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EMINENT PARLIAMENTARIANS
MONOGRAPH SERIES

# JAISUKH LAL HATHI

LOK SABHA SECRETARIAT
NEW DELHI
1991

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# Foreword

The Indian polity enshrining our flourishing parliamentary democracy owes a great deal to the sound edifice which our parliamentarians have laid down in the past. With a view to pay homage to such eminent parliamentarians and to recall, remember and place on record the contributions made by them to our national and parliamentary life, the Indian Parliamentary Group has, for some time, been celebrating the birth centenaries of some of our eminent parliamentarians. In this connection, a new Series known as the 'Eminent Parliamentarians Monograph Series' was started in March, 1990, with the first Monograph on Dr. Ram Manohar Lohia. The present Monograph—the tenth in the Series, is an attempt to recall the services rendered and contributions made by a Parliamentarian of great distinction, Shri Jaisukh Lal Hathi.

The Monograph is being brought out in Hindi, English as well as in Gujarati to mark the birth centenary of the veteran parliamentarian.

This volume consists of two parts. Part one contains a brief profile of Shri Jaisukh Lal Hathi depicting his multi-faceted personality. Shri Hathi had the distinction of holding several portfolios as a Minister in the Government of India for over seventeen years (1952—1969) and was Leader of Rajya Sabha during 1967—69. Part two contains excerpts from some select speeches of Shri Hathi delivered in Rajya Sabha and Lok Sabha, while participating in debates on a variety of issues and problems facing the nation.

On the occasion of his birth anniversary, we pay our respectful tributes to the memory of Shri Jaisukh Lal Hathi and hope that this Monograph would be read with interest and found useful.

NEW DELHI;
*January, 1991*

RABI RAY
*Speaker, Lok Sabha*
*and*
*President, Indian Parliamentary Group*

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## PART TWO

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# PART ONE
## His Life

# 1

# Jaisukh Lal Hathi : A Profile

Shri Jaisukh Lal Hathi, known for his gentleness, objectivity and dedication had a many faceted career. A man full of ideas and a popular teacher in his early life, he regaled his young pupils with anecdotes and stories to drive home sound moral values to the budding minds. A brilliant lawyer, an eminent judge, an able administrator, a noted parliamentarian and a distinguished Minister, Shri Hathi was above all a devoted public worker and a deeply religious man.

## His Early Days

Shri Hathi was born on 19 January, 1909 in the family of Shri Lalshankar Hathi at Muli in Saurashtra. Married to Shrimati Padmavati on 27 May, 1927, Shri Hathi had four sons and one daughter. He had his initial education at Alfred High School in Rajkot District. Having finished his school education successfully, he shifted from Rajkot to Bombay where he passed the Advocates' Examination of the Bar Council. He commenced practice as an advocate in the High Court of Bombay and in 1943 served as a District and Sessions Judge in the erstwhile Rajkot State. The outstanding contribution of Shri Hathi as an Adviser to the smaller States and Talukas of Kathiawar and Gujarat during 1936 to 1947 is memorable. In the face of tremendous odds, he worked with zeal for bringing about the integration and merger of smaller States and Talukas of Saurashtra and Gujarat. The work that Shri Hathi did in this respect earned him high appreciation in all quarters. In 1948, he rose to the respectable position of Chief Secretary, Saurashtra Government.

**An Active Parliamentarian.**

The public life of Shri Jaisukh Lal Hathi embraces mainly three phases—as a Parliamentarian, as an able administrator and as a public worker. Although he has left an indelible mark in all the three fields of his activities, he is very much remembered for his valuable contribution as a parliamentarian.

Shri Jaisukh Lal Hathi had his grounding as a parliamentarian since his early days when he became a member of the Constituent Assembly (1946-47) from the Princely State of Saurashtra and was later elected to the Provisional Parliament in 1950. During the years 1952 to 1957 he was a member of the Rajya Sabha. In 1957, he was elected as a member of the Second Lok Sabha. Shri Hathi was elected to Rajya Sabha in April, 1962 and continued as its member till 1974. He held with distinction several portfolios as Minister in the Union Council of Ministers during his membership of Parliament*. Shri Hathi was also the Leader of Rajya Sabha during 1967-69.

