

regular. We have to listen to them. What can we do?

Mr. Speaker: I am sure such mistake: would not occur hereafter.

13.09 hrs.

DEMANDS FOR GRANTS—Contd.

Ministry of Law—Contd.

Mr. Speaker: The House will now take up further discussion on the Demands for Grants under the control of the Ministry of Law. Shri Braj Raj Singh may continue his speech. He wanted only one more minute, I shall give him five minutes.

श्री ब्रजराज सिंह (फिरोजाबाद) : अध्यक्ष महोदय, कल मैं राजनीतिक पार्टियों की मान्यता के प्रश्न पर निवेदन कर रहा था। उसी सन्दर्भ में मैं एक और तथ्य कानून मंत्री महोदय के ध्यान में लाना चाहता हूँ। सन् १९५७ के चुनावों के बाद चुनाव कमिशन ने तै किया कि जिन लोगों की जमानतें जम्ब हो गयीं हैं उनके वोटों को राजनीतिक पार्टियों को मान्यता देने के सिलसिले में नहीं गिना जायेगा। इसके पहले सन् १९५६ में यह निश्चित किया गया था तो यह बात ध्यान में नहीं रखी गयी . . .

एक माननीय सदस्य : ला मिनिस्टर साहब नहीं सुन रहे हैं।

13.10 hrs.

[MR. DEPUTY SPEAKER in the Chair]

Mr. Deputy-Speaker: The hon. Law Minister's attention is being invited.

The Deputy Minister of Law (Shri Hajarnavis): I am listening.

The Minister of Law (Shri A. K. Sen): The difficulty is that so many things happen simultaneously.

श्री ब्रजराज सिंह : सन् १९५६ में जब मान्यता के प्रश्न पर विचार किया गया था तब एलेक्शन कमिशन ने निर्णय किया

था कि सन् १९५२ के चुनावों में जिन लोगों की जमानतें जम्ब हो गयीं हैं उनके वोटों को किसी राजनीतिक पार्टी को मान्यता देने के लिए न गिना जाय। मैं निवेदन करना चाहता हूँ कि यदि ५७ के चुनावों के बाद एलेक्शन कमिशन को यह सिद्धान्त तय करना था तो उसका राजनीतिक पार्टियों को पहले से नोटिस दे देना चाहिए था कि ५७ के बाद राजनीतिक पार्टियों को मान्यता प्राप्त करने के लिए, मान्यता के प्रश्न पर विचार करने के लिए जिन लोगों की जमानतें जम्ब हो जायगी उनके वोटों को हम नहीं गिनेंगे ऐसी बात नहीं हुई। अब ५७ के बाद जिन राजनीतिक पार्टियों की मान्यता के प्रश्न पर विचार किया गया है तो चुनाव कमिशन ने इकतरफा इस तरह का निश्चय ले लिया कि जिन लोगों की जिन राजनीतिक पार्टियों के उम्मीदवारों की जमानतें जम्ब हो गयीं थी उनके वोटों की गिनती नहीं होगी। मैं निवेदन करना चाहता हूँ कि ऐसे प्रश्नों पर जिन पर कि देश का और प्रजातंत्र का भविष्य निर्भर करता है इस तरह से इकतरफा निर्णय नहीं लेना चाहिए। इसलिए कल जो मैं ने निवेदन किया था उसमें कानून मंत्री महोदय इसे भी जोड़ लें कि चुनाव कमिशन इन सब तथ्यों को ध्यान में रखते हुए इस पर पुनर्विचार करे।

एक बात जो कि मान्यता प्राप्त पार्टियों के लिए होती है वह यह है कि उनको मतदाता सूचियां फ्री दी जाती हैं। यह एक ऐसी चीज है जोकि एक पक्षपातपूर्ण व्यवहार हो जाता है उन लोगों के विरुद्ध जिन्हें कि मान्यता प्राप्त नहीं होती है। इसलिए मैं निवेदन करना चाहूंगा कि इस प्रश्न पर गम्भीरतापूर्वक विचार किया जाय और यदि भाप और कुछ नहीं कर सकते तो कम से कम यह तो कर सकते हैं कि ऐसे अशिक्षित भारतीय संगठन जिनको कि किन्ही राज्यों में मान्यता प्राप्त है और किन्ही में उनको मान्यता प्राप्त नहीं है, यह तो ठीक है कि जहाँ उनको मान्यता प्राप्त नहीं है वहाँ की मतदाता सूचियां उनको न दें

[श्री बजरज सिंह]

क्योंकि मतदाता सूचिया, मान्यता प्राप्त होने से मिलती हैं। लेकिन इतना तो अवश्य कर दें कि जो इस तरह के अखिल भारतीय संगठन हैं उनको उन राज्यों में भी जहाँ कि उनको मान्यता प्राप्त नहीं है उनका सिम्बल उनको जरूर दे दिया जाये। ऐसे अखिल भारतीय संगठनों को हर एक राज्य में जहाँ उनको मान्यता प्राप्त है और जहाँ मान्यता नहीं भी प्राप्त है, उनका निशान उनको जरूर दे दिया जाये। यदि आप इस पर पुनर्विचार करेंगे तो इससे जातंत्र के मजबूत होने में मदद मिलेगी।

मैं ने कन भी निवेदन किया था कि इस निर्णय के पीछे न कोई संवैधानिक व्यवस्था है, न कोई संसद् का कानून है और न कोई नियम ही है सिर्फ एलेक्शन कमिशन का एक नोटिफिकेशन है।

केवल एक मिनट में मैं आपका ध्यान एक और बात पर आकर्षित करके अपना भाषण समाप्त करूँगा। काश्मीर हिन्दुस्तान का एक हिस्सा है भारत का अविभाज्य अंग है। इसमें की दी रायें नहीं रहीं और मारा मुल्क इस पर एक है ये क-अफ़ोस की बात यह है कि बार-बार हमारे यह कड़ने के बावजूद भी हमारे इस संसद् द्वारा पास कानून वहाँ उसी शक्ति में लागू नहीं होते हैं। उनके लिए एक अलग व्यवस्था है कि जो भी कानून यह संसद् पास करे उस पर अगर काश्मीर सरकार अपनी सहमति प्रकट कर दे तो वह कानून वहाँ पर भी लागू हो जायगा। सन् १९५६ में क्रिभिनल ला अमेंडमेंट ऐक्ट जो यहाँ से पास हुआ था उसको काश्मीर की सरकार ने स्वीकृति दे दी है, सदरे रियासत की स्वीकृति प्राप्त हो चुकी है उसके बावजूद भी अभी तक वह कानून वहाँ पर लागू नहीं है। मैं चाहता हूँ कि जरा इस पर ध्यान दिया जाय। हालाँकि यह कानून ही स्थिति है कि हम किन्हीं खास व्यक्तियों को या लोगों के समूहों को उनके

खिलाफ काम करने के लिए या किन्हीं को कोई विशेष सुविधा देने के लिए कानून का अपल ३, ३ और ४, ४ साल के लिए टाले रहें? यह उचित बात नहीं होगी और उसका नतीजा यह हो रहा है कि काश्मीर में जो कुछ राज-नैतिक किस्म के केंस चल रहे हैं उनमें काफी देर हो रही है खास तौर से वहाँ का हजरतबल-गुंज का पड्यंत्र केस इसकी साफ मिसाल है। मुझे किसी पक्ष के बारे में नहीं कहना है। लेकिन यह जरूर है और एक माना हुआ सिद्धान्त है कि जब न्याय देर से मिलता है तो वह एक तरह से अन्याय हो जाता है। एक केस जिसकी तीन साल तक उसकी सुनवाई शुरू न हो ता उसका नतीजा यह निकलता है कि जो उसमें अपराधी और मुजरिम होते हैं उनको यह विश्वास नहीं रहता कि उनके साथ कोई न्याय न्याय हो सकेगा। मैं चाहूँगा कि सरकार इस प्रश्न पर विचार करे और काश्मीर सरकार को यह राय दे कि जब वह इस कानून को मान चुकी है और अपनी स्वीकृति दे चुकी है तब उसकी पूरे तरीके से लागू किया जाना चाहिए।

श्री राधामोहल सिंह (बलिया) : उपाध्यक्ष महोदय, मैं आपका बड़ा आभारी हूँ कि आपने मुझे इस विषय पर कुछ निवेदन करने का अवसर दिया। शासन का यह एक बहुत महत्वपूर्ण कर्तव्य है कि इंसोफ का ऐसा प्रबन्ध करे ताकि जनता को सस्ता और त्वरित इंसोफ सुलभ हो सके। आज मुझे खेद के साथ कहना पड़ता है कि ऐसी व्यवस्था मौजूद नहीं है और जनता को इंसोफ मंहगा मिलता है और देर से भी मिलता है। यहाँ पर इस सदन में और राज्यों के विधान मंडलों में भी बार-बार इसके लिए आवाज उठाई जाती है और शासन की तरफ से यह आश्वासन दिया जाता है कि इस बात का प्रयत्न किया जायगा लेकिन मुझे यह देखने में आता है कि शासन की तरफ से ऐसा कोई सक्रिय कदम नहीं उठाया गया है जिससे कि जनता को न्याय सस्ता मिले और

जल्दी मिले। न्यायालयों में मुकद्दमों का वर्षों तक चलना और उनके फैसले में देर लगना यह एक पुराना किरसा है और जब मैं एक विद्यार्थी था तब भी इसके बारे में सुनता था और हालांकि तब से न्यायाधीशों की संख्या में काफी वृद्धि हो चुकी है तब भी देखने में यही आता कि मुकद्दमे कचहरियों में सालों लटके रहते हैं और उनकी अपीलें हाईकोर्ट और सुप्रीम कोर्ट में पड़ी रहती हैं और उनका निबटारा नहीं होता है। मैं अपने ब्याय मंत्री महोदय से जानना चाहूंगा कि वे संसद् को यह बतलायें कि शासन की तरफ से कौन से उपाय काम में लाये गये ताकि यह इंसान जल्दी से जल्दी प्राप्त हो सके और हम तब यह कहने के योग्य होंगे कि जो आप ने प्रयत्न किया है जो कदम आपने उठाया है वह कहां तक कारगर हुआ है।

मैं आपसे निवेदन करना चाहूंगा कि सदन में और अन्यत्र भी यह कहा गया है कि इसके लिए न्यायाधीशों की संख्या में और वृद्धि कीजाय। लेकिन मेरा कहना है कि खाली न्यायाधीशों की संख्या बढ़ाने से यह चीज किस तरीके से दूर हो सकती है? हमारी आबादी निरन्तर बढ़ती चली जा रही है। हम यह कहते हैं कि हमारे पास खाना पर्याप्त नहीं है और आबादी बढ़ने पर अंकुश लगाने के लिए हम परिवार नियोजन की शरण लेते हैं तो क्या यहां पर भी फैमिली प्लानिंग जैसी कोई चीज नहीं कर सकते हैं? बजाय जनों की न्यायाधीशों की संख्या बढ़ाने के अगर हम यह प्रयत्न करते कि मुकद्दमों की संख्या कम करें तो मैं समझता हूँ कि यह अधिक कारगर सिद्ध होता मैं आपसे निवेदन करना चाहता हूँ कि इधर भी ध्यान दिया जाय। अगर हम इस बात का प्रयत्न करें कि आज जो बड़ी तादाद में हर प्रकार की अपीलें ऐडमिट हो जाती हैं उनको स्वीकार करने के पहले उनकी छानबीन की जाय तो किसी हद तक हब अपीलों की तादाद कम करने में सफल हो सकते हैं।

पूर्व वक्ताओं में बहुत से लोग सुप्रीम कोर्ट और हाईकोर्ट्स में प्रैक्टिस करते हैं और उन्होंने न्याय को सस्ता और त्वरित बनाने के लिए बहुत सी बातें रखी हैं। लेकिन मैं तो एक सामान्य जन होने और जनता का एक मामूली प्रतिनिधि होने के नाते यह कहना चाहूंगा कि क्या ऐसा प्रबन्ध नहीं हो सकता है कि आज वकील लोग अपनी फीस बढ़वाने के लिए एक दिन के मुकद्दमे के लिए ४, ४ दिन बहस करते हैं तो वह ऐसा न करने पायें और उन पर कोई उचित प्रतिबंध लगा दिया जाय? आखिर यहां सदन में हम एक टाईम गैड्यूल रखते हैं कि प्रमुक्त बिल प्रथवा लेजिस्लेशन पर हम इतन समय देंगे और उसको इतने समय के अन्दर हम पास कर देंगे तो क्या इसी तरह का कोई एक इंतजाम या टाईम गैड्यूल मुकद्दमों के लिए नहीं तय कर सकते हैं कि प्रमुक्त किस्म के मुकद्दमों को हमें इतनी प्रवधि के भीतर निबटा देना होगा? क्या हम यह व्यवस्था नहीं कर सकते हैं कि किसी मुकद्दमे में कितना समय दिया जाय? अभी होता यह है कि अगर कोई बड़े वकील साहब हैं और उनकी फीस बड़ी लग्गी चौड़ी है तो वह ५ दिन बहस करते हैं और ७ दिन बहसा करने हैं और इस कारण भी मुकद्दमों के फैसले में देर होती है। मैं यह नहीं कहता कि न्यायाधीशों की संख्या बढ़ाने से कोई लाभ नहीं होगा, मुमकिन है कि उससे कुछ लाभ हो जाय लेकिन पिछले २०, २५ वर्षों से मैं देखता रहा हूँ कि खाली न्यायाधीशों की संख्या बढ़ाते रहने से हमें अपेक्षित सफलता नहीं मिल पायी है और इसीलिए मेरा सुझाव यह है कि हम ऐसा प्रबन्ध करें कि अपीलों की संख्या कम हो और साथ ही वहां जो समय दिया जाता है बहस के लिए और मुकद्दमों का फैसला करने में उनमें भी कुछ एक प्रतिबंध लगा कर कामी करने का प्रयत्न करें। इसके साथ ही हमें इस ओर भी ध्यान देना है कि न्याय जहां जल्दी सुनभ हो वहां वह सस्ता भी हो। आज कहा जाता कि न्याय को प्राप्त करना इतना महंगा हो गया है कि गरीब लोग उसको

