जनतन्त्र को मजबूत करने के लिये और भारतीय संविधान जिसकी कि मंशा है कि हर एक व्यक्ति की आजादी सुरक्षित रहे, उसको अगर आप पूरा करना चाहते हैं तो इन धाराओं को हटा दीजिये।

अभी मन्त्री जी ने उस दिन कहा था कि किसी भी आदमी के जाकर हाईकोर्ट या सुप्रीम कोर्ट में इसको चैलेंज नहीं किया है कि इन दफाओं से भारतीय संविधान में लोगों को जो व्यक्तिगत स्वतन्त्रता की गारण्टी दी गई है, उसका हनन होता है। अब मेरा इसके लिए कहना यह है कि आपने मूल संविधान में बाद में कितनी तबदीली कर दी है और मैं समझता हूं कि आपने भारतीय संविधान में १०७, १०९ और १४८ दफाओं को बनाये रखने के लिये संशोधन किया है और भारतीय संविधान की जो व्यक्ति स्वातन्त्र्य की मूल भावना थी उसको एक तरह से यह संशोधन करके दबा दिया है। ऐसा मालूम पड़ता है कि इस सरकार को संविधान कम प्यारा है और यह दफाएं ज्यादा प्यारी हैं। इन दफाओं को कानूनी किताब में रखने के लिये ही आपने मूल संविधान में संशोधन किया है। मैं कहना चाहता हूं कि आप इस चीज पर पुनर्विचार करें और इन धाराओं का लोप हमारी कानूनी पुस्तक में से हो जाना चाहिये।

दफा १६१ को संशोधित करने के लिये मैंने केवल यही कहा था कि पुलिस प्रारम्भिक अवस्थाओं में जो जनरल डायरी भरती है या स्पेशल डायरीज भरती है उनमें अक्सर यह देखा गया है कि वह उनको मनमाने ढंग से भरती हैं और जिनका कि हकीकत से कोई वास्ता नहीं होता। यह देखा गया है कि एक व्यक्ति जिसका कि एफ० आई० आर० में नाम तक नहीं होता उसको पुलिस पकड़ लेती है और जेल में भेज देती है। इसलिये मैं चाहता हूं कि कुछ ऐसी व्यवस्था की जाए जिससे पुलिस जो रिपोर्ट दर्ज करती है उसकी एक कापी सेशन जज के यहां २४ घंटे के अन्दर पहुंच जाय और यदि ऐसी व्यवस्था करदी जाय तो फिर निश्चित रूप से उसमें कोई गड़बड़ नहीं होगी। अभी पुलिस ४, ५ कापी तैयार करती है। एक कापी थाने में रहती है, एक कापी डिस्ट्रिक्ट मजिस्ट्रेट के यहां जाती है और एक कापी पुलिस सुपरिन्टेंडेंट के यहां जाती है। और यह देखा जाता है कि चूंकि ये एग्जीक्यूटिव के अंग हैं इसलिये अगर पुलिस एक दो सप्ताह बाद भी डायरी भरती है तो वे उस पर पिछली तारीख में दस्तखत कर देते हैं। यदि डायरी की प्रतिलिपि सेशन कोर्ट में भी जाए तो यह सम्भावना नहीं हो सकती और पुलिस इस तरह से फेबरकेशन और टैम्परिंग नहीं कर सकती। इसलिये मैं चाहता हूं कि यह संशोधन कर दिया जाए। इससे न्याय मिलने में बहुत लाभ होगा और जो पुलिस कानून का दुरुपयोग करती है उस पर हम अंकुश लगा सकेंगे। मैं उम्मीद करता हूं कि जो विधेयक मैंने प्रस्तुत किया है उस पर सदन गम्भीरता के साथ विचार करेगा और जब मतदान होगा तो माननीय सदस्य यह देखेंगे कि यह कानून के लिये अच्छी चीज है या नहीं और जो हम लोग यहां संविधान की कसम खाकर और लोकतन्त्र का नाम लेकर बैठे हैं उसके अनुसार यह चीज है या नहीं।

Mr. Deputy-Speaker: The question is

"That the Bill further to amend the Code of Criminal Procedure, 1898, be taken into consideration"

The motion was negatived

15.09 hrs

STATES REORGANISATION (AMENDMENT) BILL

(Amendment of Section 51)

Shri Easwara Iyer (Trivandrum): Mr Deputy-Speaker. I beg to move:

"That the Bill further to amend the States Reorganisation Act, 1956, be taken into consideration."

By this Bill, I seek a clarification of section 51 of the States Reorganisation

[Shri Easwara Iyer]

Act of 1956 which relates to the seat of the High Courts. Section 51 of the States Reorganisation Act consists of three parts The first sub-section deals with the principal seat of the High Court in a newly established State or a new State within the meaning of the States Reorganisation Act Sub-section 2 of section 51 of the States Reorganisation Act provides for the establishment of a permanent bench or benches by the President in consultation with the Governor or the Chief Justice of the High Court. Sub-section 3 deals with what I may term in common parlance as a Circuit Bench, which could be established by the Chief Justice in consultation with the Governor of the State

In order that the House may understand the circumstances that led to the introduction of this Bill by me, I must take it to a consideration of the existence of a High Court in the city of Trivandrum Prior to the integration of the princely States of Tranvancore and Cochin, a High Court was functioning in the Trivandrum city for a pretty long period of over hundred years When due to political exigencies, the Travancore and Cochin States were integrated, the High Court's seat was transferred to Ernakulam But public opinion at Trivandrum and other places was so extreme and so strong that a non-official Bill was introduced in the legislature of the erstwhile Travancore-Cochin State for the re-establishment of a Bench of the High Court at Trivan-

15.22 hrs

[PANDIT THAKUR DAS BHARGAVA in the Chair]

drum The force of public opinion behind that Bill was understood by the then Congress Ministry And since the establishment of a High Court came within the purview of the Central legislature, that is, the Parliament, an assurance was given on the floor of the State legislature that suitable measures would be adopted for the immediate establishment of a High Court Bench at Trivandrum.

Subsequently, a Bill was introduced by the then Home Minister, Dr Katju, for the establishment of a Bench of the High Court at Trivandrum, and it emerged from this House as Act 38 of 1953 The question was raised while that Bill was being introduced here whether the introduction of that Bill had been necessitated on account of political considerations. The then Home Minister assured the House that it was not out of any political consideration, but it was because of his intention that justice must be cheap *and must be made available cheap to* the common man, and, therefore, he would welcome the establishment of more than one Bench at different places in a particular State Act 38 of 1953 was passed, and it provided for the establishment of a Bench of the High Court at Trivandrum in the following words

> 'Such judges of the High Court of Travancore-Cochin not exceeding three in number as may from time to time be nominated by the Chief Justice shall sit at Trivandrum and exercise in respect of cases arising in the district of Trivandrum the jurisdiction confered by this Act on a single judge or a division bench of two judges as the Chief Justice may determine"

So, in pursuance of this Act 38 of 1953, a Bench of the High Court of the Travancore-Cochin State was established on 14th June, 1954 at Trivandrum and it continued to function till 1st November, 1956 when the States Reorganisation Act came into force

This House may now realise the force of the public opinion behind the establishment of a permanent Bench at Trivandrum, and it was in pursuance of that public opinion which was voiced in more than one place in the districts of Trivandrum and Quilon that this Bench of the High Court came to be established there.

