3.

In regard to admonition the amendment that I have moved is, "notwithstanding anything contained in any law for the time being in force . . ." Today, we have section 363 which deals with admonition and probation. So we cannot make any changes in any law that is still to be passed. Therefore, what I would suggest is, so far as this question is concerned, let us accept this amendment No. 26. It will serve the purpose. When, for example, the Probation of Offenders Bill comes before the House, we shall consider that question and remove the ambiguity that the hon. Member has pointed out. It is true, such expressions as 'notwithstanding anything contained in any law for the time being in force' occur here and there and when there are similar expressions in two Acts, the question is, which has to be preferred. All the difficulties in this respect would be considered when the Probation of Offenders Bill comes before the House.

**Mr. Chairman:** The point is, you are accepting what he has said.

**Shri Datar:** I have another amendment. I read it now. That amendment is to clause 4. That is exactly in anticipation of his amendment. I am meeting the principle of his amendment though in another clause.

**Mr. Chairman:** Provided that when the Probation of Offenders Bill comes, it will . . .

**Shri Datar:** That was an independent question which was raised during the discussion. You will kindly see the two amendments 25 and 26. I read them out to the House when the Deputy-Speaker was here.

"notwithstanding anything contained in any law for the time being in force, no such person shall

be released on probation or after due admonition."

It meets with the case. When the Probation of Offenders Bill comes here, we shall consider that question here and remove this ambiguity or inconsistency.

**Pandit Thakur Das Bhargava** wanted that the presumption which has been referred to in the Prevention of Corruption Act ought to be removed altogether. In one place, he wanted that the word 'may' should be substituted in the place of 'shall'. He also desired that it would be entirely wrong to proceed on the basis of any presumption. My answer is very short. Here, it is not an ordinary presumption. Certain things do happen. I would read to the House clause (3) of section 5 :

"In any trial of an offence punishable under sub-section (2) the fact that the accused person or any other person on his behalf is in possession, for which the accused person cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income may be proved, and on such proof the Court shall presume . . ."

Therefore, it is not a presumption as a matter of course. Possession has to be proved and then the financial resources that he has, have to be proved to be disproportionate to his legitimate sources of income. Then, this question of presumption arises. I may also invite the attention of the House to a recent ruling of the Supreme Court where they have upheld this presumption, and they have said that evidence of unexplained assets is sufficient to base a conviction without any additional evidence of a specific offence. Thus it will be found that even this presumption has to be formed or drawn in certain circumstances. The moment there is material for such a presumption, it is open to the special

court to proceed on the basis of this presumption and to convict the man. That means the Supreme Court are fully satisfied that in a proper case such a presumption should be drawn. Therefore, the matter is not so bad or so objectionable as my hon. friend wants us to believe. Therefore, I am not accepting his amendments.

Then it was contended by one hon. Member that the minimum term of punishment should be two years. Another hon. Member from this side wanted that the minimum should be three and the maximum ten years. I have already explained the position. I have stated that the minimum ought to be one year because one year is a fairly reasonable degree of punishment, and it would be entirely wrong and vindictive if not savage to raise it to three years minimum and ten years maximum. Let us take into account the position as it is. We can leave it to the Judge. The minimum would be one year, as I have already pointed out. There are other Acts where the minimum term of imprisonment has been prescribed and there also this Parliament has prescribed that the minimum term should be one year. Therefore, it should not be two or three years. So far as the maximum is concerned, seven years is generally a maximum sentence except in two cases under the Penal Code, *viz.* death sentence and ten years. In the circumstances, seven year is a fairly heavy amount of punishment, and therefore I submit I cannot accept this amendment.

So far as Kashmir is concerned, that is a matter of constitutional position. Under the Constitution an agreement has to be reached and as the House is aware there is an agreement between the President of India and the Kashmir Government. So, matters are governed by the Constitution itself, and therefore, it would be proper to act according to the provisions of the Constitution.