[श्री राघामोहन सिंह]

प्राप्त नहीं कर सकते। हमारे बहुत से माननीय सदस्यों ने भी इस चीज को कहा है कि कोर्ट फीस बढ़ती जाती है, वकीलों की फीस बढ़ती जाती है और आज हालत यह है कि जहाँ पहले मुकद्दमे में एक पैसा खर्च होता था वहाँ अब दस पैसा खर्च होता है। आज समय आ गया है जबकि हमको न्याय को सस्ता, सरल और जनता को जल्दी मिलने वाला बनाना चाहिए अन्यथा न्याय इतना मंहगा हो चला है कि गरीब और साधारण लोगों के लिए न्याय प्राप्त करना असंभव हो जायगा। मैं माननीय मंत्री महोदय से यह जानना चाहता हूँ कि इस दिशा में क्या रुदम उठाया गया है, ताकि लोगों को न्याय की प्राप्ति सस्ती और जल्दी हो सके।

मैं नहीं कह सकता कि यह कहां तक सही है, लेकिन मैं समझता हूँ कि डिस्पेंसेशन आफ जस्टिस का जो पुराना प्रोसीड्यर है, न्याय को प्रदान करने की जो पुरानी प्रणाली है, वह कम्बरसम हो गई है और उस तरफ सरकार को ध्यान देना चाहिए। एविडेंस एक्ट या इंडियन पीनल कोड में कोई गलती नहीं है। वे बहुत अच्छे कानून हैं, लेकिन प्रोसीड्यर के बारे में यह बात नहीं कही जा सकती है। उस को और सस्ता और शीघ्रतापूर्ण किया जा सकता है। मैं ला मिनिस्टर साहब से प्रार्थना करना चाहता हूँ कि सरकार की ओर से प्रोसीड्यर की ओर, अदालतों के बैठने और न्याय वितरण करने की प्रक्रिया की ओर खास ध्यान दिया जाये।

मैं एक सुझाव यह देना चाहता हूँ कि ऐसा प्रबन्ध किया जाये कि किसी भी मुकद्दमे में थर्ड अपील की इजाजत न दी जाये। मैं जानता हूँ कि जितनी अधिक अपीलें होती हैं, उन में फ़ैसलों के रिवर्स होने, बदलने की सम्भावना उतनी अधिक होती है। इस का परिणाम यह होता है कि लोगों के मन में न्याय के सम्बन्ध में सन्देह पैदा होता है और

उन को यह समझने में बहुत मुश्किल होती है कि आखिर न्याय क्या है। डिस्ट्रिक्ट कोर्ट एक फ़ैसला करती है, हाई कोर्ट दूसरा फ़ैसला करती है और सुप्रीम कोर्ट कोई और फ़ैसला करती है—हर एक अपील न्यायालय दूसरा फ़ैसला करता है। इस कारण मैं चाहता हूँ कि अगर किसी मुकद्दमे में दो अपीलें हो गई हैं, हैं, तो उस में थर्ड अपील कभी भी एंसाऊ नहीं होनी चाहिए—उस को सुप्रीम कोर्ट में नहीं आने देना चाहिए। मैं समझता हूँ कि ऐसा करने से बहुत से मुकद्दमे खत्म हो सकते हैं और ज्यादा मुकद्दमे ऊपर नहीं आ पायेंगे।

यह कहा गया है कि रिटायर्ड जजिज को—जो जज अपने स्थान से अवसर प्राप्त करते हैं, उन को—फिर से प्रैक्टिस करने की इजाजत नहीं देनी चाहिए, लेकिन मैं ऐसा ख्याल नहीं करता हूँ। मैं समझता हूँ कि ऐसा करना उन पर अपनी इच्छा के पेशे को अस्तित्वार करने पर प्रतिबन्ध के समान होगा। मैं नहीं समझता कि उन पर प्रतिबन्ध करने का कोई आधार है। उन पर इतना प्रतिबन्ध लगाया जा सकता है कि जिस उच्च न्यायालय से वे अवसर प्राप्त करते हैं, उस में वे फिर प्रैक्टिस न करें, लेकिन उन पर मुकम्मल प्रतिबन्ध लगा देना मुनासिब नहीं होगा। उन का जो अनुभव है, कानून का जो ज्ञान है, उन को उस को उपयोग करने का अवसर प्रदान करना चाहिए। मैं समझता हूँ कि यह कोई ऐसी बड़ी चीज नहीं कि जिस के लिये हम को कानून बनाना पड़े।

हम देखते हैं कि वकीलों और डाक्टरों की फीस के बारे में कोई प्रतिबन्ध नहीं है। जिस अवस्था में हम रह रहे हैं, उस में देखा जाता है कि हर प्रकार के मूल्यों पर प्रतिबन्ध है और हम मुनाफाखोरी को रोक रहे हैं, बाज़ार में कीमतों पर सीलिंग है। लेकिन पुराने डाक्टर और वकील जो इतनी ज्यादा फीस लेते हैं, उन पर कोई सीलिंग नहीं है।

में ला मिनिस्टर सहाब से प्रार्थना करना चाहता हूँ कि उनको इस तरफ ध्यान देना चाहिए और बड़े बड़े वकीलों और रिटायर्ड जजिज से परामर्श ले कर ऐसा तरीका निकालना चाहिए कि वकीलों की फीसों पर कुछ नियंत्रण लगाया जा सके। सस्ता न्याय प्राप्त करने की दिशा में यह एक बहुत बड़ा कदम होगा।

जो दो तीन सुझाव मैंने रखे हैं, मैं आशा करता हूँ कि हमारे ला मिनिस्टर साहब उन पर विचार करेंगे और ऐसा प्रबन्ध करेंगे कि सस्ता और शीघ्र न्याय प्राप्त करने में हम को आसानी हा सके।

Shri Tyagi: (Dehra Dun): Mr. Deputy-Speaker, Sir, my remarks are of a laiman's and therefore I should be pardoned if I go somewhere against the spirit of the law, but I will abide by the constitutional and parliamentary procedure. As regards the present Law Ministry of the Government of India, I am afraid we are using the best talents both in the secretariat as well as in the Treasury Benches. I feel that this Ministry has very little to do and not worth the name. I congratulate them for the manner in which they have conducted the elections twice with the Election Commissioner and also for the work rendered by the Law Commission. That was wonderful work done by both these bodies under this administration. But what has this Ministry to do? They have nothing to administer.

I have got personal knowledge of what they do. They give interpretations. It is not a Minister's or Ministry's job. Any expert can give that. This Ministry could be as well decentralised, each Ministry having some person to give legal opinion. That is what they do. They sometimes give original drafts of Bills and sometimes they look into the drafts made by others. That is not the job of a Ministry. I am afraid our Government has not been positive enough in their policies. They are just carrying on humdrum. This Law Ministry could

be entrusted with something which the other Ministries are unnecessarily holding on. For instance, I am quite sure that judiciary can be transferred from the Home Ministry to the Law Ministry. That should have been done.

May I sound a note of warning to the nation through the Parliament? With my little humble experience of 40 years of political career, I see that the country is going fast towards disintegration. If there can be any plan of integrating the country, it can be the unification of the machinery of justice alone. Innocently you can do that without causing any alarm or annoyance to any Government. If the judiciary is integrated in the sense that there is one Indian Judicial Service, as has been suggested by the conference of High Court and Supreme Court Judges yesterday, that will lead to integration of the country. The Indian Judicial Service must be an all-India service and High Courts must be given administrative powers over judges and other judicial bodies.

I know it for a fact that the Government are having some type of influence over the judiciary. After all, I represent the people and I am voicing the reactions of the people. People know it that sometimes instructions are issued on a general basis to the States, because in one State I find similar treatment was given to all the accused arrested within a week by all the judges. It is not possible unless there is some central machinery doing the job. With this strife in political career....

Mr. Deputy-Speaker: Treatment being afforded to the accused or sentencing them?

Shri Tyagi: I am talking of the bail application. Supposing the bail applications are decided on the very same level and everybody demands Rs. 5,000 or Rs. 50,000 in each case, that is proof positive of the fact that there is somebody sitting at the centre trying to influence the judiciary.

Shri Tangamani (Madurai): Exorbitant bail bonds are demanded in Delhi for all the accused, although later on, they turn out to be ordinaryailable cases.

Mr. Deputy-Speaker: That is all hearsay, I suppose.

Shri Tangamani: Rs. 100,000 are taken.

Shri Tyagi: If only the Indian judicial Service is organised and the whole of India comes under one service, that would be one good positive step towards the integration of the country. In spite of all damage done so far to the integration, this will be one very positive step.

I feel in due course things will go bad. The society is fast becoming one in which our human relationship is becoming more contractual; I am using the word in the literal sense. Previously it used to be sacramental and in society a sort of sacred relationship was established. Society in India was more duty conscious than society anywhere else in the world. Today, on account of the impact of lawyers, litigation, delay in courts and the manner in which the judiciary is working, our social climate has fast become right-conscious rather than duty-conscious. There is a lot litigation. What is the main criterion to judge what the condition of the society is? Now the number of litigation is increasing and all types of cases are registered in various courts. How did the British make their influence felt here? It was through their Diwans that the British became popular. Therefore, governments may be judged by the merits of the justice they give.

Our justice is very badly delayed. There is no doubt about that. I remember, I put a question to the Home Ministry about the pendency of cases and the answer given was that in the Allahabad High Court there were 41, 834 cases pending. These cases have

been pending for the last 12,13 or 15 years. Though one generation has ceased to exist, still the cases go on pending. That was the position in 1957. I do not know what the position is today. In 1957, in Allahabad High Court alone there were 41,000 cases. In Andhra Pradesh there were 28,000 cases; likewise, in other High Courts also. The total number of cases pending judgment in all High Courts in 1957 was 1,82,947. What is this? If justice cannot be dispensed early in the existing circumstances what have the Government done to expedite the disposal of cases? Are they only thinking of political rivalries, regional jealousies and communal disturbances which are now visible in various parts of the country?

My fears are that there can be no democracy so long as the judges are put under the administrative control of particular State Governments. In such a set up there will be cases where election petitions will be decided, not on the basis of merits, but on the basis of expectations of becoming High Court judges. District Judges become High Court Judges because the Governor makes a recommendation, and Governor means the Government. To keep democracy safe from all political influences I say, let judiciary be independent of the State Governments at least. Let their administrative powers be vested in the High Courts so that the judiciary is free from executive interference. If you vest that power in the Governor, it amounts to vesting it in the Government, which is run by a political party which can influence the judiciary. So let the judiciary be independent. Once that is guaranteed, I think society's best security is guaranteed and also the fundamental rights. I do not want to dilate on this any more.

Apart from the increase in litigation, there is a feeling among the people, by and large, that corruption is creeping into the judicial system. First I was afraid of talking in these terms.

But last night when I went through the Report of the Law Commission I found that they have also taken notice of it. In the Report they say:

"If dishonesty is to be rooted out from this branch of judiciary, it is vital that it be immediately brought under the administrative control of the High Court."

This is the view of a body of learned people, the Law Commission. What are the Government doing? Grabbing powers? What do we, the politicians of this generation, want? Do we want to grab more and more powers and keep them in our hands? Why should there be delay in the implementation of the Law Commission's Report? I am afraid there is confusion. Otherwise, why cannot action be taken? Parliament wants that action be taken, public wants that action be taken and your Ministry wants that action be taken. Then who is standing in the way to see that no action is taken? Committees, commissions and all those considerations. Have we lost all our brains? When would we take a decision? So, my submission is that before this Parliament dissolves, let us take some decision of which at least we might be proud of when we go to our constituencies and we can say that some good decision has been taken.

Shri Chintamani Panigrahi (Puri): Otherwise, there will be no votes.

Shri Tyagi: I do not want to take much time on this. I hope some thought will be given to this aspect.

My hon. friend was saying that there must be some curb on the fees of lawyers. I am sorry, everywhere, all round my friends are all lawyers. Therefore, where to go to appeal against them? Sir, since you are in the Chair, I appeal to you that the lawyers.....

Mr. Deputy-Speaker: But I am a lawyer.

Shri Tyagi: But you are the ideal person occupying the Chair, and that is why I am appealing to you, despite your being a lawyer.

You are applying ceiling on small peasants. You are applying ceiling on income. But is all that socialism meant only for the small and poor villagers? Will socialism ever come to the urban areas, municipalities etc. or not? Now lawyers enjoy all the fruit. There is no limit to their income. They can charge Rs. 10 000 or Rs. 20,000, as they like. There is no curb on these. I do not know how far they submit accurate returns to the income-tax department. Nobody knows that. So, I feel that there must be some curb, and I support that suggestion. I think the time has come when the lawyers themselves must feel that they have also a duty to perform. People's general complaint is that it is the lawyers who have the reins in their hands and they are the custodians of their destinies. So, let the lawyers not have that name for ever. There must be some ceiling on their income. My friends, the Law Ministers, both of them, are eminent lawyers. I am sorry for the hon. Deputy Law Minister, because I was responsible for bringing him into this Parliament. I am sorry that I have done him a wrong by putting him to a very great financial loss, because, when I went to his constituency I found that he was a very successful lawyer, earning a lot. Most probably, he would be suffering now.