But, subsequent to the States Reorganisation Act, by virtue of the operation of section 51, the principal seat of the High Court has been declared to be at Ernakulam by the President's order We expected that even though the principal seat was declared to be at Ernakulam, the Bench which had been established under Act 38 of 1953 would be continued by the promulgation of a subsequent order made under sub-section 2 of section 51 And we hoped that there was no justification for the abolishment of the permanent Bench which was functioning there till then, but unfortunately nothing happened The permanent Bench which was functioning at Trivandrum ceased to exist So, public opinion was again voiced by means of an agitation which started at Trivandrum from 9th February 1956 and which continued till 18th February 1957

In pursuance of the public opinion which has been voiced, I may submit to this House that all the lawyers of the district all persons, irrespective of their political affiliations all members of the community whether they belonged to the business community or to any other walk of life joined together in protest against the abolishment of the High Court at Trivandrum All the political parties whether it be Congress or Communist or PSP joined in the agitation, and the public opinion was so unanimous that it resulted in the Governor interfering in the matter and assuring us that a Bench under sub-section 3 of section 51 of the States Reorganisation Act would be established very soon In view of that assurance, the agitation was temporarily stopped and a Bench under sub-section 3 of section 51 was established at Trivandrum

But, unfortunately, the then Chief Justice took he view—I do not say, out of any political consideration—and stuck to the view that under sub-section 3 of section 51 of the States Reorganisation Act even though a Bench had been established at Trivandrum, yet it would have no institution powers In other words, the Chief Justice, for whose legal erudition, I have already stated I have no admuration, came to the conclusion that this Bench which had been established could function only as a Bench to dispose of the pending cases there and could not receive appeals, original petitions or other papers This is in direct contradiction with other cases of Benches which have been established under sub-section 3 of section 51 in other States For example, in the Bombay State there is a Bench at Nagpur under sub-section 3 of section 51 again, in Gwalior, in Jaipur, in Indore in Rajkot and in Delhi and in Lucknow, Benches under sub-section 3 of section 51 have been functioning as Benches of the High Courts concerned receiving all petitions, and appeals, and if I may put it in common parlance having institution powers But this interpretation which has been placed on sub-section 3 of section 51 rendered nugatory all the efforts of the people of the Trivandrum district for the establishment of the High Court Practically, it became no High Court, although under section 51(3) there is now theoretically a High Court which is sitting at Trivandrum

It so chanced that one citizen perhaps urged with the desire to test the validity of the Ministerial Order that has been passed by the Chief Justice there, took up a revision petition before the High Court at Trivandrum and said 'You must receive it' The Registrar of the High Court said, 'his court has no institution powers' Immediately that gentleman took it up in writ proceedings before the Ernakulam High Court asking for a writ of *mandamus* to be issued against the Registrar for compelling him to accept the registry, because, according to me the interpretation that is sought to be put under section 51(3) is erraneous Unfortunately, the High Court of Kerala in a decision, which I have got here—in original petition No 395 of 1957—said that the proper interpretation of section 51(3)

[Shri Easwara Iyer]

is that a Bench which has been established under section 51(3) of the States Reorganisation Act cannot have institution powers. Although we are bound to obey the decision of the Kerala High Court, I can submit without fear of contradiction that the proper and the correct interpretation is that section 51 deals only with the seat of the High Court and not with its jurisdiction. I would, with great respect to the Judges of the Kerala High Court, say that theirs was a very wrong and very erraneous decision. I hope the Law Minister, Shri A. K. Sen, who came over to Trivandrum, has also been in agreement with our view that it is a decision which, in the words of Sir Frederic Pollick, 'must be kept in the book shelves'

What is this decision? Is it consistent with the social justice envisaged in our Constitution? Is it consistent with the spirit of the words contained in section 51 of the S.R Act? Section 51 of that Act deals with the seat of the High Court. The first sub-section deals with the principal seat; the second sub-section deals with the establishment of permanent Benches, and the third deals, notwithstanding anything contained in sub-section (1) or sub-section (2), with the temporary seat of the High Court

If the High Court goes and sits at Trivandrum, it immediately divorces itself of all jurisdiction to receive papers. Is this the decision? The decision says that we must act according to the directions of the Chief Justice. Even a *prima facie* perusal of section 51 of the S R. Act would show that this House in enacting that section really intended it as an enabling provision for permanent Benches being established in different places in States and that such permanent Benches or Circuit Benches, as are found in U K. or in America, must have all the powers of the High Court with respect to exercise of jurisdiction under article 226 or otherwise, including all the powers to receive papers. What is the High Court going to do without papers? The Chief Justice says that we must transfer the cases to his court. It is an entire *mala fide* action in law. Its *mala fide* would be seen in that although the notification which has been issued on 18-12-1956 establishing a Circuit Bench at Trivandrum is there, after all cases have been finished, he has not transferred a single case so far. It has been rendered nugatory. The notification has not been withdrawn so far by the Government. It has to be withdrawn by virtue of section 51. The Circuit Bench as a Bench under section 51(3) is declared to be there at Trivandrum, but it cannot function as a High Court

This is the position. The hon Minister might say: why not test the decision by taking it to the Supreme Court? Of course, I expect that question will be coming from him Here is a man, who as a plaintiff in a small cause case, out of enthusiasm for it took it to the High Court and incurred unnecessary expenditure. But so far as he was concerned, he thought that public opinion demanded the incurring of that expenditure When the High Court has decided the case against him, it involves a huge expenditure for a single person to take it in appeal to the Supreme Court The worst of it is that after the decision of the Court—that case on which this writ petition was founded has ended in a decree—it has been compromised. So, the matter cannot now be taken to the Supreme Court That is one aspect.

There is also another aspect Now, there is no Bench functioning. Another case cannot be tried I can quote over so many instances in which the Central Government have moved on the decision of High Courts, and not necessarily on final decision by the Supreme Court. Take, for example, the decision of the Bombay High Court in respect of the Insurance Act There was an amendment to that Act. There was also an amendment sought in the Industrial Disputes Act on a decision of the Calcutta High Court The correctness of these decisions was not tested in the Supreme Court. So,

why is it necessary that the correctness of this decision should be tested in the Supreme Court now? This is a demand of the people. It is not a mere technical interpretation. The entire people of the district demanded it. The pressure that has been put by the people caused the re-establishment, under section 51(3), of a Bench of the High Court as a High Court to function there and not for name's sake. That pressure was understood by the Governor. That agitation also which continued subsequent to the Chief Justice's decision that it has no institution powers continued till 19-2-1957 when the elections were due. Then, it was thought by the people that their voice would be well represented through the Members of the Legislature So the agitation was suspended by the people. This was the most constitutional, most non-violent demonstration by all persons, irrespective of age, sex, creed etc, who took part in this. They thought that the most constitutional way was to voice it through the Legislature.

Shri Vasudevan Nair (Thiruvella) A real mass upsurge

Shri Easwara Iyer: Yes a real mass upsurge.

After the elections, the Chief Minister of Kerala piloted a Resolution—an official Resolution—requesting the Central Government to establish a permanent Bench of the High Court at Trivandrum. It was supported by all Members of every party, even by the Congress Party It was not only unanimously passed; it was actively supported. In fact, Congress Members and Praja-Socialists who spoke said that the Resolution as worded was not strong enough The Resolution was carried without protest It was passed in April, 1958 and sent to the Central Government. More than a year has elapsed since then. The Central Government have not made any whisper regarding that Resolution, not even a reply that they are negativing it. They cannot say 'We won't establish a Bench'. There they took it up in the Kerala State, but here they won't reply This is the attitude.

So, whether it is a permanent Bench or whether it is a Circuit Bench as a seat of the High Court declared at Trivandrum, we want that High Court to have filing jurisdiction or institution power as a regular High Court. The proper and most constitutional course to be adopted is to put in an amendment to section 51 to clarify the position. The Nagpur High Court, which is a Bench of the new Bombay High Court, receives all papers. The Circuit Court here in Delhi receives all papers. In Jaipur also, it was till recently receiving all papers. What happened in Jaipur? In spite of the protest that has been made against abolition, it has been abolished.

I would respectfully submit to this House that where popular will has expressed itself and when the States Reorganisation (section 51) has contemplated the establishment of Circuit Benches, there is no justification for the abolition of such Circuit Benches Rightly in Kerala, it was not abolished The Government took it up there because there was a unanimous Resolution passed by the legislature

So, the amendment proposed by me says in *Explanation*:

> "Notwithstanding anything contained in this section or any other law for the time being in force or any notification, rules or orders issued by the Chief Justice of any of the High Courts in any State, Judges and Division Courts of the High Court for a State sitting at places other than the principal seat of the High Court whether under sub-section (2) or sub-section (3) shall have power and jurisdiction to receive appeals, original petitions and other proceedings presented or filed at the place of their sitting under sub-section (2) or sub-section (3)."