Both as a Minister and as Leader of Rajya Sabha, he won the approbation of members, always trying to accommodate as many points of view as possible. He was a rare type of individual who, by his very gentleness and suave manners,

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*Deputy Minister in the Ministry of Irrigation and Power (From 12.9.1952 to 17.4.1957); (Again from 17.4.1957 to 10.4.1962); Minister of Labour in the Ministry of Labour and Employment (From 16.4.1962 to 15.11.1962); Minister of Supply in the Ministry of Economic and Defence Coordination (From 15.11.1962 to 1.9.1963); Minister (of State) of Supply (From 1.9.1963 to 10.3.1964); (Also held charge of the Department of Technical Development from 1.9.1963 to 10.3.1964); (Also assumed the Office of Minister of State in the Ministry of Labour and Employment from 4.9.1963 to 24.1.1964); Minister of State in the Ministry of Home Affairs (From 10.3.1964 to 27.5.1964); (Again from 27.5.1964 to 9.6.1964); (Again from 9.6.1964 to 11.1.1966 and again from 11.1.1966 to 24.1.1966); (Again from 24.1.1966 to 13.11.1966)

(Also assumed the Office of the Minister of Defence Supplies in the Ministry of Defence, from 29.10.1965 to 11.1.1966); (Again from 11.1.1966 to 24.1.1966); (Again from 24.1.1966 to 13.11.1966); Minister of State in the Ministry of Defence (From 13.11.1966 to 12.3.1967); Minister of Labour and Rehabilitation (From 13.3.1967 to 15.11.1969).

instinctively commanded respect of everyone who came into contact with him. He had a remarkable way of getting around difficult situations by a smile on his face and a dignified and a responsive approach. Leader of the Congress-O, Shri S.N. Mishra, once said about him*:

> "....Mr. Hathi is the very picture of Sobriety. In fact, I speak of my friend; Sobriety, thy name is Hathi: He is the very picture of restraint, balance and dignity"....

With these virtues, Shri Hathi became a politician *par excellence*. His debating skills were always admired. During the parliamentary proceedings, relying on his logic and reason, Shri Hathi used to be firm but open-minded to suggestions. While the Anti-Corruption Law (Amendment) Bill was being discussed in Lok Sabha on 17 November, 1964, he said**:

> "It is not a question of being afraid of discussing corruption. I am bold enough and competent enough to reply to all the points that might be raised. At the same time, I am humble enough to accept any suggestion that they might make. But what I say is that we have to utilize this time of the House for giving concrete suggestions whereby we can tighten the existing law. I am prepared to accept all practicable suggestions. Hon. Members may kindly make those suggestions which they feel are necessary to tighten the laws and to expedite the disposal of cases and to bring corrupt people to book."

During his tenure of almost over seventeen years (1952-69), as Minister in various capacities, Shri Hathi always used to remain cool and humble in the midst of the heat of debates. Replying to one such debate on 18 May, 1966 on the motion for consideration on Delhi Administration Bill, Shri Hathi said@:

> "I was wondering why should Braham Prakashji come forward with these attacks on the Home Minister saying that he has bribed, he has induced or he has done this or

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*R.S. Deb., 18 November, 1969, c. 315.
**L.S. Deb., 17 November, 1964, cc. 253-254.
@L.S. Deb., 18 May, 1966, cc. 17519-17520.

that. I was really sorry that a person of the stature of Shri Braham Prakash whom I have always looked upon as a good and respectable friend.....and still I look upon him as a good and respectable person, should have made such a speech. I thought that perhaps it was his frustration, it was his anger, it was his wrath, and when he spoke that day—I was hearing him—he spoke with the force and powers of the ex-Chief Minister, with the hopes and aspirations of the would-be Chief Minister perhaps. But all that he spoke was very bitter and I really felt sorry for what he said. I still hope and feel that it was only an outburst of all his frustration, disappointment, anger and wrath and now that he has given vent to his out-burst, that having been subsided now, he will again become the same, my old good friend, Braham Prakash will associate in the working of this scheme. Let the frustration or the anger not lead him to renounce politics—he resigned from the membership of the Joint Committee—and let the feeling of *sanyas* not over-power him. That is what I would wish."