Lastly, the question of sanction was referred to by Shri Tangamani. His amendment says there should be no

question of sanction at all, that immediately a notice should be given. That would not be proper. It would lead to endless harassment in certain cases. Therefore, what is necessary is that before actually a prosecution is ordered, some enquiry should be made to see whether that particular officer or public servant has *prima facie* committed an offence. If this valuable restraint is removed, it is likely to lead to endless harassment and a considerable amount of blackmail. That is the reason why I cannot accept the amendment.

**Shri Raghubir Sahai:** You did not say anything with regard to my amendment about confiscation of property.

**Shri Datar:** So far as confiscation is concerned, by anticipating his argument, I have already stated that it would be entirely wrong, and perhaps in some cases it would be difficult to have confiscation as he wants, or to have attachment as Shri Tangamani wants. What has been done in this case is that it is left open to the special Judge to fine the particular offender to any amount that he likes. No particular amount has been laid down. He can take this point also into consideration.

As I have stated, confiscation is an extremely rare remedy that can be resorted to under the Code of Criminal Procedure, and there also, there would be a number of difficulties. Civil questions would be raised as to what is the extent of his property, whether he has been in possession; and all these questions would arise, and there will have to be endless litigation even, in ascertaining whether the property belongs to the particular offender or not. Under the circumstances, the better, the easier and the more appropriate remedy would be for the special Court to raise the amount of fine so as to meet the object which the hon. Members have in view.

**Mr. Chairman:** The question is:

Page 2, lines 10 and 11,

[Mr. Chairman]

omit "refrain from imposing a sentence of imprisonment or".

*The motion was adopted.*

Mr. Chairman: Now I shall put the other amendments.

The question is:

Mr. Chairman: The question is:

Page 2, line 4—

after "commits" insert "or attempts to commit or abets in committing."

*The motion was negatived.*

Mr. Chairman: The question is:

Page 2—

after line 20, add:

"(2B) Notwithstanding anything contained in any law for the time being in force, the property of the accused person who has committed the offence of criminal misconduct may be attached by the order of the Special Judge."

*The motion was negatived.*

Mr. Chairman: The question is:

Page 2—

after line 31, add:

"9. Notwithstanding anything contained in any law for the time being in force or any departmental order, an employee giving information leading to the prosecution for criminal misconduct will be adequately protected from departmental or other actions."

*The motion was negatived.*

Mr. Chairman: The question is:

Page 2—

after line 20, add:

"(2B) Notwithstanding anything contained in such law, any law dealing with release of offenders on probation or after due admonition and matters con-

nected therewith, shall not apply to any person tried under this Act or to any proceedings thereunder."

*The motion was negatived.*

Mr. Chairman: The question is:

Page 2—

after line 20, insert:

"(aa) sub-section (3) of section 5 shall be omitted;"

*The motion was negatived.*

Mr. Chairman: The question is:

Page 2—

after line 20, insert—

'(au) in sub-section (3) of section 5,—

(i) for the words "the Court shall presume unless the contrary is proved" the words "the Court may presume" shall be substituted; and

(ii) the words "and his conviction therefor shall not be invalid by reason only that it is based solely on such presumption" shall be omitted;"

*The motion was negatived.*

Mr. Chairman: The question is:

Page 2, line 8—

add at the end "or confiscation of property"

*The motion was negatived.*

Mr. Chairman: The question is.

Page 2, lines 6 and 7,—

for "one year" substitute "two years".

*The motion was negatived.*

**Mr. Chairman:** The question is:

Page 2, line 12,—

for "one year" substitute "two years".

*The motion was negatived.*

**Mr. Chairman:** The question is:

Page 2, lines 6 and 7,—

for "one year" substitute "three years".

*The motion was negatived.*

**Mr. Chairman:** The question is:

Page 2, line 7,—

for "seven years" substitute "ten years".

*The motion was negatived.*

**Mr. Chairman:** The question is:

"That clause 3, as amended, stand part of the Bill".

*The motion was adopted.*

*Clause 3, as amended, was added to the Bill.*

**Clause 4.—(Amendment of section 8, Act 46 of 1952).**

**Shri Datar:** I have got amendments 25 and 26. So far as amendment 26 is concerned, I have already stated that I accept the suggestion of my hon. friend, but in view of the acceptance of the amendment of Shri Kasliwui, the question is whether it is necessary at all, because what has been stated therein is that a man, if he has been found to be guilty, has to be sentenced to some imprisonment. Either it must be the minimum of one year, or under the clause some other imprisonment will have to be given to him. Under the circumstances, I feel perhaps it is not necessary. Anyway, if there is any other point, I am prepared to meet them.