This will cure the defect, if any, to the satisfaction of the Judges of the Kerala High Court who, with great respect to them, have not correctly

[Shri Easwara Iyer]

understood the principle behind section 51 of the S. R. Act It is the moral duty of the party in power to accept this Bill. At least, political morality demands it They have been consistently supporting this position in the Kerala legislature, saying that such an amendment may be passed to enable the establishment of a Circuit Bench with full powers there And, if they oppose us, people will react That is all I have to submit

Mr. Chairman. Motion moved

"That the Bill further to amend the States Reorganisation Act, 1956 be taken into consideration"

Shri D. C. Sharma (Gurdaspur) Mr Chairman I whole-heartedly support the Bill brought forward by my hon. friend Shri Easwara Iyer. I agree with him that the *Explanation* which he wants to add to section 51 of the States Reorganisation Act is not an addition It is not something which is a plus, it is not something which is going to add to what already exists, it is something which is clarificatory, something which is explanatory And, I believe, that section 51 of the States Reorganisation Act, after this *Explanation*, will become more clear and more explicit than it is now Of course, I say this in all humility because, after all, the States Reorganisation Act has been drafted with great care But things which human beings do are not always perfect Therefore, this *Explanation* or this amendment will be very helpful in making the meaning of this section as clear as crystal.

I am not a lawyer But I have gone through section 51 of the Act a number of times. I have tried to understand its meaning I am a humble student of English and I understand English slightly So, I have asked myself, what does section 51 means? What do clauses (1), (2) and (3) of section 51 mean? Clause (1) says:

"The principal seat of the High Court for a new State shall be at such place as the President may, by notified order, appoint."

This refers to the principal seat of the High Court And then, clause (2) of this section says:

"The President may, after consultation with the Governor of a new State and the Chief Justice of the High Court for that State, by notified order, provide for the establishment of a permanent bench or benches of that High Court at one or more places within the State other than the principal seat of the High Court and for any matters connected therewith"

I think this sub-section adds to what has been said Then sub-section (3) reads

"Notwithstanding anything contained in sub-section (1) of subsection (2), the judges and division courts of the High Court for a new State may also sit at such other place or places in that State as the Chief Justice may, with the approval of the Governor, appoint"

Therefore, it is clear It says that the judges of the High Court can sit at more than one place, that there can be more than one seat of the High Court

Somehow there has been some kind of—what word shall I use, I do not want to use a harsh word—there has been some kind of misinterpretation of this sub-section Why? I find there has been no uniformity of practice If the *Explanation* sought to be included by Shri Easwara Iyer is added, I think, all this ambiguity will be resolved. When that ambiguity goes away there will be uniformity of practice I think what is good for the Punjab is good for Rajasthan; and what is good for Rajasthan should be good for Bihar, and what is good for

Bihar should be good for Bengal. There should be a uniform practice. What is good for Bombay should be good for Kerala. I think, in a matter of this kind there should be no discrimination between one State and another.

When we give the people the highest kind of justice through these High Courts we should see that we practise no kind of discrimination so far as the seats of the High Courts are concerned Common sense demands that there should be uniformity of practice As the hon Mover of the Bill has said there are some States which have already followed this practice Therefore, I do not see any reason why this practice should not be followed in the interests of uniformity

At the same time this practice should be followed also in the interests of what I may call meeting the wishes of the public The High Court is meant for the public The High Court is an expression of the judicial conscience of the public The High Court is a symbol of the authority of law for the public I would say that so far as these things are concerned we should try to avoid agitations in our country

In some States there has been agitation because the seat of the High Court was removed from one place to another I know there has been a long drawn-out agitation in some States—I do not want to mention the names of those States I do not see any reason why, in the first place, there should be an agitation when the High Court is taken from one place to another And if the public which is going to indulge in litigation is insistent, I do not see any reason why the Central Government or the State Government or the Governor should stand in the way of the public and not concede this demand

Shri Narayanankutty Menon (Mukandapuram): Only the Central Government is standing in the way.

Shri D. C Sharma: I do not understand it. I think, in these matters, we should try to meet the popular will Again, I would say that for the last 12 years or so we have been hearing that justice should be made cheap and speedy Of course this cry was also there when we were not free But, since Independence this cry has gained in volume and in intensity and also in what I may call insistence. This cry is heard everywhere from the lowest court to the highest court The expenses of the public which indulges in litigation go up in proportion to the importance of the court. You may be spending a small amount when you are fighting your case in a district court You may have to spend more money when you are fighting your case in a Sessions court. And, when you go to the High Court you will have to spend far more money than in the district court. Of course when you go to the Supreme Court you will have to spend much more than that too Therefore, the expenses of litigation go on increasing as you go up, from the lowest rung of the judicial ladder to the highest rung

India is a country where the *per capita* income is not very high. India is also a country where we want people to have justice as quickly as possible and justice as cheaply as possible We are talking in terms of free legal aid We want all these things because we want to be free from worry One of the ways of lessening the worries of the public which has to go to the law courts is this, that the High Court should have more benches than one I know that it will be said that the High Court has a sanctity Of course, it has the highest kind of sanctity But to associate that sanctity with a particular place or city or locale is something that I do not understand The High Court is a temple of justice, there is no doubt about it but we think of a High Court more in terms of a religious sanctity than in terms of judicial sanctity. The majesty of the High Court will not suffer if this kind

[Shri D. C. Sharma]

of concession is given. I believe that the High Court's sanctity does not depend upon the place; it is contingent upon its personnel, the High Court Judges, and the function that it discharges. It does not matter where a High Court sits There is a Persian proverb which says that that place is the seat of the chair where the Chairman sits. Wherever you have Judges, that place will be the High Court; it is not that the High Court should be restricted to a particular place.

Take Chandigarh which is the seat of the Punjab High Court and there is something also at Delhi Previously, it used to be at Simla. I know what a financial burden it used to be upon those persons who had to go to Simla. They had to go to Simla in all kinds of weather, summer or winter It was a big hardship upon those persons Now, we have the High Court at Chandigarh The High Court should be within the easy reach of the public If this thing is taken into account, I believe the geographical limitations which a particular place places upon the High Court will disappear I would therefore very respectfully submit, that in view of what is happening in this country and also in other countries, this thing should be accepted by the Home Minister

I am very sorry that my hon friend Shri Iyer based all his arguments upon his own State I do not have anything against that State I merely say that all his arguments were based upon Kerala and Kerala only

Shri Easwara Iyer: I came to Jaipur also

Shri D C. Sharma. I have nothing against Kerala I like Kerala and I love Kerala (*Interruptions*) But I was sorry that an M P of his distinction and a lawyer of his kind did not widen the scope of this discussion. I am sorry to say that he narrowed the scope of the discussion Whatever he did, I believe that this thing will have greater usefulness than the usefulness to which my hon. friend referred. If this is done, the public and the lawyers all over our country will feel happy and they will feel happy not only with my hon. friend Shri Iyer who has piloted the Bill but more happy with the hon. Home Minister who is going to support and accept this Bill.

Shri Kasliwal (Kotah): Mr Chairman, Sir, I believe that it is a very amiable circumstance that a discussion of such a matter which has arisen over the Bill brought forward by my hon friend Shri Iyer, should have come, so soon after the discussion over the report of the Law Commission which we discussed yesterday We also discussed the question of High Court Benches there It is a fortunate circumstance for the hard-hit litigants of those big States where they have to go to a forum for filing writs or for vindicating their Fundamental Rights that this discussion should have come up today so soon after the discussion of the report of the Law Commission I have risen to support the amendment put forward by Shri Iyer When the States Reorganisation Bill was under discussion in this House, I hope you would also recall, it was never thought that under section 51 of the Act—which was clause 53 then—under section 51(iii) of the Act, the powers of the Governor to appoint a bench would be restricted to the extent that the High Court bench which was appointed under that section would have no powers of institution It is possible that the Governor has appointed the bench for a specified period I will go further and say that if the President has appointed a bench for a specific purpose or for a specific period, you can say that that particular bench has no powers of institution But if a bench has been appointed with the consent of the Chief Justice by the Governor, how can you say—unless it is for a specific period—that that

bench has no powers of institution? With all respect to the learned Judges of Kerala, I do not know how they have interpreted section 51(iii). I had been from Ernakulam to Trivandrum; it is almost 150 miles and it takes one whole day in a bus. There is not even a rail connection.