During his 10 year tenure (1952 to 1962) as Deputy Minister of Irrigation and Power, Shri Hathi took keen interest in a variety of important issues. Whether it was Inter-State Water Disputes Bill, 1955 or discussion on motion on flood control projects in the Second Five Year Plan or discussion on a resolution regarding river valley schemes or the statement laid on the table on irregularities in Hirakud project, his concrete suggestions and solutions to these long standing problems were accepted by the House with great respect.

As champion of labour, Shri Hathi fought fearlessly for the cause of labour as Minister of Labour and Rehabilitation during 1962-64 and 1967-69. He promoted healthy discussions on burning labour issues of his time like representative character of trade Unions, need to reconstitute the Calcutta Dock Labour Board, retrenchment in foreign oil companies, strikes and labour agitations, etc. During this period, several important bills such as—the Factories (Amendment) Bill, 1962, Public Employment (requirement as to residence amendment) Bill, 1964;

Government Servants (Ban on Service After Retrenchment) Bill, 1964; Displaced Persons (Compensation and Rehabilitation) Bill, 1967; Tea Districts Emigrant Labour (Repeal) Bill, 1967 were discussed at length and later passed by Parliament.

Gifted with outstanding qualities of head and heart, Shri Hathi was chosen as Leader of Rajya Sabha in 1967 and he proved himself a good friend, a good colleague, a good leader and above all, a good man. Paying tribute to Shri Hathi on his relinquishing the charge of Leader of Rajya Sabha, a renowned leader from the Opposition, Shri Dahya Bhai V. Patel said*:

> He managed to persuade friends of the Congress and friends of the Opposition to be accommodative to each other and to allow the business of the House to go on....I think because of his tactful nature he was eminently suited to look after the portfolio of Labour that he did for some time, and I do not know whether it was that experience that stood him so well when he became the Leader of this House. I do not think anybody in this House would have any word except praise to say about the manner in which he conducted himself in this House and outside the House. He was a friend to everyone.

He was affable and kind according to another leader and veteran parliamentarian, Shri Bhupesh Gupta, who said**:

> Mr. Chairman, the importance of Mr. Hathi was that he was very affable and kind even when he violently differed. I have never seen Mr. Hathi, in the course of these years he has been here, even for a moment, losing his temper. I have never seen him using harsh words. I have always seen him smiling even when he had been hit from this side of the House. These are rare qualities in the Treasury Benches. You know Sir, from the Treasury Benches

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*R.S. *Deb.*, 18 November, 1969, c. 318.
**Ibid., c. 324.

> very often the smile that comes is hypocritical smile. But in the case of Mr. Hathi I think the smile was not hypocritical. This was one of his good qualities...

When he attained the age of 60, Shri Hathi promptly sent in his resignation as a Cabinet Minister to the Prime Minister (Smt. Indira Gandhi) which she, of course, refused. It was characteristic of him. He would not cling to his chair, for power to him was just a means to serve peoples' interest. As a servant of the people, he wanted to set an example.

Shri Hathi was elected Deputy Leader of the Congress Parliamentary Party after he resigned from Union Cabinet. Commenting on his role as Deputy Leader, Shri K.P. Unnikrishnan, said:

> It has been rightly stated by Atal Bihari Vajpayeeji that Shri Jaisukh Lal Hathi was an "Ajatashatru". It was a treat to work with him. And, I remember when he was a Deputy Leader of the Congress Party in Parliament, the great consideration he showed to younger Members and the great ability he had in tackling people and their problems. He was a man of outstanding ability which he always concealed in his humility. His record as an Administrator will be long remembered.

**As a Governor**

Appointed as Governor of Haryana on 14 August 1976, Shri Hathi was transferred to Punjab in September 1977. He resigned as Governor of Punjab in December 1981 on grounds of ill-health. As a Governor of two States, Shri Hathi was known for his gentleness, humility and objectivity and for his capacity to get along with those who were opposed to him without yielding on principles.

**A Distinguished Public Figure**

Shri Jaisukh Lal Hathi was an eminent patriot who rendered his services with devotion and dedication for the promotion of social and cultural interests. In 1974, Shri Hathi headed the

Commission on Drugs and Pharmaceuticals appointed by the Government of India. Within a year, the Hathi Commission produced a monumental report on the drug industry and the role of multinationals in it. The recommendations of this Commission were accepted in toto by the Government.