**Shri Tangamani:** We are on clause 4.

**Mr. Chairman:** He says by accepting amendment 3 to clause 3, this becomes redundant.

**Shri Datar:** Because in the case of an offender where that particular offence has been proved, he has to be imprisoned; he has to be sentenced to some term of imprisonment. The least might be one day, and the highest might be seven years. If that is the position, what my friend has in view is already achieved. Therefore, he might consider that. In that case I shall not move amendments 25 or 26. Amendment 25 is consequential.

**Shri Naushir Bharucha:** Unless the Government moves that amendment the position will be that any man may be released with an admonition, because as the other Act stands, it will over-rule this. That is the point I am making.

**Mr. Chairman:** It reads like this:

"Provided that the court may, for any special reasons recorded in writing, refrain from imposing a sentence of imprisonment or impose a sentence of imprisonment of less than one year."

**Shri Datar:** My point is this. In any case, in view of the acceptance of the amendment deleting the words "refrain from imposing a sentence of imprisonment or", if the special Judge comes to the conclusion that the offence has been proved, then naturally he shall have to sentence him to imprisonment. The extent of it might be anything, one day or seven years.

**Shri Naushir Bharucha:** It is not so. The actual effect of this will be that unless the Government give an undertaking that they are going to make some provision in the other Act, notwithstanding any language here, that Act will prevail.

**Shri Datar:** I shall give this assurance that when that particular Bill comes here, we shall consider this question.

**Shri Naushir Bharucha:** Not consider; you will have to incorporate it.

**Shri Datar:** Provided it is necessary.

**Mr. Chairman:** The point made by Shri Bharucha is this particular wording, "Notwithstanding anything contained in any law for the time being in force..." will have to be incorporated in that particular Bill when it comes up. That is the assurance which he wants.

**Shri Datar:** Provided it is necessary. What I am pointing out is this. I have no objection. I am in agreement with him, that is why I accepted the principle of his amendment, that such persons should not be released on admonition or on probation. I agree with him so far as that question is concerned...

**Mr. Chairman:** And that this will be considered at that time.

**Shri Datar:** But the question is whether it is necessary at all. That, of course, can be done.

**Shri Nausahir Bharucha:** I am satisfied with his assurance.

**Shri Datar:** So I am not moving amendments 25 or 26.

**Mr. Chairman:** There are no other amendments.

The question is:

"That clause 4 stand part of the Bill".

*The motion was adopted.*

*Clause 4 was added to the Bill.*

**Shri Datar:** I have got some formal amendments to clause 1 and the Enacting Formula.

*Amendments made:*

(i) Page 1, line 1, for 'Eighth Year' substitute 'Ninth Year'.

(ii) Page 1, line 4, for '1957' substitute '1958'.

—[Shri Datar]

**Mr. Chairman:** The question is:

"That clause 1, the Enacting Formula, as amended, and the Title stand part of the Bill".

*The motion was adopted.*

*Clause 1, the Enacting Formula, as amended, and the Title were added to the Bill.*

**Shri Datar:** I beg to move:

"That the Bill, as amended, be passed."

**Mr. Chairman:** Motion moved:

"That the Bill, as amended, be passed."

**श्री यू० एं० जैन (कैबल):** सभापति महोदया, इस संशोधन विधेयक की सैकंड रीडिंग हो गई है और अब यह बर्ड रीडिंग स्टेज में है और शीघ्र ही यह पास हो जायेगा इसके सिलसिले में जहां से अपनी सरकार को मुबारकबाद देता हूं वहां से यह भी कहना चाहता हूं कि हमारे मुल्क में अच्छा खासा करप्शन मौजूद है। प्राया यह करप्शन ब्रिटिश गवर्नमेंट के जमाने से कुछ बढ़ा है या नहीं, लोगों में कुछ एकतलाफ है। कुछ लोग कहते हैं कि करप्शन हमारे देश में बढ़ा है तो कुछ लोगों का यह ख्याल है कि नहीं वह उतना ही है और पहले से कम हुआ है।

श्री बाबू पाई (राजापुर) : प्रापका क्या अनुभव है ?