Mr. Deputy-Speaker: The hon. Member is putting limits on his fees. So, when he goes back, he will suffer again.

Shri Tyagi: Then I want to come to my next point, and that is the manner in which jurisprudence is conducted in India. That must now change. Law has become more of fiction, based on fiction from end to end, because fact is discarded deliberately in law. I can well understand that a large number of things have to be decided on facts, because sometimes

there may be personal knowledge, or other prejudices might crop up. But there must be some limit to rejecting facts. Now the decisions of judiciary are based on fictions, arguments and all that, and not on facts at all. Facts are taken into account only when evidence come in. So, what I suggest is that some change must be effected, because delays are occurring. There are cases on very small matters which are postponed for years together. There must be some curb on this activity and the manner in which we are giving justice has to be thoroughly examined.

Then, there are some Centrally-administered areas. It is not the fault of the people living there that they are Centrally administered. Every citizen in this country enjoys the freedom of representation and having their own elected Ministers, people who have been living in their own vicinity. But there are certain sections of the people who have not got that benefit. They are ruled by the Home Minister of India. What? Does the Home Minister of India expect that an ordinary citizen can have easy approach to him? After all, he is busy with so many things. Why retain all the powers with him? Why not hand over at least the local administration to the Law Ministry? If not the people, at least their judiciary must be handed over to them, so that the people in that area might at least have some satisfaction that it is not the police, it is not the district magistrate, who will try their cases, but there is some separate agency which is looking after their interests and that agency will be impartial. Even that little thing is not done.

What is the meaning of the Home Minister exercising his judgment over such matters? Of course, there is joint responsibility in Government. Still, I suppose it must be Law Ministry's job. Now the final selection or promotion of judges to the High Court or Supreme Court is done in consultation with the Governor, which means the local government. Governor is only a titular head, as the President

is here. So, the use of the name Governor is only just to safeguard the Government so that there may not be any criticism. For that purpose, the word "Governor" is used. Otherwise, whatever the Governor does, that is actually done by the government of the State. So, it is the State Government which initiates proposals or makes recommendations regarding promotion, selection etc. If that is so, after some time you will see that those judges who favour the politicians in their election petitions will generally be appointed as High Court judges.

An Hon. Member: It is happening now.

Shri Tyagi: The High Court judges are losing their old reputation for ability to a great extent. I remember, 20 or 30 years ago judgments of the Allahabad High Court, the Lahore High Court or of other High Courts were quoted not only as judicial authority but as pieces of literature. They were looked upon as if there was nothing wrong in them. Now the judgments are fast becoming cheap, both in language and in substance. It is on account of the fast promotions being given without due considerations. I would, therefore, again emphasise that the Indian Judicial Service (IJS) be organised soon as recommended by the judges collected together. The whole judiciary was here in Delhi. In their judgment they have decided that it would be the fairest thing to safeguard democracy for the future and to give relief to the people. I think those recommendations should be accepted.

Mr. Deputy-Speaker: Shri U. L. Patil. I will request that hereafter hon. Members may condense their remarks so as to finish within ten minutes. There is why little time and there are many hon. Members who want to speak.

Shri Tyagi: When is the hon. Minister going to reply?

Mr. Deputy-Speaker: I will call him at 2.30. We will conclude this at 3.30. I suppose the hon. Minister desires one hour.

Shri U. L. Patil (Dhulia): Mr. Deputy-Speaker Sir, I am in agreement with my hon. friend, Shri Tyagi, when he says that the judiciary should be separated from the executive at an early stage. Strictly speaking this is not the function of the hon. Minister of Law, even then it was expected that during these last 13 years the Law Ministry would exercise its good offices over the various State ministries in this respect. The executive should get rid of the judiciary and there should be a complete separation. But so far it has not been done in a number of States. It has been tried in some States, for example, in Maharashtra, where there is complete separation of the judiciary from the executive. But even then we find that this separation has not completely removed the apprehensions that were created in the mind of the common man. For example, we find that though the Public Service Commissions interview candidates for appointment to judicial posts, like that of magistrates or civil judges, and final appointments are effected by Government, still politics has become all-embracing.

Not only that, having separated the judiciary from the executive we find that there is a tendency on the part of various State Governments to put limitations on the judiciary by enacting special laws. I can understand that for the sake of speedy justice certain enactments need an altogether different treatment and under those enactments special tribunals are created. But there are certain tribunals which have assumed a permanent nature, for example, the revenue tribunals. Then we have the co-operative tribunals. Such tribunals are to be found almost in every State. The appointment of members of these tribunals is done purely by the executive government. These tribunals, in fact, do not have to do any sort of administrative work, but it is purely judicial work that they have to do. They hear appeals, revision petitions, review petitions and references. They decide cases. There is practically no administrative work done by these tri-

bunals. That being so, we find that these appointments are kept out of the purview of the Public Service Commissions and are effected only by the executive government. Therefore some sort of political considerations do creep in and, as has been said on the floor of this House yesterday, this sort of atmosphere has crept in even in regard to appointments of judges of High Courts. Government should, therefore, evolve certain form whereby these appointments will be kept completely out of the purview of the Public Service Commissions and of the executive government also. In each State there should be a commission consisting of two High Court judges and one senior officer of the Law Department. This commission alone should effect all appointments of judges to tribunals, of magistrates and of civil judges. Then, promotion also should be left to this particular commission. Not only that, this commission should also deal with rules, regulations and procedures and in that way advise the various High Courts. The appointments of such a commission is highly needed in the present atmosphere and as things have developed. Government should therefore at least consider this suggestion and take away the system of appointment, promotions and terms and conditions of service from the executive.

My next submission would be with regard to the tendency to which a reference was made by my learned friend Shri Sarhadi yesterday. There is an increasing tendency on the part of the various State Governments to earn by enhancing court fees and to gain through litigation. Even though it might be pressed on the floor of the House that the average income of an average man is being increased day by day as our Plans are being implemented, still we find that over litigation the average man suffers a lot and practically for all purposes his entry into the law courts is beyond his capacity. In the circumstances, therefore, this sort of tendency should be curbed.

We talk of legal aid, but no system has as yet been evolved. The Central

[Shri U. L. Patil]

Government should at least evolve an ideal aid system for the Centrally administered areas. We have a certain idea regarding legal aid societies. Then there are certain provisions made by the State Governments regarding legal aid to the poor. But then its implementation is completely out of the reach of a number of people. Not only that, it has not inspired confidence also. The poorest man does not believe in the poor aid that is given to him so far as legal matters are concerned. Therefore for extending legal aid to the poor some ideal system should be worked out by the Ministry of Law and that alone should be put into practice. It might also serve as an ideal for the various State Governments.

Yesterday my learned friend, Shri Bharucha, suggested some changes in the conduct of elections. I quite agree that our Election Commission has done a very commendable job. Not a single political party has any axe to grind against the Election Commission. India being one of the biggest democracies, our Election Commission has conducted our affairs, so far as elections are concerned, in so nice a way that there is unanimity all over regarding its commendable job. This time the Election Commission is introducing the system of putting a mark on or of stamping the ballot paper. Yesterday my hon. friend, Shri Bharucha, suggested that instead of stamping the ballot paper, it should be punctured. Probably he might be thinking that because of the high standard of illiteracy that is still prevalent, people would not be able either to stamp or to mark the ballot paper. The system of stamping the ballot paper was not in vogue, but the system of marking it was in vogue since a number of years and our voters are in touch with that system for a long time. Illiterate voters also are practically aware of the system and they are to some extent acclimatised to it. On the contrary, if the system of puncturing the ballot paper is introduced,

it might lead to some corrupt practices. When a ballot paper is issued, it would be possible to puncture it somewhere, and if there are two punctures then that ballot paper might be rendered invalid. It is possible. Let us try in the direction of stamping it and see the result. This system was introduced in a number of by-elections and it was found that this system is a sound one.

Shri Naushir Bharucha (East Khandesh): Is it not a fact that under this system the number of invalid votes run to the extent of 10 per cent of the total votes cast?

Shri U. L. Patil: I do not know exactly. What I was submitting was this. The system of marking the ballot paper has been there for a long time. Now the system of stamping the ballot paper can be tried in the coming elections and then suggestions can be made.

Then there was a suggestion of the exchequer being taxed to the tune of the expenses incurred by a successful candidate.

Shri Naushir Bharucha: Instead of political contributions.

Shri U. L. Patil: That is, that Government should defray the expenses of the successful candidates. My submission would be that instead of the expenditure being less in elections, this system might provoke the expenses being incurred to a larger extent. The election arena will almost be reduced to that of a race-course. Any possibility of a candidate....

Mr. Deputy-Speaker: Is it that a socialist system might be applied, that a certain amount might be given as *ex gratia*? Is that the intention?

Shri Naushir Bharucha: It has to be worked out fully. I had no time to develop it.

Shri U. L. Patil: It would not be practical. Anyhow, it is for the Law Minister to deal with. My submission

is that the system of stamping may be followed so far as the elections are concerned.

Shri Kalika Singh (Azamgarh): Law and justice are the biggest casualties of our planned economy today. In the Five Year Plans that we have been having here for the last ten years there is no mention of law and justice in the whole Plan, and therefore it is a non-Plan expenditure, that is being incurred in respect of the Departments connected with law and justice. Opinions might differ whether, when we are giving top priority to development, we should for some time ignore law and justice. Because, essentially it is a welfare State, and not a police State, and there might be an argument that in a welfare State we have to devote all our energy, all our economy and all our resources towards finding out some means to rehabilitate our people and to bring their standard above the present level. But because this Plan has now come to stay and it might remain here for 25 or 50 years in that case there must be some line of demarcation. There must be some stage at which we will have to bring law and justice in the Plan expenditure. In the Plan we find that agriculture, industry, irrigation, power, transport, all these have been given a place, and under the head "social services" so many other things are lumped together.....

Mr. M. S. Aney (Nagpur): Is there any reference to Defence and External Affairs also in that plan?

Shri Kalika Singh: No, that is also non-Plan expenditure. Because, some time back when our country required to be strengthened in the matter of defence, Rs. 50 crores were found and it was with difficulty that we decided that for some time we should think of defence also as a very essential expenditure. In the non-Plan expenditure Police, Justice, Defence and so many things come. But I think that law and justice are essentially con-

nected with development. And therefore now, when we are going to have the Third Five Year Plan, we should include this also, if not under Social Services, under some separate head. Because, we find in our districts and States that the subordinate judiciary or even the High Courts, are very much neglected. While the officers of the development departments, even the petty officers, get State bungalows and colonies and all arrangements and amenities are provided by the State, we find that the judicial officers when they are transferred to some district have to find some accommodation for themselves and have to live under very bad conditions. And compared to the development officers, the pay and salary scales of these officers are also low. Therefore, my emphasis is that this should now be included as Plan expenditure in the Third Plan.

Regarding the crime situation, we find in our districts that crimes have increased. And it is because of the fact that for every one lakh of population there is one police station—I am talking of Uttar Pradesh—and in one police station there are at the most twelve or thirteen constables, including the sub-inspector. That is the whole police force there. To imagine that one lakh of population can be controlled by ten or fifteen constables is too much. It is only because we have not got money for these departments. We have not got money for the Police. Therefore we cannot increase the numbers. But considering the proportion of the police personnel to the total number of population in other countries of the world, we have to increase the number of police personnel in India also, in due proportion to the number of population here. For every twenty or twenty-five thousand of the population one police station should be established. There should be beats of five or ten villages in which there should be a constable or two constables who should go and visit all the villages at least once a week.

I have to say something about discipline. Article 311(2) of the

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Constitution provides that—"No such person as aforesaid shall be dismissed or removed or reduced in rank until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him." Now, we have seen in Law reports that so many cases of discipline have been coming up to the High Courts and the Supreme Court, and the number has multiplied to such an extent that I feel there is something wrong either with this article or with the discipline. Many officers are being dismissed, but they find some shelter behind this constitutional provision. Therefore, the Ministry should reconsider the whole thing. Previously, that is, in Government of India Act 1919, this very provision was provided for only in the rules. At that time, the Privy Council had just held that it was a mere moral or a political question to give this opportunity or not to an officer. But, this rule was incorporated in the Act itself, when the Government of India Act, 1935 was framed. Now, that provision had been bodily lifted and put in the Constitution of India. We should now consider whether this provision should remain in the Constitution or it should find a place again in the rules, so that the discipline of the officers and the Government servants may improve, and there may not be any confusion and delay in the disposal of cases.

14 hrs.

Another important thing that has been coming up lately is about the powers of the President. This was discussed by some of the Members here also. I believe that the Law Ministry should give their full attention to this matter. I might just read out a portion from *Fundamental Law of Pakistan* by Mr. A. K. Brohi, an eminent jurist of Pakistan. At page 133 of this book, he has written:

"The constitutional position in India may now be briefly advert-

ed to. Article 74 of the Indian Constitution provides for a Council of Ministers with the Prime Minister at the head to aid and advise the President in the exercise of his functions. There is no provision corresponding to article 37 (7) of our Constitution which makes that advice constitutionally binding upon the President."

Then, he goes on to say:

"There is thus in India a glaring disparity between the position as it is reflected in the letter of the Constitution, on the one hand, and the actual working of the Constitution on the other."

The Constitution of Pakistan has not yet come into being, because there is no elected democracy there, but they have read into our Constitution this defect, and they have tried to remedy that defect in article 37 (7) of their Constitution.