He was also Chairman of the National Lawyers' Forum. He functioned as a Director of the Press Trust of India and was also appointed by the Government of India as Member of the Committee on Legal Aid.

He worked silently and steadily for the upliftment of weaker sections of the society and down-trodden. He had a long and highly productive association with Bharatiya Vidya Bhawan almost from its inception.

He remained as Chairman of Bhavan's international chapter besides being the Chairman of the Bhavan's Central Kendra's Committee. He extended the activities of the Bhavan to Britain and the U.S.A. This was a creditable achievement for him and speaks volumes for his faith in good causes and his tenacity. He also served with utmost dedication in number of organisations like Rajaji International Institute of Public Affairs, Hatkesh Vyayam Mandal, Saurashtra High School etc. Deeply religious, Shri Hathi was also a Trustee of the Somnath and Dwarka Temples.

**A Gifted Writer**

Besides being an untiring parliamentarian, Shri Jaisukh Lal Hathi made his mark as a young writer who wrote with sincerity and wisdom. His work **"Position of Indian States in Federation"** was published in 1939, when he had attained the age of only 30 years. Despite his many preoccupations, Shri Hathi managed to write short stories which were published in the Bhavan's Journal, between 1970 and 1974. His stories delightfully portray human nature at its best and worst. Another work of Shri Hathi **Sidelights on Indian princes,** published in 1975, is also a collection of stories pertaining to the princely States. These

interesting, instructive, absorbing and simple stories were based on his "real-life" experiences in some of which he was a participant.

His hobby of reading on a variety of subjects and his inimitable narration of delectable stories during long-distances travels made him indeed very popular among his colleagues and friends.

**Tributes on his Passing away**

Shri Jaisukh Lal Hathi who remained a prominent figure on Indian Political scene for over three decades passed away in his sleep at Bombay on 2 February 1982 at the age of 73 years. With his demise, the nation lost a veteran administrator of high integrity and ability, a leading statesman who served the nation in various capacities with distinction, a personality endowed with a cool and calm mind and balanced views, a man of principles who made his mark in the national, social and educational life of India. The then President Sanjiva Reddy, expressing his grief over the death of Shri Hathi, recalled him as "a devoted social worker, besides being an able administrator".

Remembering his association with Shri Hathi, the then Vice-President M. Hidayatullah said: "He was a man of full of ideas, forthright but humble."

Paying her tributes on the sad demise of Shri Hathi in Lok Sabha on 18 February 1982, the then Prime Minister, Smt. Indira Gandhi said:

> For many years he adorned the Treasury Benches with distinction. Earnest and imperturbable by temperament, he shouldered a variety of responsibilities at State as well as Central levels.

The then Union Home Minister Zail Singh said: "I am deeply shocked at the sudden demise of Mr. Hathi. He was a great patriot and an able administrator. He served his countrymen all his life with devotion."

One of the best tributes on Shri Hathi's death came from the noted parliamentarian Shri Madhu Dandavate, who said:

> Sir, ...his last dream was: Let us enrich the proceedings of Parliament and make them more meaningful and let us make them more relevant to our times. Now, that was the dream. And if we have to pay a real and lasting tribute to Hathiji, I think if we are able to make our Parliamentary proceedings more relevant to the time then that would be the best tribute that we have paid to Hathiji.

Recalling his role as Governor, the then Punjab Chief Minister, Shri Darbara Singh said:

> Mr. Hathi was an outstanding administrator who discharged the responsibilities of the post of Governor of Haryana and Punjab with earnestness and impartiality. He had maintained close affinity with the people of Punjab even after leaving the post.

The then Haryana Chief Minister, Shri Bhajan Lal said:

> Mr. Hathi has left behind several institutions that would continue to serve the public for generations. The establishment of the Chandigarh centre of Bharatiya Vidya Bhawan was Mr. Hathi's solid contribution in the field of education in this region.

# Sources Consulted

## I. Books


(i) Hathi, Jaisukh Lal: *Sidelights on Indian Princes* (Bombay, Bharatiya Vidya Bhavan, 1975).

(ii) Aggarwal, Sudarshan: *The House Laughs* (New Delhi, Rajya Sabha Secretariat, 1989), p. 7, pp. 75-76 and p.86.


## II. Parliamentary Publications


(i) Parliament of India: Who's Who. 1950 (New Delhi, Govt. of India Press), p.37.