**श्री यू० एं० जैन:** मेरा यह ख्याल है कि बाबू मुहकमों में करप्शन बहुत बढ़ गया है और बाबू मुहकमों में कम हुआ है। इस सीके पर मैं कुछ सुझाव गवर्नमेंट के सामने रखना चाहता हूं। यह करप्शन का मामला ब्रिटिश गवर्नमेंट के जमाने में उतना नहीं चुभता था जितना कि आज चुभता है। आज ज्यादा ही चुभता है। क्योंकि अपना राज्य है। और करप्शन वाले अपने ही हैं।

**Mr. Chairman:** I should like to remind the hon. Member that in the third reading stage, every detailed

consideration of the Bill or suggestions are not permissible. Any particular point which has not been stressed in the other readings might just be made now.

श्री यू० चं० जैन : मैं उसी की तरफ आ रहा हूँ। बर्ड रीडिंग के मीके पर इसके एम्पलीमेंटेशन का सवाल ज्यादा है कि कैबिनेट गवर्नमेंट इस सेविस्लेशन को एम्पलीमेंट करे। इस सिलसिले में यह बताना जरूरी है कि इसी मजमून पर पहले जो कानून थे उनके एम्पलीमेंटेशन में क्या कसर रही थीर अगर वही हालात दुहराये गये तो जैसे कि मेरे से पहले एक दोस्त ने कहा वही बात होगी कि मर्ज बढ़ता गया ज्यों ज्यों दबा की। अगर इस बात इस तरह से कानून रोजाना बनाते जायें और उसके साथ साथ करप्शन भी बढ़ता जाय तब तो इस ऐवान और हुकूमत को सोचना होगा कि आखिर यह क्या तमाशा है क्योंकि यह बात साफ़ है कि कोई भी इनक़लाब हो, क्रान्ति हो जब तक देश में करप्शन बंद नहीं होता तब तक वह कामयाब नहीं हो सकता है और करप्शन अगर चलता रहे तो वह उस इनक़लाब को खा जाती है।

इस सिलसिले में मैं यह कहना चाहता हूँ कि एक बानेदार, तहसीलदार या कोई बड़ा अफसर करप्शन करता है रिस्वत लेता है तो उसकी तरफ़ हम झपटते हैं लेकिन हम देखते हैं कि आज मुन्क में चारों तरफ़ राजनीतिक करप्शन चल रहा है। जब एक एम० पी० की हैसियत से अथवा मिनिस्टर की हैसियत से हम करप्शन करें तो हम किस गुंठ से किसी अफसर को उससे रोक सकते हैं। जब तक यह पोलिटिकल करप्शन नहीं रुकेगा तब तक आफि-इयल सेविल पर करप्शन रुकने वाला नहीं है। इसलिए पहली चीज़ गवर्नमेंट को यह करनी चाहिए कि देश में सरकारी अफसरान के अलावा कितने भी नान आफिशियलस हैं चाहे वे किसी बारा समा के एम० एल० ए०

हों अथवा एम० पी० हों या मिनिस्टर हों उन में पोलिटिकल करप्शन न हो क्योंकि इसके बगैर हम जो काम करना चाहते हैं उसमें कामयाब नहीं होंगे।