Mr. Brohi has also quoted one Mr. Alan Gledhill in Vol. 6 *Republic of India. Commonwealth Series*, pp. 108-109. It reads like this:

"Today in India with a powerful Congress Party in the saddle, the President of India, has to submit to the advice of the Cabinet, but tomorrow with the change in the climate of political opinion, its docility may give way to a more aggressive outlook, and at least one of the well-known commentators on the Indian Constitution, of the fame of Alan Gledhill has little difficulty in contemplating the possibility of the Indian President becoming a dictator by disregarding the very convention of Constitution which makes the advice of his Ministers binding on him and thus succeed in bringing about, within the letter of the Constitution a coup d'etat."

That is a very important thing. And that point has been even mentioned by the President of India himself, and it is being discussed in the papers and everywhere else. So, why should that confusion remain, and why should the people in India go on discussing the possibility of some *coup d'etat*? Of course, that may not be there today because really the Congress Party is in a majority, and so long as one party has got an overwhelming majority in the Centre and in the States, there can be no difficulty in running the Government and we can even amend the Constitution. But, tomorrow, we may just imagine the possibility of there being two parties just as in England with equal numbers and one party ruling by only some nominal majority; then, the Constitution also cannot be amended. Therefore, we should take the earliest opportunity to consider this matter and amend the constitutional provision and provide the same wording as is provided in article 37 (7) of the Constitution of Pakistan where they have said that the President will act in accordance with the advice so given. That is a very important thing which must be considered.

Then, I would like to say a word about the Election Commission. I had put in a petition also before the Election Commission, and I had said that the Swatantra Party should be asked to modify its name before it is allowed to qualify even for getting 3 per cent votes, because the name 'Swatantra' is liable to create great confusion among the electorate. We have to provide some fool-proof law. In any constituency, there may be so many Swatantra candidates standing. The Swatantra Party candidate also will be in the same lot, and he will not be given a party symbol so long as he qualifies only within the 3 per cent of votes; so, he will also be like one of the 'Swatantra' candidates. Now, there are so many electors in a constituency who do not want to vote for any party candidate. They say that they will give their votes to a

candidate who obeys their constituency and who does not owe allegiance to any party. Now, the Swatantra Party candidate can equally go to any electorate and say that he also is 'Swatantra', and he does not owe allegiance to any party.

Mr. Deputy-Speaker: He will be double 'Swatantra' then.

Shri Kalika Singh: If an elector really wants to enquire into the fact of whether this man is a Swatantra Party candidate or a Swatantra candidate, he has got no means to verify it. Even if he were to go to the election office, there also, the symbol will be an 'Independent' symbol. Therefore, I would submit that the Swatantra Party should not be allowed even to qualify for the 3 per cent votes, unless it changes its name suitably; it may add to its name the word 'Praja' and say 'Praja-Swatantra' or something like that, but it cannot be 'Swatantra' by itself.

Shri A. K. Sen: Does the hon. Member mean Raja-Swatantra?

Shri Kalika Singh: Finally, I would say a word about the elections. The elections are coming shortly. But there is one great difficulty about the return of election expenses that the candidates have to file. Everybody knows that the return of expenses, that is filed before the returning officer does not contain the true state of affairs. Therefore, the law should be so modified by amending the Representation of the People Act that at least a correct return may be filed, and it should not also be very technical.

Shri Rami Reddy (Cuddapah): There are so many subjects which can be dealt with when we are discussing the Demands for Grants relating to this Ministry, but since the time at my disposal is very limited, I would like to confine myself to only a few points.

The first thing that I would like to deal with is about the elections. I

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fully associate myself with the compliments paid to the Election Commission by the several speakers who have already participated in the debate. While saying so, I would like to suggest one thing to the Election Commission in regard to the coming general elections. The elections in 1957 were spread over a period of fourteen to fifteen days and they were conducted in four stages. In a parliamentary constituency in my State, namely Andhra Pradesh, there are seven Assembly constituencies. In the first stage, the elections in two Assembly constituencies will be held; in the second stage, the elections in two other constituencies, and in the third stage, in still two other constituencies, and in the fourth and last stage, in the seventh constituency. This means that the candidate who is contesting for Parliament has to contest the election at four stages. This is a very severe strain on a candidate who is contesting for Parliament. Therefore, I would like to suggest that the election in a parliamentary constituency may be held in one day. The Election Commission now seem to be thinking of reducing the duration of the elections from fourteen to fifteen days, to about seven or eight days; they are also probably thinking of reducing the number of stages. But I would suggest that at any rate the election in a parliamentary constituency might be concluded in one stage in one day. That would reduce the strain that the candidate has to undergo. That would also reduce the expenditure that has to be incurred both by the candidate and also by the party.

Mr. Deputy-Speaker: That would shift the strain on to the administration of the Election Commission.

Shri Rami Reddy: It is not so. After the election is completed in one parliamentary constituency, they can go to another. In every district, there are more than one parliamentary constituency. Therefore, in one parliamentary constituency they

could conclude the election in one day in one stage and then for the second stage, they could go to the second parliamentary constituency. They could also adjust the administrative machinery like the police *bandobast* deployment of polling officers and other things.

In this connection I would like to say that I do not agree with the extraordinary suggestion made by Shri Naushir Bharucha that the expenditure of a successful candidate should be reimbursed from the exchequer to the extent of Rs. 10,000 in the case of a parliament candidate and Rs. 5,000 in that of an assembly candidate. I do not think anywhere in the democratic world such a system prevails. I do not know what is the *rationale* behind it, paying some amount to the successful candidate and not paying anything to the unsuccessful candidates. Further, as I said, such a system does not exist anywhere in the world, and to me it does not stand to reason at all that the exchequer should pay something towards the expenses of a candidate.

Coming to the administration of justice, the first thing I would like to mention is about the enormous cost of litigation. It has been mentioned by several speakers and it has been urged that the cost of litigation should be reduced. Of course, the administration of justice is a purely State subject. But court fees have been increasing enormously. This aspect has been considered by the State Governments, not for reducing the expenditure on litigation but as a source of revenue. I would in fact go to the extent of saying that dispensation of justice is being sold and that at a very high price. There is no doubt that State Governments are finding it very difficult to meet their expenditure in other activities. So in their anxiety to find revenue, to secure as much revenue as possible, they are not hesitating to tap this source also. This is highly regrettable. The Minis-

ter should bring pressure to bear on the State Governments to see that the cost of litigation is reduced to a very considerable extent.

While on the subject of surplus revenue by collecting court fees and other things, I regret to say that the State Governments are not paying any attention to the equipment in courts, the court building and other things. In the subordinate judiciary, they are not even supplied with text-books and law reports. The court houses are very old. Even the chairs are rickety. I have seen that in many courts the State Government do not care to cater for the needs of these subordinate courts in respect of chairs text-books, law reports and other things. So much so, in the absence of text-books and law reports, I have come across very many instances where incorrect decisions are given.

Therefore, I would appeal to the Law Minister to impress on the State Governments the necessity of providing more allocation to the subordinate courts so that they may be supplied with text-books and law reports. This would ensure that they will give correct decisions and appeals over incorrect decisions are be avoided.

There is another aspect. Yesterday Shri Raghubir Sahai was saying that the latest amendment to the Code of Criminal Procedure made while Dr. Katju was Home Minister dispensing with the examination of all the witnesses during the preliminary inquiry had not in any way reduced the delay in disposal of cases. In my experience it has really helped in disposing of criminal cases quickly. Before this amendment, even during the preliminary stage in a judicial sub-magistrate's court, cases used to be pending for over a year. Now under the need procedure, from the date when copies of documents are supplied by the public prosecutor to the accused, within the course of four to six weeks, the cases are disposed of in a magistrate's court. The long delay is not on account of the courts

being hesitant to dispose of the cases. It is the responsibility purely of the police; I do not mean to say even the police, but it is the responsibility of the executive. The executive is not providing sufficient funds to the police department or the other departments to supply copies of documents to the accused. Under the new procedure, the accused has to be supplied with copies of all the documents on which the prosecution is going to rely. But the Government have not provided any additional clerks for preparing these copies. Therefore, I would appeal to the Minister to impress on the State Governments to provide more allocation to them.

As regards the retirement age of High Court Judges, I suggest that it might be enhanced to 65 years. There is no reason why we should lose the ripe experience of the Judges. Under the Constitution, the High Court Judges should now retire at 60, but the Supreme Court Judges, who could be recruited from the High Courts, can under the Constitution continue till 65. In England and USSR, there is no age of retirement fixed for judges. So there is absolutely no reason why we should also not fix the age of retirement of High Court Judges at 65. The Law Commission has recommended it. I read in the papers yesterday that the Chief Justices Conference has also recommended it. Therefore, I suggest the Constitution may be amended to enhance the age of retirement of High Court Judges to 65 years.

Then I would request the Law Minister to consider holding a Circuit Bench of the Supreme Court somewhere in the south. Recently the Advocates' Association of Madras has also passed a resolution suggesting this. There are several advantages in this. Now people in the south have to come far away, about 1300 or 1400 miles. They want to reduce the expenses of litigation.

Shri Kalika Singh: What about east and west?

Shri Rami Reddy: In regard to *nyaya panchayats* for disposing of cases where the stakes involved are not of a high pecuniary value and where the cases are simple in nature, it is better that they are entrusted to panchayat courts. I have gone through the recommendations made by the Law Ministers' Conference. They also seem to be interested in that. They seem to have recommended that a Sub-Committee might be appointed to consider this. So I would appeal to the Government to see that these *nyaya panchayats* are established as quickly as possible.

Shri M. B. Thakore (Patan): It is very kind of you to give me time to speak on the Demands of the Ministry of Law. I am glad that Shri Tyagiji has come before I could reply to the wonderful points raised by him about the judiciary.

Shri Tyagi: My hon. friend seems to be a practising lawyer.

Shri M. B. Thakore: Our judiciary is the best in the world, and let me tell him that, as a practising lawyer, I have great regard for our judiciary. I had been to England, I have attended the courts there, and I can easily compare our judicial system with the English system.

Shri A. K. Sen: That is not saying very much.

Shri M. B. Thakore: Tyagiji is a very experienced man, but he proved himself to be a lay man commenting on the judiciary as a whole.

Shri Tyagi: I must say I never said that our judiciary was inferior. I only said there must be a ceiling on the income of lawyers. My hon. friend should not be annoyed at the suggestion.

Shri M. B. Thakore: He said there was corruption even in the judiciary.

Shri Tyagi: I said corruption was also creeping into it now.

Mr. Deputy-Speaker: Those who feel affected must feel offended. Why should Tyagiji be offended?

Shri Sadhan Gupta (Calcutta East): I wish as many lawyers as possible could be annoyed with his suggestion.

Shri Tyagi: It is a regular trade union in India.

Shri M. B. Thakore: You would very well know, Sir, having been a Judge and a lawyer, that many of them are starving. About 70 per cent are starving. May be 30 per cent are earning. So, our elder's suggestion is not quite correct.

It may be correct that there is some recent intervention of the executive at the State level, in the lower judiciary, on the question of promotions or appointments. Otherwise, I think our judiciary is the best, I would again repeat, in the world. As an Opposition Member, I would say that I have the greatest regard, and I can safely rely upon the judiciary, rather than all the departments of the Government of India.

Shri Tyagi: Hear, hear.

Shri Kalika Singh: There is no question of the Government of India.

Shri M. B. Thakore: Beg your pardon.

Mr. Deputy-Speaker: He should not mind what does not reach him.

Shri M. B. Thakore: The point is, I have some instance to give you regarding intervention in promotions, and appointments, but I do not wish to go into details about that.

Regarding the Kashmir Conspiracy Case and the Hazaratbal case, I have to request the Law Minister through you to expedite them. For more than two years now these cases have been going on in the Srinagar Court.

Mr. Deputy-Speaker: Just now the hon. Member was praising the judiciary. Does he mean that the Law Minister should intervene?

Shri M. B. Thakore: Not at all, Sir. What I want to say is this. The delay may be due to some procedure, or

long statements by the accused in the case. I would request the Minister, through you, to expedite the cases.

I appreciate the excellent work done by the Election Commission, but I have my own bitter experience in the last General Elections. I have written about it to the Law Commission, and a copy has been sent to the Law Minister also. On the day of election, at Delvada village in Chansma Taluka, in Gujarat State, I saw 20 to 25 military personnel in a lorry with helmets on. In the village the lorry was standing just near the polling station, I objected to the commander, and asked: "Why have you come? There is nothing here to be complained about." Then they started off. I also complained to the presiding officer on the spot. I also complained to the Collector. He was election officer, I think the Chief Polling Officer in the District, and he assured me that nothing like that would happen. When I asked him if he admitted that they were military personnel, he said: yes. But no steps were taken.

Mr. Deputy-Speaker: Were they called in by the civil authorities, or they were only spectators, just to satisfy their curiosity?

Shri M. B. Thakore: They had guns with them, they had helmets on their heads. They came there because I do not belong to the Congress Party, that is my presumption, just to terrorise the people.

Shri Tyagi: It may be on account of curiosity to see an election, on the way they might have stopped.

Mr. Deputy-Speaker: That was what I put to the hon. Member, but he did not reply.

Shri Sadhan Gupta: It should not be armed curiosity, that is all!

Shri A. K. Sen: Voters do not vote by coercion in this country.

Shri M. B. Thakore: Certainly if you go to the villages in Gujarat, they are terrorised if they see the

police. Now it is a different matter, but ten years ago or even three or four years ago, if a policeman went there, they would hide themselves.

Shri A. K. Sen: Sardar's country?

Shri M. B. Thakore: I am talking a North Gujarat, which is most backward and undeveloped.

Shri A. K. Sen: Sardar's country has fought the military long ago.

Shri M. B. Thakore: Sardar's place is Kaira, not my part of Gujarat.

Mr. Deputy-Speaker: The hon. Member would concede that they could not influence the voters; otherwise, the hon. Member would not have been here. With his presence here, we can presume that they could not influence anybody.