Shri Easwara Iyer: Now, there is a rail connection.

An Hon. Member: It takes more time now.

Shri Kasliwal: What is the good and how can a person go to vindicate his Fundamental Rights if he is not provided with the forum? I say this; I said it yesterday also my State is a State which is sprawling almost all over the western India. How can a person go to vindicate his right 400 or 500 miles if the bench in Jaipur had been abolished? If the Jaipur bench is restored and if this particular matter comes up, then they will say: although we have restored the bench in Jaipur, because of the decision of the Kerala High Court, the Jaipur bench has no power of institution. Then the whole purpose of setting up or restoring the bench is lost. What is the good if it becomes a *functus officio*? That is what has happened in the case of Kerala.

16 hrs.

I strongly support the amendment. In the words of my hon. friend Shri D. C. Sharma, if there was an ambiguity in 51(iii), it should be cleared up. I believe that by this explanation, ambiguity will be cleared and I see no reason why the Home Minister should not accept this. After all, what was the purpose of section 51 which dealt with the question of the High Courts and also permanent benches? Section 51(i) says that the seat of the High Court will be such and such. Section 51(ii) says that permanent benches may be appointed in consultation with certain persons by the President. It means that the President who has the power to appoint Benches has also the power to dispense with the Benches and nobody else can do it. Then sub-section (iii) also comes in. My hon. friend, Shri Easwara Iyer, has given the instances of Nagpur and some other places where these Benches have been appointed by the Governor in consultation with the Chief Justice. Therefore, there is no reason why such Benches should not have the power of receiving applications, of receiving suits and of institution of other cases.

With these remarks, Sir, I support the motion moved by Shri Easwara Iyer.

Shri Achar (Mangalore): Mr. Chairman, Sir, I am also very glad to support this Bill, which my hon. friend, Shri Easwara Iyer, has moved. Though not for the weighty reasons given by my hon. friend, I would be supporting it simply from the point of view of the clients. We have to consider the interest of the litigant public more than anything else. I am afraid, Sir, the discussion has gone wide away from the point really involved in this small Bill, which attempts only a change of procedure. There is no substantial right at all involved in this matter. I was wondering why my hon. friend, Shri Easwara Iyer, was travelling from China to Peru and introducing all sorts of political considerations, *satyagraha* and everything in a small Bill like this which involves only a small matter of procedure.

What is the simple point involved in this Bill? I am afraid my hon. friends who spoke before me went wide away from the point involved. What is the Bill? The Bill only says this much—and it does not apply only to Kerala but it will apply to all over India—that if there is a Division Bench of the High Court sitting in a particular place that Bench should be allowed not only to hear appeals but also to receive those appeals, receive applications or any other proceedings which the High Court is entitled to receive. This is all the point. Whether it be in Kerala State, Rajasthan, Bombay or wherever it be, all that

[Shri Achar]

this amendment provides for is, wherever there are these Benches of High Courts sitting those Benches must be allowed also to receive appeals, receive proceedings or petitions.

I would submit, from the point of view of clients this is a very necessary convenience. Those of you who have some experience of practice know that if a client wants to file an appeal he has to engage a lawyer both for filing the appeal and then for arguing it Now, as it is, what will happen is this Take the case of Kerala If a client wants to file an appeal, he has to go to Ernakulam, engage a lawyer, pay him the fees and then get the appeal filed When it comes up for hearing, it will go to Trivandrum. If the case is within that jurisdiction naturally it will be transferred to Trivandrum I hope that is the practice. Then what will happen is, either the client must get the lawyer from Ernakulam to Trivandrum or engage a new lawyer at Trivandrum. Whichever be the case, it will be a costly affair. Therefore, this is the one convenience more than anything else that we have to consider.

There is no other substantial law or anything provided for in this. I do not know why Shri Kasliwal or Shri Sharma or, in fact, the Mover himself introduced all sorts of other political considerations into this Bill I support this Bill simply on the ground that it is a mere procedural matter. It is a convenience for the lawyers also. If one lawyer has studied a case once it need not be studied by someone else. I would submit that we need not go into the question as to whether the interpretation of the Kerala High Court is right or wrong It may be right or wrong As lawyers and also as ordinary people, we must accept the interpretation of the Chief Justice of the high court. Let us accept that interpretation.

There is this small defect or difficulty, namely, that nobody can file those appeals before the High Court. This is made clear by this amendment. Thereafter, this advantage through this amendment will accrue. So, I would submit that there is no substantial right here. It is a convenience for the public, for the clientele and for the lawyers as well. From these points of view, I would request the Home Minister to consider this aspect of the question and accept the amendment.

Probably, the objection is raised on the grounds of administrative convenience. So far as these benches are concerned, whenever they go and sit in other places, as circuit benches, they have no permanent staff or establishment in those places where they can sit and hear the appeal That is a difficulty. But even there, it is not a real difficulty. After all, there would be a permanent district court there The district courts may be authorised to receive those appeals

Another question may arise. Supposing an appeal is filed. The question of interim orders comes up. As soon as an appeal is filed, often it happens that a client wants stay orders. That difficulty may be there. It is rather inconvenient, no doubt, but then, unless it is an urgent matter, it need not be taken up immediately. If any urgent matters come up, probably, rules may be framed so that they may be taken up and moved in the high court. Otherwise, they can also be kept pending till such time when the bench comes and sits there. There seems to be no inconvenience whatsoever when we look at the question from any point of view ..

Let us not bring in political considerations This is a convenience which is required by the clients, by the lawyers and by the public. I shall gladly support this Bill. I have rare occasions when I could agree with

Shri Easwara Iyer and other friends from Kerala. But at least on this occasion, I am glad that I had this opportunity to agree with them. I request the Home Minister to consider this aspect of the question and, if possible, accept the amendment.

Shri Narayanankutty Menon: Mr. Chairman, Shri Achar *inter alia* raised a very pertinent point. He wanted to know why Shri Easwara Iyer was speaking about politics when the matter was a very simple one, and could be disposed of within a minute or two. I would like to state and tell Shri Achar that the matter is not such a simple one If he looks into the protected course the very same matter has travelled ever since the States Reorganisation Act came into being and much earlier before the integration of the States of Travancore and Cochin was brought about, he will realise the difficulty

Shri Achar referred to the difficulties of lawyers who are practising at the permanent seat of the high court If this is the consideration I should be the first man to oppose the Bill, because I am a person who practises at the headquarters of the high court and getting some cases from Trivandrum. It will be against my own personal interest if a bench or other convenience is given at Trivandrum But the whole question from the very beginning has been that the high court was at Trivandrum and when the high court was shifted to Ernakulam after the integration, certain vague promises were given by the then ruling party and the Government that at least a convenience would be extended for those litigants in the Trivandrum district and also the adjoining districts so that a bench would be retained at Trivandrum They waited till the States Reorganisation Act came into being When that Act came into being, it was said that section 51(3) was wide enough and that the Chief Justice could very well order, by making administrative orders, the filing of cases and getting them heard by the circuit bench which was going to Trivandrum at that time. That was to be done as a matter of convenience for the litigants at Trivandrum. But unfortunately, the matter had to be taken in a writ petition before the High Court and it is quite ununderstandable why the High Court took a different view. But we were not surprised by the view taken, because as you will very well understand, a very anomalous position arises when the administrative orders passed by a High Court are questioned before the same High Court There is very real difficulty when the Chief Justice exercising his administrative jurisdiction passes an order and that order is questioned before the same court. The junior judges sit in judgment over that order and it will be very embarrassing for them to consider an order passed by the Chief Justice, whether technically it is an administrative or judicial order.

Unfortunately, the two junior judges, who heard this, petition okayed the Chief Justice's order As pointed out by Shri Easwara Iyer, while addressing the Bar Association in Trivandrum, the Law Minister almost expressed the opinion that with all respect to the High Court, he could not agree with the judgment given about the interpretation of section 51(3) Many eminent lawyers both in the State and elsewhere expressed their opinion that the High Court had gone a bit wrong in giving its interpretation of section 51(3).