दूसरी बात में यह कहना चाहता हूँ और वह भी जरूरी है यह मेरे तजुबों की बात है कि छोटी लेविल के अफसरान रिशवत लेते हैं और बड़े अफसरान प्रायः उनको प्रोटेक्ट करते हैं और इस तरह वे इन अफ़्टाचार को निकलने नहीं देते। हांता यह चाहिए कि ऊपर के अफसरान या तो अपने नीचे वालों के करप्शन को खुद नोटिस में लायें और उन को सजा दें लेकिन अगर वे खुद ऐसा नहीं करते और उनके मातहत लोग यदि पबलिक के कहने पर पकड़े जाते हैं तो उन को मुजरिम करार देना चाहिए और सजा देनी चाहिए। जब तक यह बात नहीं की जायेगी, करप्शन रुकने वाला नहीं है। पंजाब में जहां पर कंसालिडेशन का काम शुरू है उसमें करप्शन की बेहद गुंजायश है। पंजाब के किसान उसके कारण बहुत घबड़ाते हैं और वह इस परेशानी से बचने के लिए पटवारी और तहसीलदार को रिस्वत देते हैं। पंजाब में इस मुहकमें में काफी रिस्वत थी लेकिन अब वह रिस्वत कम हो गई है। उसका कारण क्या है? वहां रुस्त में यह प्रोवाइड किया गया है कि अगर पटवारी रिस्वत लेता है और अगर उसकी रिस्वत को गिरदावर जो उस के ऊपर का अफसर है वह अफसरान बाला के नोटिस में नहीं लाता, तो पटवारी अगर पकड़ा जाता है तो गिरदावर को भी सजा दी जाती है। जब तक यह बात नहीं होगी तब तक करप्शन रुकने वाली नहीं है।

मैंने देखा कि अभी हमारे हातार साहब ने उस तरनीम पर जिसमें सीस्ट पनिसमेंट एक साल के बचाव दीन प्राप्त करने को कहा गया था उसकी उन्होंने ने अचीव किया।

[ श्री मू. चं. जैन ]

उन्होंने फरमाया था कि यह तो बहुत विडिक्रिय होगा।

इसी तरीके से सेंचमन की तरफ से के बारे में उन्होंने कहा कि अगर यह सेंचमन का प्राबिजन नहीं रहा तो यह तो ब्लैक-मेलिंग हो जायेगी। इसी तरह कनक्रिप्सिफिकेशन की तरफ से के बारे में उन्होंने कहा कि यह तो बहुत एक्सट्रीम स्टेप होगा। तीनों तरफियों के बारे में जो जबाब हमारे धानरेबल मिनिस्टर ने दिया है उनको जब जुडिशिएल अफसरान जो कि करप्शन के केस को ट्राई करने वाले हैं, पढ़ेंगे तो मैं जानना चाहता हूँ कि कौन सा ऐसा मजिस्ट्रेट या स्पेशल जज होगा कि किसी करप्ट अफसर को एक साल से ज्यादा सजा देगा? वह भी तो यही समझेंगा जैसा कि खुद हमारे धानरेबल मिनिस्टर ने कहा कि उसको एक साल से ज्यादा की सजा देना विडिक्रियवर्नस होगी...

एक माननीय सदस्य : माननीय मंत्री ने बारबरस कहा है।

श्री मू. चं. जैन : ठीक है मैं माननीय सदस्य का शुक्रगुजार हूँ कि उन्होंने मुझे वह शब्द याद दिला दिया। होम मिनिस्टर ने एक साल से ज्यादा करने वाली तरफीम को रिजैक्ट करते हुये उसे बारबरस कहा है।

Shri Datar: My hon. friend has misunderstood me . . .

Mr. Chairman: The hon. Minister can say it later.

श्री मू. चं. जैन : मैं कहना चाहता हूँ कि यह एक एटीयूड है जो कि जुडिशिएल अफसरान के सामने जायेगा और यह अफसर देखा गया है कि जब कानून के इंट्रिप्रेटेशन का उनके सामने सवाल आता है और कुछ शब्दों में गड़बड़ी होती है तो वे पार्लियामेंट