Shri M. B. Thakore: I thought that my rival would lose his deposit, but he got about 90 per cent of the votes that I got.

The next point I want to make is regarding free legal aid to the poor. I fully support my learned friend, Shri Ajit Singh Sarhadi. He being a very practical lawyer and very experienced, knows that many a time these poor people do not get time even to appeal. I know one case where the police brought up the case. They were actually prosecuted and sentenced for two years, and they were in jail. They could not get time to appeal in the district court. Again, they went to the High Court, and, being poor, they could not appeal. So, they appealed through the jailor. Being a practical lawyer and Judge, you know, Sir, that jail authority must perform the ceremony. It was summarily dismissed in the High Court. I know definitely many of them were innocent. About five or seven were sentenced to two years for nothing absolutely. So, I would request that there should be some kind of all-India legal aid corporation or something like that to help and assist the poor persons who are sentenced and who want to appeal, or

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to have legal assistance. Instead of political contributions the candidates may be given assistance or election expenses from the Central Exchequer was a suggestion of my learned friend Shri Bharucha and I fully support it. The details may be worked out. (*Interruption*). I do not understand why they oppose it. The Congress will be benefited more than any other party.

Pandit Thakur Das Bhargava (Hisar): It may come to about Rs. 3 crores.

Shri M. B. Thakore: It will not be more. Shri Braj Raj Singh also pointed out that it may be Rs. 2 crores. It may be lesser; may be one crore.

Mr. Deputy-Speaker: The hon. Member should conclude.

Shri M. B. Thakore: Would you allow me some time more, Sir?

Mr. Deputy-Speaker: I am sorry. The hon. Minister.

Shri A. K. Sen: Mr. Deputy-Speaker, Sir, I am much obliged to the House for the keen interest taken. It has been the good fortune of our Ministry that every year since I have assumed charge of this Ministry, we have come up before Parliament, and we have discussed the affairs of this Ministry, a position which, I understand, did not obtain previously. That shows the keen interest which Parliament takes in the working of our Ministry, which, as I have said often, deals, more or less, with non-controversial matters, technical matters, though the debate has disclosed that even in regard to our Ministry there are matters which, certainly, do not rise above the pale or level of controversy. (*Interruption*).

Several points have been raised in which, certainly, the country is interested but which, certainly, at the same time, do not concern our Ministry, either directly or indirectly. As Shri Tyagi has rightly pointed out,

the functions of the Law Ministry follow a pattern which is the result of historical accidents. Much of the work concerning the administration of justice which either in the States which came into being after dyarchy was introduced in this country or which, in other countries, pertained to the Ministry of Justice in this country by reason of historical factors were assigned to the Home Ministry because, during British days, the entire question of administration of justice was considered so important and so necessary for the maintenance of law and order that this function was assigned exclusively to the Home Ministry. And, in olden days, only the Law Ministry was thrown open to the Indian personnel and the Home Minister was never an Indian. Therefore much of the functions which possibly by logic should have belonged to this Ministry came to be assigned to the Home Ministry and we are still working under that tradition.

Shri Sinhasan Singh (Gorakhpur): Why so?

Shri A. K. Sen: It is not for me to answer; it is for the Prime Minister to answer.

Shri Tyagi: So, I take it that independence has not affected this. (*Interruption*).

Mr. Deputy-Speaker: Order, order.

Shri Tangamani: Subordination.

Shri A. K. Sen: Whether you call it subordination or not, the words do not matter much so long as the functions are understood. Ever since independence the Home Ministry which has been bearing the burden of much of the work concerning the administration of justice has done it very ably and impartially. We have had great men in charge of the Home Ministry who have not only shouldered the responsibility well but have discharged their functions in fairness and with impartiality.

My own personal connection has been with our late Home Minister,

our revered colleague whose death we all lament, Shri G. B. Pant. I have seen him working from very close quarters and I have had more intimate contacts with him. Naturally, the Home Ministry and the Law Ministry work very closely in all matters and I can say that in all matters concerning the administration of justice and the courts of law, I have never seen a greater champion of the independence of the judiciary than our late colleague, Shri G. B. Pant. He was very jealous in protecting and preserving the independence of the judiciary, of the High Courts and the Supreme Court. And, the Chief Justices of India who have come since independence have all spoken unanimously to that effect to me personally. Without indulging in any comparison between Shri G. B. Pant and his predecessors—I do not want to do so—I can say this from the personal experience of at least two Chief Justices who had occupied the high office of Chief Justice during the tenure of Shri G. B. Pant, that they never found Shri G. B. Pant trying even to affect the great independence of the judiciary on which our Constitution rests and without which our Government and system of administration will founder. Therefore, we are all agreed that we have to have not only an independent judiciary but a fearless judiciary, a judiciary which does not fear anyone and does not favour anyone; at the same time, a judiciary which does out justice to the common man as it should.

And there I agree with a good deal of the argument which has been addressed by Shri Anthony, our friend opposite. I am a firm believer in enabling the ordinary citizens to go to the court of law without having to pay anything. I do not think any country can boast of its administration of justice if the cost of justice is such that, though theoretically it is open to everyone yet practically it shuts the door of the courts to the common man. And, though Government had nothing to do with the imposi-

tion of this levy of Rs. 2,500, which is more or less a levy if I may say so, for the purpose of enabling a petitioner to approach the Supreme Court with an application under article 32 for the enforcement of his fundamental rights, yet I personally believe the sooner that levy goes the better for us. I, certainly, would make the wishes of the House known to the Chief Justice of India.

After all, the Chapter on Fundamental Rights really represents one of the finest periods of our history when the representatives of the people, the representatives of the Nation met together after the withdrawal of foreign rule and framed what they thought was the free Constitution for the people of India which would guarantee for ever some of the basic rights which are necessary for the common man, not only to enjoy freedom but also to attain that fullness of life which is the object of every democratic society.

Shri Achar (Mangalore): Why not have an enactment on the point?

Shri A. K. Sen: I am coming to that. Although article 145 says that the rules of the Supreme Court are subject to laws made by Parliament, there again, we are trying to build up healthy conventions not only here but also outside. Where courts of law are concerned, we should not readily jump into the arena and clamp down rules which commend to ourselves without consulting the judiciary who, for their own reasons, have thought it fit to frame certain rules. Parliament will justify the retention of these transcendental powers only if those powers are exercised rarely, not if they are exercised frequently. That has been the history of great parliamentary institutions. It is not the fullness of power or the abundance of power which is so important as the caution with which such powers are exercised. It is the rule of prudence which marks the progress of democracy and of a demo-

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cratic government as opposed to the rule of ruthlessness and to the rule of one mind pervading the entire field of administration which is so characteristic of dictatorships. If we, here, establish healthy conventions not only for our country but also for all countries which have earned freedom in recent years and are struggling to build up democracy and democratic institutions, then, we must not always inflict our power all around us but we should only use those powers for good purpose and with caution, especially when those powers are directed against the judiciary.

I, therefore, humbly submit that the criticism, which was been levelled against Government for not acting under article 145 in initiating legislation in Parliament trying to supersede certain rules framed by the Supreme Court, it not justified. If the Government have not acted immediately it is because they want to establish a tradition of deference to the judiciary, a tradition of consultations and negotiations in arriving at conclusions in regard to matters with which the judiciary has as much concern as the Government, that Parliament should not enact rules or laws unilaterally without consulting the views of the judiciary.

Shri Frank Anthony (Nominated—Anglo-Indians): I did not want to criticise and at no point in my speech had I actually said so; I had not put down a cut motion. I am only suggesting that these things could be done in a friendly way; I never even hinted at legislation in the matter.

Shri A. K. Sen: If that is so, then we are at one. Shri Anthony is a great champion of the judiciary and an advocate of standing and I thought it was rather odd that it came from a person like him—the suggestion that we should act unilaterally and not settle these matters in a friendly way, through the process of consultation and negotiation, I agree whole-

heartedly with the criticism that the door of the court should be closed by indirect methods for the ordinary man, specially when the question of the enforcement of Fundamental Rights is concerned. These are great and basic rights of which we are proud and it is open for every citizen to walk across the road and enter the doors of every court to see that these Rights granted under the Constitution are not only protected but are enforced . . .

Shri Khadilkar (Ahmednagar): . . . as open as the Asoka Hotel, you mean?

Shri A. K. Sen: I think the hon. Member mentioned Asoka Hotel. It is not open even for me except as an invite. I mean . . . as open as the edict of the great emperor Asoka Priadaršana.

Shri Tangamani: What is the Ministry going to do about it?

Shri A. K. Sen: Without trying to initiate legislation to supercede the rules of the Supreme Court, we can only make the wishes of the House known to the Supreme Court and that, I assure the House, I shall do without delay.

One of our most important functions lies in advising the entire Central Government, a work which has assumed great proportions with the passage of years. As our Governmental activities are increasing in every field, in External Affairs, in national undertakings and trading activities and in so many other ways, our advisory functions are also increasing in the same proportion. Naturally, no legal adviser, however high he may be, not even the highest judge can boast of always being correct in his pronouncements. In fact it is not unknown that even the judgments of celebrated judges get upset either in the court of appeal or the judgment of a court of appeal gets upset by full bench of the Supreme Court or the pronouncement of a smaller

bench of the Supreme Court gets reversed by the pronouncement of a full bench of the Supreme Court. Errors in pronouncing opinions, therefore, are inherent in the judicial process, especially because conclusions do not follow according to the rules of mathematics and they are not guided by the natural laws of science, in regard to which relationship of cause and effect is discernible more easily. Therefore, if there had been errors in certain matters, these errors have only been natural and one should wonder how the errors had been so few, especially with the volume of work turned out by the Law Ministry. I am myself dealing with some of the important matters and I invite any hon. Member who is interested in this matter to come with us and see how our advisory section functions.

But I shall certainly answer some of the criticisms based on alleged individual instances which according to me are based on erroneous assumptions and wrong premises. The instance of Berubari was taken up by Shri Gupta. If I had heard him rightly, he said that if we had advised the External Affairs Ministry, that means the Prime Minister, properly at the time the agreement was entered into, it would not have been entered into. This Ministry, Sir, does not advise voluntarily and I hope it will never inflict its advice where they are not sought. Advice is given only when it is sought. Especially in matters of international negotiations, discussions go on at the highest level in regard to matters which are strictly political and there is hardly ever a legal adviser, though it is the custom with regard to many countries to associate one before the final agreement is arrived at. But in India there was, no one from the Law Ministry either to assist the Prime Minister or to advise him at that stage. It is only after the agreement was entered into that the Parliament and ourselves came to know of it. I am only stating it as a fact, not as a complaint against the way in which it was done because it is

natural for the Prime Minister to choose the way he wants to adopt in such matters....

Shri M. B. Thakore: Whether it was discussed in the Cabinet before the said agreement was arrived it?

Shri A. K. Sen: I hope the hon. Member would not want me to divulge what goes on in the Cabinet. But it can only be discussed after it is entered into; it is common sense that it cannot be discussed before it is entered into.

Shri Tyagi: It was left to a lay man to question its validity.

Shri A. K. Sen: Whether it is the Cabinet or Parliament, it must be placed before either of these two bodies after the agreement is entered into; it cannot be thrown up either before the Parliament or the Cabinet as a nebula in the stage of formation. The question of its legal enforcement could only arise after the agreement as such was entered into, because if the agreement was something else the question of its legal enforcement would have never arisen. But it lies to the credit of the Law Ministry that according to the advice of the Law Ministry the Government first approached the Supreme Court before it adopted any course, and it is one of the few instances where in enforcing an important agreement, notwithstanding the party in power having such a large majority in Parliament, this Government took the course of approaching the highest court in the country for its advisory opinion as to the manner in which this agreement could be enforced.

Shri Sadhan Gupta: That was because writs were pending.

Shri A. K. Sen: The reference was made long before any writ was made. My learned friend's history is wrong. The reference order was made and a decision arrived at before any writ was made before the Supreme Court. Now, in any event, I can tell you that so far as I was concerned the writs had nothing to do in influen-

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cing my views in the matter. Therefore, the Government did not proceed in this matter at all with the advice of the Law Ministry but, if at all, with the advice of the Supreme Court and the Attorney-General. That is what the Prime Minister said on the floor of this House. The matter was discussed threadbare and the Parliament as such has ratified that agreement. That is the end of the matter. I suppose even after the reiteration by Parliament there were applications filed in the Supreme Court and they were not successful.

That shows that so far as the legal position is concerned there was hardly anything worth mentioning either here or outside and the procedure followed by the Government must have been the correct in accordance with the views of the Supreme Court.

The next instance given by Shri Gupta was that of the Auditor-General. I take full responsibility for that opinion because it was on my opinion that the appointment was made. What is the function, Sir, of the Finance Commission? It is one of the most responsible bodies whose existence is created by the Constitution and whose functions and procedure are laid down by the Constitution and by the Act of Parliament. It is my considered opinion, Sir, based on earlier precedents, that this is not an office under the Government of India because—the hon. Member is a lawyer and he knows it—the criterion by which the courts have always decided whether a relationship of master and servant exists between two parties or not is the question of control exercised by one over the other. Where there is no question of control exercised by one over the other, there is no relationship of master and servant obtaining. Is the Finance Commission a servant of the Government of India? Is that what he thinks? Is the Finance Commission whose recommendations are of vital importance for the allocations of revenue as bet-

ween the Centre and the States and the States *inter se*, a servant of the Government of India?

Shri Tangamani: Is the body appointed on its own? It is the President who appoints.

Shri A. K. Sen: If it was a question of mere appointment by the Government of India making one the servant of the other, then of course the hon. Member would have been right. Then the Chief Justice would have been a servant of the Government.

Shri C. R. Pattabhi Raman (Kumbakonam): Or the Election Commission.