Twice or thrice this matter was raised before this House in the form of questions and last time the Home Minister answered that the matter was being taken to the Supreme Court. It is a wrong answer, because nobody took the matter to the Supreme Court at all Nobody desired to take it, because, as my hon. friend Shri Easwara Iyer pointed out, there was one case in the Trivandrum bench; the High Court passed this order and by the time a copy was applied for, the case was compromised by the client, because the client was interested in his Rs. 100 or Rs. 150.

[Shri Narayanankutty Menon]

He was well satisfied by his laborious litigation before the Ernakulam bench and he was least interested in getting the matter settled by spending Rs. 5,000 He ran away from the advocate, because he was afraid that tthe matter settled by spending of public interest to the Supreme Court and there was a compromise

Now a very peculiar position has come. Even though by the Governor's Proclamation, a division bench is to go to Trivandrum, by the administrative action of the Chief Justice, the entire notification has become nugatory, because a few months back, when the last case was being heard, the Chief Justice refused to transfer any case So, that notification has become nugatory Under those circumstances, I request the hon. Home Minister to tell this House, quite honestly, without any political prejudice, what is the course of action left. When the interpretation of a particular section of a statute is quite contrary to the intention of this Parliament, what is the remedy left? Is it open to the Home Minister to tell the Public to take the matter to the Supreme Court and incur heavy costs or is it left to Government itself to come with a clarificatory amendment, just as they have done in many other matters by passing ordinances? If the Home Minister is going to say that this matter should be clarified by the Supreme Court, it is impossible, because there is no case left to be heard by the Trivandrum bench; there is nobody left in Trivandrum and the division bench is not going there That is an impossible proposition he is going to put before the House

On a matter of principle also, he cannot say that, because let him declare what was the intention of this House when it enacted this statute. Was it the intention that the Chief Justice of a particular High Court should have jurisdiction to pass an order like this when power is given to the Governor to notify that a division bench can be set up? While the Governor of the State is satisfied or a division bench being set up and the Governor has notified it, how can the Chief Justice come and stand in the way? Let the Home Minister say whether it is not against the intention of this House. If he can agree that this was not the intention of the Government and of this House, while enacting section 51(3), what is the difficulty for him to accept this amendment? If he is going to stand on either prejudices or prestige, we are prepared to withdraw this Bill let him bring a similar Bill and got it passed. That also could be done. Therefore, an answer is called for, so far as that particular matter also is concerned

I will finish by just pointing out to my hon friend, Shri Achar, who said that politics is imported into this matter, that this has been the subject matter of intensive political agitation in the State of Kerala for the last three years

Shri Achar: That may be so, but ..

Shri Narayanankutty Menon: And deliberate attempts have been made by many political parties to make political capital out of this, by dividing the people of Kerala into Travancore people, Cochin people and Malabar people And it is only when the new Assembly came into being that the Government brought a resolution and tested the *bona fides* of each political party, and every political party supported the resolution and the resolution was passed—the ex-Congress Chief Minister, Shri T K Narayana Pillai was the supreme commander of the agitation— in order to get a division bench at Trivandrum, and the agitation was withdrawn only the assurance given at that time that immediately the new legislature comes into being something would be done in the matter. I remember, I saw the discussion in this House the apathy of the Central Government for the last one and a half years and the utter silence of the Congressmen of the State of Kerala over this utter silence of the Central Government.

I am reminded of the remark made by the Vice-President in Calcutta that the main difficulty in India today is not political differences, but it is almost a crisis in the character of individuals and political parties. Regarding this particular question I would go a step beyond and say that this is not a question of crisis of character but this is a question of collapse of character, because the Congress party in the Kerala State, in the Trivandrum district, who were in the forefront of the agitation just a year before.....

Shri V. Eacharan: Only the Trivandrum district people.

Shri Narayanankutty Menon: I did not know that the Kerala Congress was divided by a partition deed into Travancore Congress, Cochin Congress and Malabar Congress. I thought the Trivandrum District Committee of the Congress Committee and the Kerala Provincial Congress Committee were of the same view and I thought that Shri Parur T K. Narayana Pillai is still a Congressman. The District Congress Committee of Trivandrum has passed a resolution, and the Leader of the Opposition in the Kerala Assembly belonging to the Congress party extended his wholehearted support to the resolution. He even criticised the resolution on the ground that the resolution drafted by the Chief Minister was not strong enough to condemn the attitude taken by the authorities concerned. I thought Shri Chacko was representing the Congress and I did not think that Shri Chacko was representing a few members of the Trivandrum district at that time

Now an accusation was brought against the Communist Government of Kerala, immediately the resolution was passed—I say, within 15 days of the passing of the resolution—by the Congress saying that this particular Communist Ministry is hand in glove with the Central Government, they are not doing anything, that the Chief Minister goes to Delhi only to have a talk with the Home Minister there, in one line, they are not doing anything, that accusation was brought against the Kerala Government.

Sir, I am completely dissatisfied with it and I am sorrowful today, because I find that not even half a dozen members from Kerala, who have supported the agitation, are not present here when this most important topic is being discussed. Shri Pattom Thanu Pillai, the undisputed leader of the Praja Socialist Party, went to jail for this agitation, and that Praja Socialist Party has also withdrawn from this. I am pointing out this today because I am reminded of the say that what is prevalent today is the collapse of the character.

I request the hon Members who are coming from Kerala whether they belong to this party or that party—unfortunately, Dr K B. Menon, the only Praja Socialist member from Kerala, is absent today—to support this Bill; not only to support the Bill, but if they have got any conscience left, if they have got any *bona fides* in them and if they want to serve the people of Kerala, let them stand by their demand for a bench at Trivandrum Let them defy the party whip of the party also, because they have come here I know what is standing between the Home Minister and Shri Easwara Iyer today in the matter of support for the resolution is the party whip of the Congress party, because undisputably every Congressman has given his support to this resolution If they have got any *bona fides*, if they want to further the promise they have given to the people of Kerala that they will do their best to get a bench at Trivandrum, let them vote for this, because we are pressing for a division on this; let them not go away without voting. I also want to tell the Home Minister that this is only a clarificatory amendment There is no difficulty in that, not even an administrative difficulty, as envisaged by my hon. friend, Shri Achar, because when the Chief Justice decided not to send a division bench there, and not to transfer the cases there, there was a

[Shri Narayanankutty Menon]

Deputy Registrar and staff sitting at Trivandrum. Only when the Chief Justice decided that hereafter no case should be sent to the Division Bench and the Division Bench should not go to Trivandrum, the entire staff was withdrawn. So, I am telling that the old arrangement of a Deputy Registrar and only one clerk be restored at Trivandrum. The building is already there, lying vacant. The library is there. Everything is there. I cannot envisage, nor can any hon. Member in this hon. House envisage, any difficulty as far as the establishment of the bench is concerned. If at all there is any *bona fide* in the stand of the Congress Party, let the hon. Home Minister accept this amendment and let the difficulties that are suffered by the people of Trivandrum be removed.

16.21 hrs.

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

The only interested party in the Kerala State, which I could know from the public utterances, was a section of the lawyers of Ernakulam. Of course, I fully understand the grievances of some of the lawyers of Ernakulam. Their grievance is that if the Division Bench is given at Trivandrum, some of the cases will be lost. It might be that a few lawyers may lose a few cases. But what about the interests of the people of the entire district? Now, justice is being completely denied to them practically.

Shri Jinachandran (Tellichery): What about the benches in the northern parts of Kerala?

Shri Narayanankutty Menon: I could not hear him.

Mr. Deputy-Speaker: Then it is not intended for him.

Shri Jinachandran: What about the benches in the northern parts of Kerala?

Shri Narayanankutty Menon: He did not stand in the way of a bench at Calicut. If they want it they dare not ask because of political reasons. Therefore what I am pointing out is that a small number of lawyers is there who seriously oppose it. They may be very big lawyers but their position is based on their own considerations.

Mr. Deputy-Speaker: They are troublesome everywhere.