के डिबेट्स का भी इस्तेमाल करते हैं कि इस कानून का इंटिशन क्या था और कुछ कानून के बनाने वालों का इरादा क्या था। अगर होम मिनिस्टर यह कहते कि चार घाने की Embezzlement पर भी एक साल से ज्यादा की सजा दी जाती जरूरी है, तो ऐसा कानून बनाना जादती होगी। तो मैं उनका यह आर्गुमेंट किसी हद तक मान सकता था लेकिन वह यह आर्गुमेंट न देकर यह कहें कि कम से कम सजा तीन साल रखना बारबरस है यह विडिक्रिय है, मैं उसको मानने को तैयार नहीं हूँ। अगर वह इस एक साल की भिवाद की बढ़ाने वाली तरफीम को विडिक्रिय और बारबरस समझते हैं तो इस देश में करप्शन कैसे रुक सकता है। मैं कहना चाहता हूँ कि इस करप्शन को रोकने का मनासिब बंग से इन्सिजाम करना होगा। यह सरकार सोशल फील्ड में और इकानमिक फील्ड में बहुत अच्छा काम कर रही है। यदि (Corruption) न रुकी तो सारा अच्छा काम धरा धराया रह जावेगा। मैं एक बात और कहना चाहता हूँ . . . . .

Mr. Chairman: Hon'ble Member must conclude now.

श्री मू. चं. जैन : मुझे तीन चार मिनट और दीजिये। यह करप्शन कैसे रुक सकता है? हमारे एग्मिनिस्ट्रेशन में एक "प्रो-रिच एटीयूड" फैली हुई है, धमीर की रियायत की जाती है, गरीब की सहायता नहीं की जाती। इस प्रो-रिच एटीयूड को आप किस तरह से रोकेंगे? धमी पिछले दिनों ए० आई० सी० सी० की तरफ से लैड रिफार्म के बारे में एक पैमफ्लैट जारी किया गया है जिसमें दिखाया गया है कि स्टेट्स में जो लैड लैजिस्लेशन पास हुए हैं वे ५० की सदी की इम्प्लीमेंट नहीं हुए।



सम्बन्ध जो जो कानून बनते हैं वे ही संगठे खुलें होती हैं और फिर कलक्टर यात्रि अफसर इनको ठीक तरह से इम्प्लीमेंट नहीं करते। मैं तो कहना चाहता हूँ कि इस चीज को भी करप्शन समझा जाना चाहिए। आज हमारे देश का 1000 करोड़ डॉलर का बजट है। कोई भी अफसर जो उस धन के बिना कार्रवाई करे उसके इस काम को भी करप्शन समझा जाये। जब तक आप इसको करप्शन नहीं समझते तब तक इस के लिए आप सजा नहीं दे सकते। ऐसे अफसर को देश का ट्रेटर समझा जाना चाहिए। आज कितने ऐसे अफसर हैं? अगर मैं उनका परसेंटेज बतलाने लगूंगा तो मेरे दोस्त कहेंगे कि मैं बहुत बढ़ाकर बतला रहा हूँ। लेकिन आज हर जगह यह प्रोरिच एटीट्यूड है। इसलिए मैं कहना चाहता हूँ कि यह भी करप्शन का मामला है। यह खुशी की बात है कि पुराने कानून में जो कमी है उसको आप दूर करने की कोशिश कर रहे हैं। लेकिन आप वकील हैं, आप जानते होंगे, मैं भी एक छोटा मोटा वकील हूँ। इसलिए मैं भी जानता हूँ कि इस सैन्शन की बिना पर हज़ारों गुनहवार बचे हुए हैं। जब मैं एक नान आफिशियल को हैसियत से जुर्म करता हूँ तो मुझे फौरन पकड़ लिया जाता है। लेकिन सरकारी अफसर को पकड़ने के लिए सैन्शन की जरूरत होती है। मैं चाहता हूँ कि यह सैन्शन कतई उड़ा दी जाये।

हमारे यहां पंजाब में भाखरा में बड़े बड़े अफसरों ने रिस्वत जाई। चाफ-इंजिनियर तक पकड़े गये। लेकिन इस सैन्शन के परदे में सैकड़ों अफसरों को छपाया गया। इस बीस मुकदमे चले लेकिन जब बड़े बड़े मगरमच्छ फंसने लगे तो उनको सैन्शन के बहाने प्रोटेक्शन दिया गया और चार चार पांच पांच साल के कैद पेंडिंग पड़े हुए हैं। यह कोई छोटी मोटी चीज नहीं है। मैं यह