Shri A. K. Sen: Yes, in that case the Election Commission is also a servant of the Government. I am very sorry our view is correct, that it is not the mere appointing authority that matters but it is a question of control exercised by the appointing authority. The relevant provisions in the Act of Parliament and the Constitution say that the procedure, functions and everything is laid down by the Constitution and the Parliamentary Act. The President merely appoints as the President appoints the Chief Justice, the Election Commission and various other offices.

Shri Tyagi: According to his analogy even the Linguistic Commission is an office.

Shri A. K. Sen: I personally thought, even as a matter of policy, Shri Ashok Chanda who was the Auditor General and who was intimately connected with the finances of the States and of the Centre was admirably suited for doing the job for which he was selected.

Shri Chintamani Panigrahi: He has taken up jobs with the Calcutta Jute Mills Association.

Shri A. K. Sen: I was not concerned with what other jobs he had taken,

but I was concerned with his experience in relation to the function which he would be called upon to discharge as the Chairman of the Commission.

Shri Tangamani: On a prior occasion where the Chairman of the U.P.S.C. was involved the opinion of the Attorney-General was sought. We want to know whether the opinion of the Attorney-General was sought in this particular case. Though there is no similarity between the two things, we want to know whether his opinion was sought because here it is the Auditor-General and there it was the Chairman of the U.P.S.C.

Shri A. K. Sen: If there is any doubt in the matter it has been our practice to consult the Attorney-General. If there is no doubt in the matter we never consult the Attorney-General.

Shri Tangamani: If the Minister refers to the discussion we had in this House on this point and the observations made then.....

Shri A. K. Sen: It has been the uniform policy of the Law Ministry that it is only matters where doubt is felt that are referred to the Attorney-General. The hon. Member must appreciate that it must be so. We cannot send every case to the Attorney-General. In that case the Attorney-General's life will be miserable and ours will also be miserable. It is only matters where genuine minor importance according to him?

Shri Tangamani: Are we to take it that the re-appointment of the Auditor-General after retirement is of minor importance according to him.

Mr. Deputy-Speaker: He says that there was no doubt. He did not say that it was of minor importance.

Shri A. K. Sen: The hon. Member is open to challenge it in any court of law. The court of law is not bound to accept our interpretation, but we are entitled to have our own views.

The hon. Member cannot cast doubts on us when we do not feel any doubts ourselves. But if there is any doubt in the mind of anyone he is free to test it in a court of law by a writ of *quo warranto*.

Therefore, it is really premature to characterise this opinion as erroneous. The Law Ministry is not concerned with the policy. The policy is entirely that of the Government as a whole. But if the legality of the opinion is challenged then, I was submitting, we have no doubts in the matter and those who have doubts may test it by approaching the highest courts in the land with a petition for the issue of a writ of *quo warranto*.

Shri Sadhan Gupta: Sir, on a point of explanation. I said that the Law Minister might have been right technically in his opinion that it was not an office of profit under the Government. But the point is, the reasons for which the Constitution made these provisions and the spirit of these provisions were violated through a technical loophole, because what was obviously intended by the Constitution was that such a high official after he had a job should not look up to the Government for further prospects after retirement. That is the thing that should have been guarded against. I specifically stated that if errors are to be made they should be made on the side of strictness rather than on the side of liberality.

Shri A. K. Sen: I am thankful to the hon. Member for having conceded this point. If technically, Sir, this advice is correct, then the attack is not really on the correctness of the legal opinion, as you will appreciate, because you are a lawyer yourself, and the hon. Member will appreciate.

Mr. Deputy-Speaker: Then the attack is on the policy.

Shri A. K. Sen: Then the attack is against the policy. As I said, the Government is entitled to have its own policy.

Shri Sadhan Gupta: As we are entitled to.

Shri A. K. Sen: Then the attack should be on some other Ministry. For the policy of it the Finance Ministry is responsible.

The next point that arose was the Orissa Ordinance. Ever since I have assumed charge of this Ministry, whatever might have been the opinions in the past, we have uniformly tried to hold that the Parliament must be consulted in all matters concerning the voting on Grants or the appropriation of money from the Consolidated Fund, whether of the State in which the Presidential rule has been imposed or of Parliament; and that this business cannot be achieved by the ordinance-making power either of the governor or of the President. I think that opinion is not only in consonance with common sense but also in accordance with the best traditions of constitutional law, and in any democracy, in all matters concerning money, no ordinance should be resorted to. In fact, there is no power to resort to any ordinance and everything concerning money must be done through the machinery of the elected legislature.

15 hrs.

Shri Chin'amon Panigrahi: May I point out that at the press conference in which the governor addressed, the governor had said that he had also consulted the Law Ministry in the Central Government before issuing that ordinance? He said it. Is that not true?

Shri A. K. Sen: I do not know about that. I do not think he could have said so, because he saw me only after we had declared the ordinance as invalid. (*Interruption*)

Shri Surendranath Dwivedy (Kendrapara): He said that they are informing the Law Ministry.

Shri A. K. Sen: The press must have reported him wrongly.

Shri T. B. Vittal Rao (Khammam): The Central Government did not send him any advice for two days.

Shri H. N. Mukerjee (Calcutta-Central): I have got a cutting from the newspaper, and if the Law Minister will bear with me, . . .

Mr. Deputy-Speaker: How can he be sure that it is correctly reported?

Shri H. N. Mukerjee: Here is the statement reported to have been made by the Governor of Orissa, saying that he had written to the Centre on a particular day.

Mr. Deputy-Speaker: It is only purported to have been made by the Governor. The Law Minister says that probably it was incorrectly reported.

Shri H. N. Mukerjee: This is the report about the press conference which the Governor was addressing, and in very respectable papers, the reports have appeared. Is it your ruling that we should never put any credence on this kind of thing, when the Minister is . . .

Mr. Deputy-Speaker: I have not said so. I am only pointing out the position of the Minister. I am only repeating that.

Shri H. N. Mukerjee: If the Minister does not object, here is a statement reported to have been made before the press conference by the Governor, which he may deny, . . .

Shri A. K. Sen: I have not heard it.

Shri H. N. Mukerjee: . . . regarding the dates on which he had communicated to the Centre; and he had not got a reply till the 25th February.

Shri A. K. Sen: I shall be obliged if the hon. Member reads it out.

Mr. Deputy-Speaker: The hon. Member may read it out if he wants.

Shri H. N. Mukerjee: This is the report from Bhuvaneshwar dated the 18th March:

"The Governor of Orissa, Mr. Y. N. Sukhthankar, told a press conference here today that he would not have issued the February 23 ordinance authorising the supplementary expenditure of over Rs. 4.4 crores during the current financial year if the Government of India had warned him earlier against doing so."

Then, after one paragraph, it is said thus:

"On February 21, he sent a telegram to the Centre stating that he was issuing an ordinance although he was very unhappy about it. If the Centre had warned him then he would not have issued the ordinance on February 23. It was only on February 25 that the Secretary of the Union Home Ministry informed him that the validity of the ordinance was open to doubt and that steps were being taken to set things right. The ordinance, he said, was issued on the advice of the former Chief Minister and in consultation with the officials of the State Government."

Then he talked about mid-term elections.

Shri A. K. Sen: It is more in accordance with the facts as we know them to be, but I am not quite certain about the language employed.

Shri H. N. Mukerjee: I read the exact language as reported.

Shri A. K. Sen: I am not in a position to contradict it. But the substance of it is more in accordance with the facts. The facts are that on the 25th February a telegram was sent by the Governor of Orissa to the Home Ministry and it reached in the evening, and actually, unfortunately it was that very evening that the late Home Minister took ill, as the House is aware. The telegram stated that the Governor has been advised to

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prorogue the Assembly and to pass an ordinance of the type which he in fact passed. Before the matter could be examined and the firm views of the Central Government could be communicated—on the 23rd he had passed the ordinance—for reasons which I do not know—there must have been certain reasons which impelled him to do so without getting any views of the Central Government—on the 23rd he informed the Central Government that he had already passed the ordinance. Perhaps by that he means that during these two days the Central Government had not warned him—"warning" may not be the appropriate expression—the Central Government did not communicate it—it takes time—and the telegram came only on the 21st, and the communication from the Central Government went very soon after that. The telegram of the 23rd came on the 24th and I think the communication of the Central Government went on the 25th. So, unfortunately, this was the position. But I do not see how the correctness or otherwise of the Law Minister's advice in regard to this matter comes into the question. Naturally the Governor also is not to blame very much. He got the advice of the local officials there and said—(Interruptions).

Mr. Deputy-Speaker: Let us hear him.

Shri T. B. Vittal Rao: Who has advised?

Shri Tyagi: It is a matter for the Home Ministry.

Shri A. K. Sen: There is the question of the Home Ministry or the Law Ministry. As I said, it is all a question of trying to shift the blame from one Ministry to another. What I said was that even the local officials cannot be blamed very much because, as I said, on these matters, to commit an error is not a very rare thing.

Shri Chintamani Panigrahi: The Law Department of the Orissa Government have said that they are not

[Shri Chintamoni Panigrahi]

responsible for it. They have also stated it.

Mr. Deputy-Speaker: They feel that they gave an honest opinion but it turned out to be wrong! (*Interruption*).

Shri A. K. Sen: I think something was said about the Orissa election. We have heard nothing from the Election Commissioner yet about the election.

Shri Sadhan Gupta: I said that the Government seems to have determined on a mid-term election, and I added that the Election Commission should over-rule the Government in this matter in the interests of fairness of the elections.

Shri A. K. Sen: Apparently the hon. Member seems to be knowing more about the mind of the Government than I myself know. But I can honestly tell the hon. Member that nothing could have been decided before the Prime Minister had returned, and the hon. Member knows that the Prime Minister returned only two days ago.

Acharya Kripalani: (Sitamarhi): Does everything hang upon him or what?

Shri A. K. Sen: I think Acharya Kripalani knows more about this than myself? (*Interruptions*). I do not have the pretention to enlighten the Acharya on this most well-known feature of our administration!

Shri Chintamoni Panigrahi: The time-table of the election has already appeared in one Orissa daily newspaper.

Shri A. K. Sen: I do not know how they have forestalled all of us and I do not think even the Chief Election Commissioner knows anything about it.

Shri Chintamoni Panigrahi: Even when the Election Commissioner was going to Orissa and visiting places,

everything about the elections appeared in the papers.

Shri A. K. Sen: The difficulty is, the hon. Member puts more faith in newspaper-cuttings than he should really do. If the paper-cuttings are to be relied upon always, I should be somewhere else today!

With regard to these elections, it is well known that the Government never interferes in these matters. I make bold to say that during my experience of being in charge of the Law Ministry under whose administrative jurisdiction the Election Commission comes, there has not been a single instance where I or the Government had tried to interfere with the discretion of the Chief Election Commissioner. Fortunately, our Chief Election Commissioners have been tough men and they would not readily tolerate interference from the Government.

Shri Chintamoni Panigrahi: Let us see how it happens in the case of Orissa now.

Shri A. K. Sen: I can assure the hon. Member that the decision is made by the Chief Election Commissioner. But what is open to Government is to decide whether it will extend the Presidential rule for another two more terms or not, and that can only be done with the concurrence of the Parliament. The hon. Member knows that if the Presidential rule is not extended twice, we cannot have the elections in Orissa in March, 1962, because six months will take us to August and another six months to February. Even then it will need a short extension beyond that, if we have to have general elections in Orissa in March, 1962.

It is, therefore, an important question of policy which certainly cannot be decided all at once as to whether a State should be put under Presidential rule for over a year just to avoid a mid-term election. The hon. Member is aware that when the Presidential rule was imposed on

Kerala, we had decided to hold elections immediately and not to extend the Presidential rule. It might have been argued even then that the Presidential rule be extended until March, 1962.

Shri Sadhan Gupta: Unfortunately Kerala does not have 120 degrees of heat.

Shri A. K. Sen: I can assure the hon. Member that I had been to Kerala more often than him and it is pretty hot.

Shri Tyagi: It also causes inconvenience to the electorate.

Shri A. K. Sen: The date and everything else will have to be decided by the Chief Election Commissioner. I can assure the hon. Member that no decision has yet been arrived at, so far as I know, as to when the elections will be held, as to whether the programme has been already settled by the Chief Election Commissioner or not. All that is news to me. I have not read it in any paper myself.

Shri H. N. Mukerjee: Could the programme be settled before the bifurcation of constituencies?

Shri A. K. Sen: Bifurcation of constituencies is for all the States; it is not merely for Orissa. It is for every State that bifurcation is going on, because if we have to hold the general elections in March 1962 on the basis of single-member reserved constituencies, then bifurcation must proceed very very quickly. If the hon. Member thinks that bifurcation is going on only in Orissa, he is wrong. It is going on simultaneously in every State. Therefore, bifurcation has nothing to do with the question of holding mid-term elections in Orissa or not. That is a common question for every State, because it is necessary for the general elections in March, 1962 whether we hold the elections in Orissa in June or not. Therefore, the criticism in regard to Orissa elections is a little premature and I am sure when the question

comes, there will certainly be a debate in this Parliament if the Government decide not to extend the Presidential rule. The debate will be replied to not by the Law Minister, but either by the Home Minister or by the Prime Minister.

Shri Gupta has unfortunately raised the question of the President's powers. Naturally when we discuss President's powers, the personality of the President is automatically brought in, specially having regard to the recent controversy which we have had in the newspapers and also outside. I would rather the hon. Member had not raised it so soon after the controversy had been raised; it might have been raised long after the controversy has become a thing of the past. Since it has been raised, it needs an answer. I do not see what the hon. Member would like the Government, or the Law Ministry to do.