Shri Narayanankutty Menon: I am submitting that feeble objections have been raised by a few lawyers which have been completely ignored. The resolution has been unanimously passed by the Assembly. This demand supported by the entire section of the population not only of the Trivandrum District but of the Quilon District also be accepted in the absence of any reasonable objection on the part of the hon. Home Minister to accept this clarificatory amendment. I will be glad that the hon. Home Minister, at least at this very late stage, will be fulfilling a promise and an undertaking given by the Congress Party in the State long before, thrown overboard by his own brethren in the State because of some other reasons now.

Pandit M. B. Bhargava (Ajmer): Sir, I congratulate the hon. Mover of this Bill for affording me an opportunity to give expression to my views on a very important question. The Bill raises the fundamental question of the power and jurisdiction of the benches of the High Courts. On a plain reading of section 51, clauses 1, 2 and 3, one fails to understand as to why the Kerala High Court should have come to the decision to which it has come. So far as the setting up of a bench of a permanent character, as envisaged by section 51(2) is concerned or so far as setting up of a bench of a temporary character as contemplated by section 51(3) is concerned, that deals only with the question of the temporary or the permanent character of the benches. But so far as the jurisdiction question is concerned, the bench, whether it be permanent or temporary, must have the same jurisdiction

as the main High Court itself. It is un-understandable that on the language of the section, with due deference to the views of the Travancore High Court, how it could come to the conclusion that the jurisdiction of a bench temporarily formed under section 51 (3), which is to be set up by the Chief Justice in consultation with the Governor, is restricted. That does not deal with any restriction upon the jurisdiction of such a bench.

If the matter is considered further and if that interpretation is to prevail that interpretation must only govern the temporary benches set up under section 51(3). But that can equally apply to the permanent benches to be set up under section 51(2). That means that the institution of appeals and other proceedings can take place only at the main seat of the High Court and the permanent or the temporary benches will deal with only such cases which are transferred by the seat of the High Court. If this is the interpretation the very utility of this provision will go. I respectfully submit that the question that is raised by this Bill is of a fundamental and substantial character. If we go into the genesis of the view that has been expressed by the Travancore High Court, it appears that the confusion has been created by the Law Commission's report that came up for discussion before the House yesterday. The Law Commission has, in its interim report submitted on the 26th of August, come to the conclusion, to a very firm and unanimous conclusion that there should be in every State a unified seat of the High Court. It expressed unequivocally and in unambiguous language against the establishment of or continuance of Benches in any State. This is a question of fundamental character.

So far as the Government of India is concerned, so far as the responsibility of the President under section 51 is concerned, the Government of India has chosen to take a lukewarm attitude. It has not so far expressed itself whether it is going to accept that recommendation or it is going to reject it. It is on account of this wavering and vacillating policy that this confusion has arisen. The interpretation that has been given by the Travancore High Court restricting the jurisdiction of a temporary Bench under section 51(3), is, I respectfully submit, a result of the vacillating policy of the Government of India. This matter should not be allowed to go on in this manner. It has already affected the State of Rajasthan inasmuch as the Rao Committee report made this recommendation of the Law Commission as an excuse for its strong recommendation in abolishing the Bench from Jaipur. The question has to be considered. Why is the Government, which stands for equal treatment for all, which is guaranteed to us by the fundamental rights enshrined in Part III of the Constitution, following this discriminating policy from State to State? If the policy of Benches is to be accepted, all the States must have the same facility.

So far as public opinion is concerned, it has asserted itself and it has been, wherever expressed, expressed in favour of Benches. The reason is quite clear. It is an accepted policy or rather, it is primary duty of every civilised State to make dispensation of justice as cheap and as expeditious as possible. The policy of having different Benches with jurisdiction over different regions of the same State is but a necessary result of this policy of cheap dispensation of justice. I would pray to the hon. Home Minister that, in view of the fact that this vacillating policy has been responsible for creating injustice to the people of Rajasthan, it will now come to a firm conclusion and announce whether it accepts the recommendation of the Law Commission for a unified seat. If that is to be done, it must have the courage and determination to implement that recommendation in respect of all the States and not victimise Rajasthan alone.

Again, if a unified seat of High Court is to be located, it must be

[Pandit M. B. Bhargava]

located at the central place: in Rajasthan in a place like Ajmer or some central place, not in a nook or corner where people will have to travel 300 or 400 miles for institution and for hearing It is a well known fact that litigants usually like their cases to be conducted in the appellate court by the lawyers whom they had engaged in the lower court, and that means a great expenditure to the litigants

I respectfully submit that if Government accept the policy of unified seat of a High Court, then in my State, the High Court must be shifted and brought to a central place, if they do not, then the injustice done to my State of Rajasthan should be undone by re-establishing a Bench at a central place or at Jaipur or at any other place

With these words, I wholeheartedly support the Bill

Shri Jinachandran: I oppose the Bill brought forward by Shri Easwara Iyer

When the Travancore and Cochin States were integrated, the Centre was in agreement with the proposal that the headquarters of the State would be at Trivandrum, while the High Court would be established at Ernakulam That was how actually the High Court was established at Ernakulam.

Now, according to Shri Easwara Iyer, a Bench must be established at Trivandrum If that is the case, then, I think,

Shri Narayanankutty Menon: Nobody asked for a Bench here

Shri Jinachandran: every district will be demanding a Bench at every district headquarters That means that the sanctity of the High Court would be lost. And tomorrow, other States may also demand that the Supreme Court should also be transferred to the different States in order that the expenses would be reduced very much. In my humble opinion, this should not be allowed, and this is not called for Therefore, I oppose the Bill

Shri V. Eacharan (Palghat) I had no intention to take part in the discussion But Shri Narayanankutty Menon took this opportunity to accuse the political parties, especially the Congress The agitation for a High Court Bench at Trivandrum, I may point out, was not a political issue It was only confined to the district of Trivandrum They were simply drawing the other parties into the politics I may point out that all the Bar Associations of Kerala, except that of Trivandrum, have condemned this move, and they have also passed resolutions saying that this should not be allowed and condemning the way the agitation was being carried on

As my hon friend Shri Jinachandran has pointed out, when the Travancore and Cochin States were integrated, a convention was arrived at that the High Court would be at Ernakulam while the headquarters of the secretariat would be at Trivandrum At the time of the establishment of a Bench at Trivandrum, the Kanyakumari district was in the Kerala State, and the people of the Kanyakumari district and other people who were at distant places had to face a lot of difficulties in going and filing their cases and applications at Ernakulam, that was why the Bench at Trivandrum was allowed

Shri Vasudevan Nair: Is the hon. Member aware that the Executive of the Kerala Congress passed a resolution supporting this?

Shri V. Eacharan: That was the position at that time

Shri Narayanankutty Menon: Is the hon Member aware of that factor?

Shri V. Kacharan: The hon. Member has had his chance already; now, let me have my say.

Now, the Kanyakumari district has transferred to the Madras State. Now, the Kerala State is small, and it consists of only nine districts. The distance is not also very great, and the High Court at Ernakulam is centrally situated from Trivandrum on one side and Kasargod and Cannanore on the other. It is also a very convenient place.

I would submit once again that it was not a political issue The political parties were not interested in taking part in this movement It is only the Bar Association and the advocates who were interested in the establishment of a Bench who supported this movement The others who could realise the difficulties and who were aware of the expenses involved in going to a High Court and filing cases have passed a resolution opposing the move and condemning it like anything. Shri Easwara Iyer had stated that all the parts of Kerala had supported this move But I would like to point out, that all the parts of Kerala except Trivandrum, have condemned this agitation like anything; it may be that all the political parties of that district might have joined, because that is a local demand and nobody could be left out That was the position at that time This was not a political movement there

We have no objection to allowing any number of High Court Benches in a State. At the same time, it must be remembered that Kerala is a small State. When this sort of movement was there, the people in other places such as Cannanore, Kozhikode and Palghat etc were also demanding similar Benches; this is not a desirable thing. Of course, we have no objection to have easy, cheap and quick dispensation of justice; in the same way, supposing the people of Kerala or any other State demand a Supreme Court Bench at Madras or Mysore or in Kerala, what would be the reaction. But accusing the political parties with a certain motive is a painful thing. It was a very painful thing for me to find that Shri Easwara Iyer and Shri Narayanankutty Menon have taken this opportunity to accuse the political parties.