बानिग देना चाहता हूँ कि अगर इस करप्शन को ठीकी से रोकने की कोशिश नहीं की जायेगी तो जो इनकलाब हम अपने देश में लाना चाहते हैं वह नहीं आयेगा और फेल हो जायेगा। जो अमेंडमेंट बिल है वह तो पास हो ही जायेगा। लेकिन मैं चाहता हूँ कि इसके इम्प्लीमेंटेशन के दौरान में सरकार इंस्ट्रक्शनस के जरिये और रूल्स के जरिये इस अजबहे को जो कि मुंह फाड़े सड़ा है और हमको लाना चाहता है उसको सत्य करने की कोशिश करे।

**Shri Datar:** I am extremely sorry that my hon. friend has misunderstood what I have stated. It is perfectly open to a Magistrate to give any punishment according to the case. It may be one year; it may be seven years according to the first clause or it may be even less than one year. That is entirely a matter for judicial discretion. He has not properly understood my point. Putting down a minimum of three or two years would be a different thing. It is not that in all cases the magistrates or special judges would award only one year. It is entirely a wrong notion. Let my hon. friend understand it quite clearly. It is perfectly open to the special judge to sentence him properly. What we have stated is that when the offence has been proved, the minimum ordinarily ought to be one year and not less than one year. That is the principle that we have laid down. No maximum has been laid down. Let not the hon. Member misunderstand me in this matter.

So far as the question of sanction is concerned, it may be found that this is a case in which after the prosecution has been filed, there would be a presumption. If the man has unaccountable things, then evidence will have to be led. In all these things, sanction is necessary. In the ordinary offences, there is no question of sanction at all. You have

[Shri Datar]

to take into account the principle that there ought to be some enquiry. Merely because some man comes and makes a complaint, it would not be the basis for prosecution, especially in regard to such offences. Before the Government gives the sanction, it makes an enquiry and the moment it is satisfied that there is a *prima facie* case, it grants the sanction. In the absence of sanction, it would be understood that there is scope for harassment of the officer if the officer is honest. This question is fully taken into account and sanction is not refused when there is a good case. Let not my hon. friend misunderstand what I have said in a very proper manner.

Shri M. C. Jais: There is an enquiry in every cognizable case.

Mr. Chairman: The question is:

"That the Bill, as amended, be passed".

The motion was adopted

#### INDIAN RESERVE FORCES (AMENDMENT) BILL

Mr. Chairman: Let us now take up the Indian Reserve Forces (Amendment) Bill.

Shri D. C. Sharma (Gurdaspur): What is the time allotted for this Bill?

Mr. Chairman: One hour.

The Deputy Minister of Defence (Sardar Majithia): I beg to move:

"That the Bill further to amend the Indian Reserve Forces Act, 1938, as passed by Rajya Sabha, be taken into consideration".

While moving for consideration of this Bill, I have to say only a few words. The reserve liability of a man comes in because of his peculiar terms of his service. In some cases, a man when he joins up, has to put

in eight years of call-up service followed by seven years of reserve service, whereas in certain services he joins up for nine years call-up service followed by six years of reserve service. When he goes to the reserve which he has to, because the terms of service are such, he is given a retaining fee of Rs. 10 which means that he has to seek alternative employment for the rest of his useful life.

Now, at the outset, I must say that the employers have mainly been very helpful but there are a few employers who, finding that the particular person is liable to be called up or called up for having training for a particular number of days in a year, feel hesitant to re-employ him or reinstate him in the service that he was in. It is, therefore, that it has become necessary for the Government to bring in this Bill to give a statutory safeguard to the reservists. When a reservist has completed his training or if he is called up for service in an emergency and has completed that period of service, and when he goes back, the employer may not say "No" to him but he has to employ him on conditions which are not less favourable to the employee when he left service

Therefore, with these few remarks, I would commend this motion for consideration of the House.

Mr. Chairman: Motion moved:

"That the Bill further to amend the Indian Reserve Forces Act, 1938, as passed by Rajya Sabha, be taken into consideration".

Before we proceed, I think we better make clear the time allotment. One hour has been allotted for the Bill. How much for the general reading and how much for the rest? What is the desire of the House? We have to be careful. There are 11 amendments to the Bill. I suggest that probably it will be better—I do