Shri Sadhan Gupta: Apparently he has not read the debates. I said, have a reference to the Supreme Court and have the matter settled.

Shri A. K. Sen: It is not a question of my reading the debates. I was present when the hon. Member was speaking. The hon. Member need not be so caustic in his remarks. A little more gentleness would not be out of place, specially when I was not caustic. I am not in the habit of replying to the debates without listening to the debates. The hon. Member knows me in the Calcutta Bar and here also; I do not reply to debates without understanding or knowing what was said in the debates. In fact, if he had waited for a short while, I would have just touched on this question of reference to the Supreme Court. The hon. Member thought that this matter might be completely settled by a reference to the Supreme Court. I hope that courts should not be brought into the picture of political controversies.

An Hon. Member: It is not a political controversy. It is domestic.

Shri A. K. Sen: If it is not a political controversy, what else it is I do not know. It is universally agreed that this is one of the most important political controversies which has arisen since the Constitution.

Shri Tyagi: Not only in this country, but in other countries also.

Shri A. K. Sen: If the Government feel that there is no doubt in this matter, a reference under article 143 is completely out of question. The hon. Member had no doubt apparently when he quoted the relevant sections of the Constitution and he has no reason to suppose that if he has no doubt about the matter, the Government has any. In fact, those who have taken the trouble to pursue the records of the Constituent Assembly debates concerning this particular provision would have no doubt in the matter. There are certain things which can be best solved by being allowed to be developed as healthy conventions, rather than be adjudicated upon by courts of law. I have no doubt that during the last ten years, since the commencement of the Constitution, this Parliament and this Government have given ample proof to demonstrate that conventions on healthy lines are being developed.

Acharya Kripalani: Within ten years, what conventions can be made in this important matter? It is too short a time.

Shri A. K. Sen: For you, not for others. The Acharya should not commit the mistake of equating him with others.

Shri Sadhan Gupta: After all these 10 years, they are pulling in two directions.

Shri A. K. Sen: If they are pulling in two directions, it will be an unhappy thing. I hope the hon. Member will be proved to be wrong. This is not really a vital issue; this is more academic than real. In fact, I had the occasion to speak on it myself and I had quoted the words that fell from our respected President when he was

also the President of the Constituent Assembly and those words should be taken as the authoritative pronouncements of the President's powers under the Indian Constitution.

..Shri Kasika Singh has pointed out from the Pakistan's Constitution, which was adopted before the Constitution was thrown overboard and said that the framers of the Pakistan Constitution discovered the flaw in the Indian Constitution and they inserted a provision in the Pakistan Constitution to the effect that the President will be bound by the advice of the Council of Ministers. What was the practical effect of such a provision? The President, as he then was, dismissed the Ministry and dismissed himself within a few days, leading to military dictatorship.

It is not the written word of the Constitution which maintains the Constitution, but it is the faith in the Constitution and the democratic process which the Constitution embodies which sustains the Constitution. If the people lose that faith, the Constitution cannot be proposed up by the written words of the Constitution, whereas if they had, the written words assume flesh and blood and will become vital limbs of a powerful democratic Constitution.

Shri Kalika Singh: I read the opinion of one Mr. Allan Gladhill.

Shri A. K. Sen: He is a writer, but not an authority to be quoted, either in courts or in Parliament, with all respect to him. If the hon. Member had quoted Coke or Dicey, I would have understood it, but to quote Professor Gladhill is a thing with which I cannot concur.

But, as I said, the history of these written words, or section 37 of the Pakistan Constitution, are so fresh in our minds and they themselves prove the futility of this.

Shri Kalika Singh: But they have suspended the Constitution.

Shri A. K. Sen: That disposes of most of the criticisms on the general aspect of the debate.

With regard to the question of expensive litigation and the question of legal aid to the poor, I entirely agree with Shri Kasika Singh....

An hon. Member: Shri Kalika Singh.

Shri A. K. Sen: Yes, Shri Kalika Singh. I am sure, the hon. Member has got the generosity to excuse my lapse. It was really a slip of the tongue.

Acharya Kripalani: In other respects too.

Shri A. K. Sen: Yes, like you, Acharyaji.

Now, I agree with him whole-heartedly that one of the facts of planned development, in which the stress and emphasis is entirely on economic and social reconstruction, is this aspect of justice which to the lawyer and to the litigant is of great importance, and yet to the country as a whole is not of such importance. In fact, the hon. Member must be aware from the answers we have given, from time to time, in this House that during the past two years, we have framed a model scheme for legal aid to the poor, which was circulated amongst the different States. A beginning was made only by Kerala and Bombay. No beginning has been made by any State, excepting with regard to assisting litigants of Scheduled Castes, for whom 50 per cent. assistance goes from the Centre. With regard to other litigants, not belonging to Scheduled Castes, the Law Ministers of the States felt that unless the Centre came again with a grant of 50 per cent. of the total expenses, they would not be able to implement any scheme for legal aid to the poor. They are certainly masters of their own finances, and if they, in their scale of priorities, legal aid to the poor comes rather at a very low level, we cannot possibly take exception to it. Possibly, they have other priorities. And

if those in charge of finance here feel that it is impossible for the Centre to assist the States to the extent of 50 per cent. of their total expenses for legal aid to the poor, that again is matter on which we cannot pick up a quarrel with those in charge of the Central finances.

Shri Tyagi: What about a planned ceiling on the fees of lawyers?

Shri A. K. Sen: The only effect will be that the open fees taken will be less while the real fees....

Shri Braj Raj Singh: That is happening even today for purposes of income-tax and all that.

Shri A. K. Sen: If that is there, it is not on a very large scale now. But if a ceiling is put, I am sure that will be ineffective. The fact of the matter is that in such matters, as in the case of doctors, it is the eminent men who are always most sought after.

Shri Sadhan Gupta: What about a minimum wage for lawyers?

Shri A. K. Sen: It is not a case where there is equal competition, that out of ten who are equally good you choose one. That is one of the peculiarities of the legal profession—those who do well do still better and still better and those who do not do well never do well. That is one of the misfortunes or the peculiarities of the legal profession. Therefore, those who command fees command very good fees and even if you put a ceiling on their fees, they will continue to command that fees. It reminds me of a very good story of one of our very popular advocates, who might not have been an advocate in the ordinary sense of the term. One day a client came to him from the mofussil and wanted to find out what his position was, what his seniority was and so on, and he found out that he was called to the bar in the same year in which Sir Hussain Imam was called. So, he said: Hassan Imam is charging 30 gold mohars but you are not charging that much. He replied:

[Shri A. K. Sen]

“अरे नहीं, मेरी भी फीस ३० गोल्ड मोहर है, लेकिन मुझे यह देना कौन है ?

Shri Sadhan Gupta: The hon. Minister has omitted the unparliamentary part in this connection.

Shri A. K. Sen: Yes, I have omitted the unparliamentary part.

Mr. Deputy-Speaker: Order, order. The omitted words should not come from the hon. Member.

Shri A. K. Sen: I do not think it is feasible or practicable. Who will enforce it? If you put down a ceiling on lawyers' fees, it is impossible of enforcement and it will only create underhand dealing in a profession where standards are still, by and large, fairly high.

Shri Tyagi: Then they can be convicted for breach of law.

Shri A. K. Sen: No evidence. He will never be convicted for want of evidence. Will the lawyer who takes more keep any proof of it. Impossible. And the devoted client will be the last man to lodge a complaint. That ends this part of the discussion.

With regard to elections, a lot has been said by Shri Amjad Ali and also hon. Members on this side. Shri Amjad Ali's point is that election expenses of parties should also be shown. I do not know how it is feasible. Parties function in such a way that excepting absolutely set expenditure, it will be difficult to level any particular expenditure as relatable to election, because propaganda, meetings and various other things are the normal activities of any political party. What are to be regarded as the election expenses of a party unless that party actually prints posters as a party or does many other things which may be strictly relatable to the work of elections? And, secondly, as it is, it is difficulty to find out the election expenses of the individual candidates. It will be far more difficult to actually discover or scrutinise, or even

verify the election expenses of political parties.

Shri Kalika Singh: What about modifying the name of the Swatantra party?

Shri A. K. Sen: I am coming to that. Therefore, it is impossible to accept the suggestion that we should have some positive provision similar to the one we have relating to the election expenses of individuals.

With regard to the question of not allowing Swatantra party to have the name "Swatantra", there is force in this argument, because I personally think that there is likelihood of confusion arising in many cases where there have been independent candidates. Independent candidates are known, at least in the north India, as Swatantra. In the south too, I suppose, in Andhra, Malabar and other places, they would be called Swatantra. I do not know about the Madras State—how they are designated there.

Shri Naushir Bharucha: He will get votes from both sides.

Shri A. K. Sen: By and large, in the whole of India independent candidates are called Swatantra candidates.

Shri Tangamani: In Madras they are called *Suyechai*.

Shri A. K. Sen: In Madras, possibly, this difficulty will not arise. But in the rest of India, the difficulty will be there. I know in Kerala they are called Swatantras. In Andhra too they call them swatantra. (*Interruption*).

Acharya Kripalani: Tamilnad is always separate... (*Interruption*).

Shri A. K. Sen: All that I can do is to pass on the suggestion and apprehensions of this House to the Chief Election Commissioner... (*Interruption*) and request him to devote his attention closely with regard to this matter without doing anything that may be regarded as unfair by members of the Swatantra Party because

we do not want at all to be unfair to any party.

With regard to the question of drafting, I am very obliged to my hon. friend, Shri Bharucha, for the compliments he has paid to our draftsmen.

Shri Braj Raj Singh: Have you finished with elections?

Shri A. K. Sen: Does he want anything else?

Shri Braj Raj Singh: Yes.

Shri A. K. Sen: I thought I had answered Shri Braj Raj Singh when I answered a question yesterday or the day before about the recognition of political parties. The recognition of political parties has been the subject matter of discussion in the last conference called by the Chief Election Commissioner on the 18th February. We cannot do anything more than what the parties have themselves agreed to before the Chief Election Commissioner. The decision taken there was that there must be some objective criterion for determining which party would be regarded as a recognised State party and which party would be regarded as a recognised all-India party. There cannot be any better criterion which we can think of than the one we have namely, that the parties must at least poll 3 per cent. of the total number of votes.

Shri Braj Raj Singh: The point which I made this morning has not perhaps been taken note of by the hon. Law Minister. I said that after the 1957 elections, the Election Commission devised a new procedure. It said that the votes of candidates of parties who forfeited their security deposits in the 1957 elections should not be counted for the purpose of recognition. It was not the practice in 1952. After the 1952 elections they had taken into account all the votes polled by any candidate of the party whether he forfeited his deposit or not.

Shri A. K. Sen: I was coming to that. The post-election possibility does not concern the period preceding the general elections. As to what will happen after the general elections as a result of the polling results, it is a matter which will again be reviewed by the Chief Election Commissioner. We will have to await his report. How can I commit either the political parties or the Chief Election Commissioner on the basis of hypothetical results that may be revealed by the general elections of 1962?

Shri Braj Raj Singh: I have again been misunderstood. I am talking of the 1957 elections. Votes of people who belonged to certain political parties and who forfeited their deposits have not been counted towards the recognition of that party. It has happened in respect of my party.

Shri A. K. Sen: I cannot say so but at the deliberations of all the different parties who gathered at different conferences at the instance of the Chief Election Commissioner this point was either raised or was not raised. If it was not raised, it is an end of the question. If it was raised and disposed of, then again it is an end of the question. I cannot say in which particular case the votes collected by a candidate of a party who forfeited his security deposit were counted or not. I cannot say that off-hand now. But I should certainly imagine that if there was a genuine point to be made, it should have been raised by the Socialist Party to which the hon. Member belongs because they were represented at all the conferences, even at the last conference. If there was any particular omission in this respect, they should have pointed it out. All that I can do is to forward what the hon. Member has said again to the Chief Election Commissioner. How can I off-hand commit either the Government or the Parliament or the Chief Election Commissioner to any particular course of action? I have not misunderstood the hon. Member at all.

Shri Kalika Singh: Parties whose candidates generally forfeit their security deposits should be disqualified for ever.

Shri A. K. Sen: As I said, I do not know what has actually happened, but I have no reason to suppose that if it was a valid consideration it was not taken into account by the Chief Election Commissioner. As I said, the hon. Member's own party which was represented at all these conferences should have raised it. If they had not raised it, they are to blame themselves. If they had raised it, the matter has been disposed of. That again is the answer. How can I standing here, off-hand commit either the Government or the Parliament or anyone for a future course of action on certain complaints made *ad hoc*?

Shri Braj Raj Singh: I am sorry I am again interrupting the hon. Minister, but I have to submit again that a notification was issued by the Election Commission after the 1957 elections giving out a decision saying that the votes polled by candidates who forfeited their deposits shall not be counted towards the recognition of the party. Now this was a notification issued by the Election Commission superseding the notification issued previously. My point is that this is a question which affects the fundamental right of a citizen and therefore whether it is within the purview of the Commission to do this without the concurrence of Parliament.

Shri A. K. Sen: I have followed the point. There was no difficulty in following it. What I have said is that if the hon. Member thought that it was such an important point, it must have been raised in that conference. If it was raised, the conference must have dealt with it. The hon. Member can say whether he had raised that point or not.

An Hon. Member: It was raised.

Mr. Deputy-Speaker: The hon. Minister might now take up the next point.