I have no objection to it if the Government accept this Bill, but I object to any Member taking this opportunity to accuse others This is all I want to say.

Shrimati Parvathi Krishnan (Coimbatore) So he has supported it

An Hon. Member: Yes

The Minister of State in the Ministry of Home Affairs (Shri Datar): I heard with great interest the passionate and eloquent appeal of the hon sponsor of this Bill as also of a number of other hon Members. May I point out at the outset that there are certain difficulties in accepting this Bill because its scope has wider significance than what the hon Member has in view?

We had the Report of the Law Commission They gave first an Interim Report and thereafter their Final Report, on this question and also on other questions That is already before the House. Only yesterday we had a debate on the Law Commission's Report regarding the administration of justice There were also suggestions for amendment pointing out the need for having more Benches That debate has been postponed; it is not yet completed Therefore, I would not like to say anything so far as that discussion is concerned. But there are certain circumstances which we should take into account. The first that I would point out in this connection is that we must understand that the States Reorganisation Act which was passed by Parliament has made a clear distinction between a permanent Bench and a temporary

[Shri Datar]

Bench. Now, two aspects of this question have been ignored by hon. Members who have supported this Bill. One is that we have to consider and implement, to the extent possible, the recommendations of the Law Commission, one of which is to the effect that there should be only one seat of a High Court without either a permanent Bench or even a temporary Bench. It is not possible to set aside or ignore the views of the Law Commission.

Shri Easwara Iyer: The Law Commission in their present Report have not dealt with the seat of a High Court. They have referred to it in their Interim Report which was placed on the Table of the House prior to the passing of the States Reorganisation Bill. So it must be deemed to have been rejected by this House.

Shri Datar: I am not going to accept that position at all. So far as the views of the Law Commission are concerned, they had stated them at an earlier stage in their Interim Report. May I add that they have confirmed the same in their Final Report? What they say has to be duly taken into account. The Law Commission have definitely set their face against having any Benches at all.

Shri Easwara Iyer: Still we passed the Bill.

Shri Datar: That view has to be considered. Though, as a matter of fact, there are certain Benches, I shall try to say very briefly today exhaustively when the debate on the Law Commission's debate is resumed, that wherever there are such Benches, they are as a matter of historical importance, and the sooner those Benches are abolished the better. That is the opinion of the Law Commission, a body of legal experts consisting of High Court Judges and others who have had a very long experience in this respect. They have considered the whole matter. Unfortunately, this aspect of the question has escaped the attention of hon. Members who have supported this Bill. What is essential is that the High Court has always to maintain its highest place and the standard should not be lowered at any stage. This is what they have said.

> "The efficiency of the administration of justice should, in our view, be the paramount consideration governing this matter. The structure and constitution of the courts should not be permitted to be influenced by political considerations. That this has happened in the past in certain cases can be no valid ground for the extension of that policy. The Commission is of the view that we should firmly set our face against steps which would lead to the impairment of the High Court with the inevitable consequence of the lowering of the standards of administration of justice."

Therefore, we have the experts' view that the High Court should be only at its permanent seat and should have no Benches at all. This is a point which has to be fully considered and accepted, in my opinion, to the fullest extent because this is a very important matter.

Shri Narayanankutty Menon: The Law Minister speaking on the Law Commission report said that some of the recommendations made by the Law Commission are not acceptable to the Government. So, where is the sanctity of the Report? You are accepting whatever is convenient to you.

Shri Datar: No question of convenience or anything. Let us not bring in convenience or political considerations. We do not deal with this matter in this way. So far as this question is concerned, let us consider it solely on merits.

Now, we have before us the authoritative opinion of the Law Commission. That is a matter which has to

be fully appreciated by the hon. House. They desire that there should be only one seat, the principal seat of the High Court; otherwise, the standards are likely to be lowered That is their view.

As you are aware we had integrations. First we had the integration of the former Indian States Then we had the integration under the Union Therefore, as a matter of historic record, there were High Courts in some States and these High Courts did continue for some time

Take the case of the former Cochin State and the former Travancore State There also we had separate High Courts for each of these States When the question of the integration of these two important Southern States arose, then the parties agreed There was an agreement It was a term of the agreement of integration that at Trivandrum there should be the seat of the executive government and also the Legislature

Shri Narayanankutty Menon: Who agreed to this?

Shri Datar: When the integration took place I am quoting from the agreement It was a term of the agreement

Shri Narayanankutty Menon: You mean the covenant

Shri Datar: Yes: it was a term of the agreement If the hon Member wants, I shall read it

> "Before the integration of the States of Travancore and Cochin there were two separate High Courts for the two States The seat of the High Court of Travancore was at Trivandrum and that of the High Court of Cochin at Ernakulam The Travancore and Cochin Integration Committee which was appointed to go into the problems of integration of the two States, recommended that in order to satisfy the sentiments and wishes of the people of Cochin, who were losing both the seat of their executive Government and of the Legislature the seat of the High Court for the new State might be located at Ernakulam"

The executive Government as also the Legislative machinery were kept at Trivandrum This is a point which has to be understood very clearly That was agreed to between the two parties when the integration took place

Then, naturally, when this integration took place, we got the Travancore-Cochin High Court established at Ernakulam That continued for some time Then, there was a desire that a temporary bench should be established at Trivandrum The matter came up before Parliament and Parliament passed an Act known as an Act further to amend the Travancore-Cochin High Court Act, Act No 38 of 1953 Therein it has been stated that such Judges of the High Court not exceeding three in number as may from time to time be nominated by the Chief Justice shall sit at Trivandrum It is a great coincidence that the same expression occurs also in the States Reorganisation Act

Then, we come to the States Reorganisation Act Therein, they have made a clear distinction between a permanent bench and a temporary one Permanent benches had been provided for under section 51(2) It is for the President to establish a permanent bench It reads:

> "The President may, after consultation with the Governor of a new State and the Chief Justice of the High Court for that State by notified order, provide for the establishment of a permanent bench or benches of that High Court at one or more places within the State other than the principal seat of the High Court and for any matters connected therewith"

Thus, it is not merely a wrong interpretation of the order, as my hon.

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friend put it. It is deliberately put in here In this case we have been told what a permanent bench would be and how it is to be established Now, kindly mark the distinction between sub-section (2) and sub-section (3) of section 51 Sub-section (3) says

> "Notwithstanding anything contained in sub-section (1) or sub-section (2), the judges and division courts of the High Court for a new State may also sit at such other place or places in that State as the Chief Justice may, with the approval of the Governor, appoint"

The States Reorganisation Act was passed After the passing of that Act, the Travancore-Cochin High Court came to an end. It was automatically abolished and in terms of this Act, the Kerala High Court was established at Ernakulam That was under section 51(1), the seat also was fixed

Then the question arose as to whether there should be a permanent bench at all at Trivandrum or whether a temporary bench should be established. There was some agitation to which the hon Member referred I would not enter into the political or agitational aspect of that matter at all In 1957, if I mistake not, under section 51(3) of the Act, there was a temporary bench with the approval of the Governor and it is now sitting at Trivandrum That is the position which we have to understand

Unfortunately, there is a difference of judicial opinion between the Kerala High Court on the one hand and some of the other High Courts on the other

Shri Easwara Iyer: All the other High Courts

Shri Datar: It cannot be said that all the other High Courts had disagreed

Shri Narayanankutty Menon: Can you point out a single instance where another High Court has concurred with the ruling of the Kerala High Court?

Shri Datar: You will, therefore, Sir, find a very delicate situation in this case The Bombay High Court and the Madhya Pradesh High Court came to the conclusion that it would be open even to a temporary bench under section 51(3) to receive applications, appeals, etc In other words, they have institutional powers as we may put it roughly But here, in this case, as it was the subject-matter of a judicial interpretation, the matter went up to the Kerala High Court The Chief Justice of the Kerala High Court came to the conclusion that section 51(3) did not allow him to give the institutional powers to the temporary bench at Trivandrum and therefore, he did not accept such of these cases that were purported to have been filed at the Trivandrum bench.