Shri A. K. Sen: I was coming to the question of drafting. I am obliged to my hon. friend, Shri Bharucha, for the compliments he has paid to our draftsmen. I think, considering the tremendous increase in legislation and the terrible number of Bills, Ordinances, regulations and rules which the Drafting Section has had to handle since Independence, the job turned out by them has been of an excellent standard. It has not only evoked the praise of all who appreciate this type of technical work in India but also of people from outside. I have got compliments paid to our draftsmen by specialised agencies in England, Poland, Soviet Russia and other countries. I particularly remember the three new taxation laws which were enacted in 1957 for the first time for which there was no precedent in England or elsewhere. I mean the Wealth Tax Act, the Expenditure Tax Act and the Gift Tax Act. With regard to the Gift Tax Act, possibly there was some precedent available elsewhere. But the standard of draftsmanship of these laws was of such an order that it had evoked the admiration of all and sundry.

Tn Hon. Member: Sundry?

Shri A. K. Sen: They really thought that our draftsmen had made a perfect job of a legislation which was absolutely of a novel kind and which concerned matters of first rate importance.

Shri C. R. Pattabhi Raman: They are the hardest worked men.

Shri A. K. Sen: I agree that those who are in our Drafting Section are the hardest worked.

Shri Tangamani: I do not think anyone criticised them.

Shri A. K. Sen: Somebody said that the standard has gone down. Shri Aurobindo Ghosal—he is not here—has said that our standard of draftsmanship has fallen considerably. I should say that it is the other way about. He is just coming in. I wish he were here earlier.

Shri Tyagi: There is no scope for their promotion.

Shri A. K. Sen: Then Shri Ghosal has raised the question of abolition of solicitors in Calcutta and Bombay. This subject was enquired into by two high-powered commissions and both the commissions had expressed their views in favour of the retention of solicitors in these two cities where commercial litigation is of such a nature and where commercial firms and companies are so intimately concerned with legal work that it is impossible to set up only one type of advocates to whom clients can go and get their work done. In fact, firms of solicitors even work for courts, like the city civil courts, small causes courts and so on. Big firms always send their files to the solicitors. Two expert commissions have said that all the Chambers of Commerce had uniformly expressed their views that they will be seriously handicapped if the system of solicitors were abolished in these two cities. It is they really who are more concerned than any of us because it is they who form the litigant public in these two cities. It is no use setting up these high-power commissions and not accepting their recommendations. What the Government did was only to accept the recommendations of these commissions while framing the Legal Practitioners Bill. And in any event the Legal Practitioners Bill is before Parliament. The Select Committee has dealt with it and it will be before the House for being passed finally.

I think this disposes of all matters.

Shri Tyagi: What about the establishment of the Indian Judicial Service?

Shri A. K. Sen: It is really a question which ought to be addressed to the Prime Minister. It is for the Prime Minister to allocate business among the different Ministries. Shri Tyagi's point was that we should handle the Courts and various other matters. That is really a matter on which I am not competent to say anything.

Shri Tyagi: What is the hon. Minister's view with regard to the establishment of an Indian Judicial Service on an all India basis, with a view to bring about a real integration of the country?

Shri A. K. Sen: That is a different point. As the House is aware, the Law Commission had recommended the creation of an All-India Judicial Service. There are certain weighty arguments in favour of such a service one of them being, which Shri Tyagi has pointed out, that it will help integration of the entire country if, like Administrative officers, judicial officers are also taken from outside the States up to a particular percentage. At the same time, in the last Law Ministers' Conference, all the Law Ministers from the States were opposed to the Creation of an All-India Judicial Service.

Shri Tyagi: All the more important for Parliament to take notice of it.

Shri A. K. Sen: The hon. Member will appreciate that administration of justice, under our Constitution, is primarily a State subject, and without the concurrence of the States...

Mr. Deputy-Speaker: Order, order. Hon. Members are moving about as they like. I find every hon. Member is becoming *swatantra!*

Shri C. R. Pattabhi Raman: Mr. Masani is not here!

Shri A. K. Sen: All the States opposed the creation of an All-India Judicial Service. One of the main recommendations of the Law Commission was the creation of an All-India Judicial Service. And all of them, without an exception, voted against the creation of an All-India Judicial Service. In the face of the opposition of all the States it is hardly feasible either for Parliament or the Government to impose such a service on the States. It will then be a matter of persuasion and gradual development of public opinion in favour of such a service, rather than an imposition.

Sir, these are my suggestions.

crave your permission to put in.....

Shri Amjad Ali (Dhubri): Sir, I

Mr. Deputy-Speaker: No, not now. We have already taken much time on this.

Shri Amjad Ali: Some of us had raised the question of delay in the disposal of judicial cases....

Mr. Deputy-Speaker: Some points have not been answered. They might be discussed with the hon. Minister. The hon. Member can discuss it with the hon. Minister.

Shri Amjad Ali: The hon. the Deputy Minister said that we could raise them and they will be answered.

Shri A. K. Sen: Sir, if you will permit me, I will answer it in two minutes. With regard to the disposal of election petitions.....

Mr. Deputy-Speaker: He is talking of judicial cases.

Shri A. K. Sen: The Kashmir cases. I think, Sir, I should have really dealt with it, because it is of great importance.

Shri C. R. Pattabhi Raman: There is one case in Delhi, filed in 1953, the claim of an Editor for damages against a newspaper. Still it has not reached the stage of hearing at all.

Shri Amjad Ali: The Kashmir case started in 1958. Till now no evidence has been taken.

Shri A. K. Sen: The court that tries the question and the case is the only competent authority to decide how quickly or slowly it should carry on its work. Government never interferes in the question of administration of justice. And let that be made quite clear. If the Government tried to do it, I think we will be guilty of the accusation that we are interfering with the course of justice. The Kashmir conspiracy case has proved one thing to the whole world, that in Kashmir there is the fullest of liberty, even to an accused in a conspiracy case. Each accused has taken months to make his statement under section

342, and everyone knows how abusive those statements have been against the highest in the land.

Shri Ram Krishan Gupta (Mahendragarh): What about my point?

Mr. Deputy-Speaker: Can I ask him to answer every one individually? That would be difficult.

Shri Ram Krishan Gupta: Since the last General Elections an election petition has been pending.

Mr. Deputy-Speaker: Am I desired to put any particular cut motion separately?

Shri Tangaman: Yes, Sir, No. 1039.

Mr. Deputy-Speaker: The question is:

"That the Demand under the head 'Ministry of Law' be reduced by Rs. 100. (*Failure to consult Attorney General before former Comptroller and Auditor-General was appointed Chairman of the Finance Commission.*)" (1039)

I think the 'Notes' have it.

Shri T. B. Vittal Rao: The 'Ayes' have it.

Mr. Deputy-Speaker: Let the Lobbies be cleared.

I will now put the motion. Every hon. Member may be in his own seat and refresh his memory about the actual working of the machine—both the hands to be used simultaneously.

The question is:

"That the Demand under the head 'Ministry of Law' be reduced by Rs. 100. (*Failure to consult Attorney-General before former Comptroller and Auditor-General was appointed Chairman of the Finance Commission.*)" 1039).

Some Hon. Members: No.

Some Hon. Members: Aye.

Shri V. P. Nayar (Quilon): (in a loud voice): Aye.

Mr. Deputy-Speaker: Order, order. It is very bad. That should not be resorted to.

Shri V. P. Nayar: I had no control over my voice, Sir. I beg your pardon.

Mr. Deputy-Speaker: Those who have come here must have control over their voices. Division.

15.50 hrs.

The Lok Sabha divided:

राजा महेन्द्र प्रताप (मयुरा) : इस की
बिजली नहीं जली ।

Shri Tyagi: In case the machine is operating properly and the Member has made a mistake, I think we must establish a convention that the vote should be deemed to have been lost. Otherwise, there will be no end to this kind of thing.

Mr. Deputy-Speaker: The only difficulty is that the Hon. Speaker took a decision last time, and he allowed those mistakes to be rectified. Therefore, I have no option but to follow that procedure.

Shri Sadhan Gupta: But on how many occasions can this go on? I know that it happened in West Bengal.

Shri Tyagi: After all, it is a human mistake.

Shri Ram Krishan Gupta (Mahendragarh): My vote has not been recorded. I want to vote for 'Noes'.

राजा महेन्द्र प्रताप (मयुरा) : भाप ने ही
मजबूर कर दिया है कि मैं आपकी वीटिंग में
रहूँ, वैसे मैं तो कहता हूँ कि सब हाउस एक
रहे ।

Division No. 1]

AYES

Awasthi, Shri Jagdish
Banerjee, Shri S. M.
Braj Raj Singh, Shri
Gupta, Shri Sadhan

Jadhav, Shri Yadav Narayan
Kunhan, Shri
Mahendra Pratap, Raja
Nayar, Shri V. P.

Panigrahi, Shri Chintamani
Rao, Shri T. B. Vittal
Singh, Shri L. Achaw
Tangamani, Shri

NOES

Achar, Shri
Aney, Dr. M. S.
Bangshi Thakur, Shri
Barupal, Shri P. L.
Basappa, Shri
Bhargava, Pandit Thakur Das
Bhattacharya, Shri C. K.
Bidari, Shri
Birbal Singh, Shri
Bisat, Shri J. B. S.
Brajeshwar Prasad, Shri
Chettiar, Shri Ramenathan
Daljit Singh, Shri
Dasappa, Shri
Datar, Shri
Desai, Shri Morarji
Dube, Shri Mulchand
Eecharan, Shri V.
Elisaperumai, Shri
Ganapathy, Shri
Ganga Devi, Shrimati
Gupta, Shri Ram Krishan
Hajarnavis, Shri
Hajitvan Ram, Shri
Jhunjhunwala, Shri
Jinchandran, Shri
Joshi, Shri A. C.

Kalika Singh, Shri
Kashiram, Shri V.
Khwaja, Shri Jamal
Kurool, Shri B. N.
Lachman Singh, Shri
Laxmi Bai, Shrimati
Malhotra, Shri Inder J.
Mansan, Shri
Mandal, Shri J.
Maniyangadan, Shri
Masuriya Din, Shri
Mathur, Shri Harish Chandra
Mishra, Shri Bibhuti
Mishra, Shri B. D.
Mishra, Shri R. D.
Mohiddin, Shri
Muniswamy, Shri N. R.
Nehru, Shrimati Uma
Pandey, Shri K. N.
Pattabhi Raman, Shri C. V.
Raghubir Sahai, Shri
Raj Bahadur, Shri
Ram Shankar Lal, Shri
Ramu, Shri S. N.
Rane, Shri
Raut, Shri Bholi
Reddy, Shri Rami

Roy, Shri Bishwanath
Rungtong Sulea, Shri
Rup Narain, Shri
Sahu, Shri Rameshwar
Samenta, Shri S. C.
Samentsinhar, Dr.
Sarhadl, Shri Ajit Sing
Satyabhama Devi, Shrimati
Selku, Shri
Sen, Shri A. K.
Sen, Shri P. G.
Shakuntala Devi, Shrimati
Sharma, Shri R. C.
Singh, Shri K. N.
Sinha, Shri Gajendra Prasad
Sinha, Shri Jhulan
Sinhasan Singh, Shri
Subbarayan, Dr. P.
Subramanyam, Shri T.
Tarik, Shri A. M.
Tewari, Shri Dwarikanath
Thimmaiah, Shri
Tyagi, Shri
Umrao Singh, Shri
Upadhyay, Pandit Munishwar
Dutt
Varma, Shri Ramsingh, Shri

Mr. Deputy-Speaker: The result of the division is as follows:

Ayes: 12; Noes: 80.

The 'Noes' have it. The cut motion is lost.

The motion was negatived.

Mr. Deputy-Speaker: I shall now put the other cut motions to vote.

All the other cut motions were also put and negatived.

Mr. Deputy-Speaker: The question is:

"That the respective sums not exceeding the amounts shown in the fourth column of the Order paper, be granted to the President, to complete the sums necessary to defray the charges that will come in course of payment during the year ending the 31st day of March, 1962, in respect of the heads of demands entered in the second column thereof against Demands Nos. 71, 72 and 73 relating to the Ministry of Law."

The motion was adopted.

[The motions for demands for the Grants which were adopted by the Lok Sabha are reproduced below—Ed.]

DEMAND NO. 71—MINISTRY OF LAW

"That the sum not exceeding Rs. 34,71,000 be granted to the President to complete the sum necessary to defray the charges which will come in course of payment during the year ending the 31st day of March, 1962, in respect of 'Ministry of Law'."

DEMAND NO. 72—ELECTIONS

"That the sum not exceeding Rs. 26,08,000 be granted to the President to complete the sum necessary to defray the charges which will come in course of payment during the year ending the 31st day of March, 1962, in respect of 'Elections'."

DEMAND NO. 73—MISCELLANEOUS EXPENDITURE UNDER THE MINISTRY OF LAW

"That the sum not exceeding Rs. 1,27,000 be granted to the President to complete the sum necessary to defray the charges which will come in course of payment during the year ending the 31st day of March, 1962, in respect of 'Miscellaneous Expenditure under the Ministry of Law'."

15.53 hrs.

COMMITTEE ON PRIVATE MEMBERS' BILLS AND RESOLUTIONS

EIGHTIETH REPORT

Shri Jhulan Sinha (Siwan): I beg to move:

"That this House agrees with the Eightieth Report of the Committee on Private Members' Bills and Resolutions presented to the House on the 22nd March, 1961."

Mr. Deputy-Speaker: The question is:

"That this House agrees with the Eightieth Report of the Committee on Private Members' Bills and Resolutions presented to the House on the 22nd March, 1961."

The motion was adopted.

15.54 hrs.

RE: ESTATE DUTY (AMENDMENT) BILL

Mr. Deputy-Speaker: Now, Bills to be introduced. The first Bill, namely the Estate Duty (Amendment) Bill, stands in the name of Shri Ram Krishan Gupta. *

Shri Ram Krishan Gupta (Mahendragarh): I do not want to introduce this Bill.

Shri Braj Raj Singh (Ferozabad): How can he not introduce it?