Then, as my hon friend has pointed out, the matter went up before a Bench of the Kerala High Court The Kerala High Court came to the conclusion that Section 51(3) did not allow the powers of receipt and powers of institutions so far as the temporary Bench at Trivandrum was concerned Therefore, here we have a judicial decision which should be taken into account. Though it is true that in the case of some other High Courts

Shri Easwara Iyer All other High Courts

Shri Datar: I do not accept the expression "All"

Shri Easwara Iyer: Can the hon Minister point out one instance?

Shri Datar: There are Benches only in some States In Bombay and

Madhya Pradesh they took the view that such powers could be exercised by the Benches also. That was a view taken by some Judges, and therefore the receiving powers are there. But so far as the Kerala High Court is concerned they took a view that the Bench could have no powers. When there was such a difference of opinion, naturally the Government of India had to take a view which was naturally in consonance with, so far as Kerala is concerned, the Chief Justice's view which we accepted for the time being. Thereafter we consulted the highest judicial authority that we have under the Government of India, the Attorney-General, and he gave the opinion that, with due deference to the views taken by the Bombay and Madhya Pradesh High Courts, the view taken by the High Court of Kerala was quite correct so far as the interpretation of section 51(3) was concerned.

Under these circumstances, we were at this position that it was open to the party to seek a judicial interpretation from the highest court, namely the Supreme Court of India

Now, my hon. friend with vehemence stated that a particular man did not go to the Supreme Court because he had no means or his particular requirements were satisfied. So far as that question is concerned, it is certainly open to any citizen of Kerala or any other litigant to approach the Kerala High Court in the first instance and then take the matter to the Supreme Court.

Shri Narayanankutty Menon: Free of cost?

Shri Datar: Therefore, when the matter was judicially interpreted by the Kerala High Court, naturally it is open to any hon. Member or any citizen of India affected by this decision to take the matter at any time to the Supreme Court. There is no question of this right being barred to all the citizens of India only because in one case a particular order has been passed. Therefore, I do not understand why my hon friend, Shri Menon, said that we are not going to the Supreme Court at all.

Shri Narayanankutty Menon: It is a very unfortunate understanding of the law. Nobody can go to the Supreme Court of his own accord.

Shri Datar: I have explained the position and I do not wish to explain it further. Even now what will happen is this. The Kerala High Court will confirm the decision and against the confirmation of the decision it would be open to the aggrieved party to approach the Supreme Court That right cannot at all be denied. Therefore, this is a matter eminently fit for being taken to the Supreme Court, and this was the answer that the Home Minister gave when a particular question on this matter was asked.

Therefore, Sir, we have got these two matters before us. One is that the Kerala High Court has taken a view and it has judicially interpreted section 51(3), which view finds confirmation from the highest legal adviser to the Government of India. Secondly, we have got the larger question as to whether Benches should be allowed as a matter of course. So far as the Kerala Bench is concerned, that Bench is there. I would like to go into the merits and the advisability or otherwise of having a permanent Bench at Trivandrum. That question was raised in Parliament and I have already explained the pros and cons of it Trivandrum happens to be at a place which is very near the southern border of Kerala, within a few miles from the sea,—I am speaking subject to correction Under these circumstances it would be open to the Kerala Government to consider the question as to whether there is a need for the establishment of a permanent bench at Trivandrum. If for instance, any proposal is received from the Chief Justice of the Kerala High Court or from the Kerala State Gov-

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ernment, then that question will surely be considered on merits with such sympathy as it deserves.

If, as my hon. friend desires, we should accept this Bill, the effect or the implication may kindly be understood. He is virtually removing or wiping out all the differences between a permanent bench and a temporary bench. So, this aspect of the matter has to be understood. Let us not look at it from the point of view of either Trivandrum or Jaipur or, as one of my friends suggested, Ajmer also. It is a question which has to be considered by Parliament, and Parliament has to consider the Law Commission's report with the respect it deserves. The Law Commission has stated that so far as the high courts are concerned, apart from the Supreme Court, the high courts are the highest seats of justice and the highest seats of justice ought always to be maintained without the lowering of standards. They are of the view that there ought to be no bench at all. That naturally implies that wherever there are benches those benches should disappear as early as possible and as conveniently as possible.

My friend needlessly accused the Government of India of discrimination. There is no question of any discrimination against any particular place.

Shri Narayanankutty Menon: How many times have you issued ordinances in direct contravention of the rulings given by the Supreme Court to get over their judgments?

Shri Datar: This is a question which affects the prestige of the Supreme Court.

Shri Braj Raj Singh (Firozabad): How is prestige affected by this?

Shri Datar: The authoritative opinion of the Law Commission is a thing which cannot be brushed aside very lightly. Therefore, I would request the hon. Member to understand the implications. I can sympathise with my hon. friend or with those who want a temporary bench at Trivandrum to have more powers, but that question has to be considered in the context of the larger implications of having all other benches, permanent or temporary. A final decision has to be made in this respect, and I am confident that we shall have a fruitful discussion on this question.

I would not like to reply to the Jaipur case because I have got some grounds which I need not mention at this time. We have got a report of the special committee, the Rao Committee, which was appointed for this purpose. The Rao Committee definitely stated that there should be no bench at Jaipur at all. It is only under these circumstances that the Jaipur bench came to be abolished. When these two questions are properly settled, namely, whether the Law Commission's report should be fully accepted and whether we should or should not maintain a distinction between a temporary bench and a permanent bench, then only will this question receive due consideration.

17 hrs.

There is particularly nothing so far as the case for Travancore is concerned, but whatever claim it has either for a permanent bench or a temporary bench will have always to be considered with such sympathy as it deserves. Therefore, I would request my hon. friend not to press this particular matter. We shall consider all the matters and we shall try to follow the best course that is possible after taking both the sides into consideration.

I once again request my hon. friend not to press this amendment.

Shri Easwara Iyer: One small point in reply. My friend the Minister stated that the Law Commission has given a strong recommendation regarding the highest standards of justice. But I believe as a lawyer that the highest standards of justice cannot be attained by a high court judge just because he sits in one place, in a

very palatial building. It depends upon his legal erudition. It depends upon his capacity. Just because he sits in a division bench in Trivandrum, the standards are not going to be affected. Then, the question of abolition of benches was not within the terms of reference of the Law Commission. The Law Commission came in August, 1955 with an interim report voluntarily and gratuitously. This House desired the establishment of a Constitutional Bench under the States Re-organisation Act, ignoring the voluntary and gratuitous report. The Law Commission may be big, but we need not accept it as final.

Shri D. C. Sharma: Let him give the reply next time.

Mr. Deputy-Speaker: What about the appeal of the hon. Minister?

Shri Easwara Iyer: I am pressing the Bill.

Mr. Deputy-Speaker: Then I will put it to the House.

Shri Raghunath Singh: I may be allowed to move my Bill in the end.

Shri Datar: The other Bill is not finished yet.

17.03 hrs.

[MR. SPEAKER *in the Chair*]

Mr. Speaker: The question is:

"That the Bill further to amend the States Reorganisation Act, 1956, be taken into consideration."

The Lok Sabha divided*: Ayes 10; Noes 94.

The motion was negatived.

17.05 hrs.

MIRZAPUR STONE MAHAL (AMENDMENT) BILL

(Amendment of Section 3)

Shri Raghunath Singh (Varanasi): I beg to move that the Bill further to amend the Mirzapur Stone Mahal Act, 1886 be taken into consideration.

Mr. Speaker: The hon. Member may continue his speech the next time.

BUSINESS ADVISORY COMMITTEE

FORTY-SECOND REPORT

Shri Rane (Buldana): I beg to present the Forty-second Report of the Business Advisory Committee.

17.07 hrs.

The Lok Sabha then adjourned till Eleven of the Clock on August 29, 1959/Bhadra 7, 1881 (Saka).

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*Names of members who recorded votes have not been included under the direction of the Speaker as the photo copy of Division result did not clearly show the names of all members.