(ii) Parliament of India: Rajya Sabha: *Who's who, 1955* (New Delhi, Rajya Sabha Secretariat), p.76.

(iii) Parliament of India: Rajya Sabha: *Who's Who, 1972* (New Delhi, Rajya Sabha Secretariat), p. 94-95.

(iv) Lok Sabha Secretariat: *Council of Ministers* (1947-1989) (New Delhi, L.S.S., 1990), pp.18-19.

(v) Debates:

(a) Lok Sabha Debates — 17 November 1964, cc. 253-254.

(b) Lok Sabha Debates — 20 November 1964, c. 750

(c) Lok Sabha Debates — 18 May 1966, cc. 17519-17520

(d) Rajya Sabha Debates — 18 November 1969, cc. 314-339 (Part — c.315, c.318. c.324 and c.327, c.338)

(e) Lok Sabha Debates — 18 February 1982, cc. 29-30, cc.41-42 & cc. 45-46.

(f) Rajya Sabha Debates — 18 February 1982, c. 30.

**III. Newspapers**

(a) *The Hindustan Times* New Delhi, 3 February 1982.

(b) *The Tribune,* Chandigarh, 3 February, 1982

(c) *Deccan Herald,* Bangalore, 3 February, 1982

(d) *The Statesman,* Delhi · 4 February 1982

(e) *M.P. Chronicle,* Bhopal, 4 February, 1982

(f) *Patriot,* New Delhi, 5 February 1982

# PART TWO
## His Ideas

# 2
# Legal Matters
# I
# Anti-Corruption Laws (Amendment) Bill

Sir, the House knows that in 1962 a Committee on the Prevention of Corruption, known as the Santhanam Committee, was appointed to review the problem of corruption and suggest measures to combat it. The committee has made various suggestions and I would like to pay a tribute to the members of the Committee for the hard work they have put in and the valuable suggestions they have made in this regard. The present Bill is to implement those of the recommendations which have been accepted by the Government. Most of them have been accepted. Section 7 of that report deals with this subject. I do not make a tall claim that Moving the motion on Government Bill, Anti-Corruption Laws (Amendment) Bill, "That the Bill further to amend the Indian Penal Code, 1860, the Code of Criminal Procedure, 1898, the Criminal Law (Amendment) Ordinance, 1944, the Delhi Special Police Establishment Act, 1946, the prevention of Corruption Act, 1947, and the Criminal

—Moving the motion on Government Bill, Anti-Corruption Laws (Amendment) Bill, "That the Bill further to amend the Indian Penal Code) 1860, the Code of Criminal Procedure, 1898, the Criminal Law (Amendment) Ordinance, 1944, the Delhi Special Police Establishment Act, 1946, the Prevention of Corruption Act, 1947 and the Criminal Law (Amendment) Act, 1952 be taken into consideration" Shri Jaisukh Lal Hathi, Minister of State in the Ministry of Home Affairs, made his speech, L.S. Deb., 17 November 1964, cc. 241-258 and cc. 720-750.

Law (Amendment) Act, 1952 be taken into consideration," Shri Jaisukh Lal Hathi, Minister of State in the Ministry of Home Affairs, made his speech, L.S. Deb., 17 November, 1964, cc. 241-258, cc. 720-750. The Government is bringing a very exhaustive measure to change the entire criminal law. The Committee has suggested, and as is our experience, that though the main Act, the Indian Penal Code, drafted more than a hundred years ago, is a comprehensive Act and deals with almost all the offences, but with the change of time, especially during the last seven years, with the economic development, there are various other offences which we can conveniently call social offences. The Committee has suggested in this section that the law should be so amended and made comprehensive so as to include these social offences also. They have recommended that this should be referred to the Law Commission. We have referred this matter to the Law Commission. For the remaining suggestions which the Committee have made,—there are, in all, 29 paragraphs in this section—I shall try to relate the clauses of the Act with the recommendations of the Committee so that it may be more convenient for the House to appreciate and understand the theme of the measure and also the sincerity with which the Government deals with the subject. I will, therefore, correlate the Committee's report with the clauses of the present Bill.

There are 29 paragraphs in section 7. Out of this 7.1, 7.2, 7.3 and 7.4 relate to the suggestions about the social offences. Paragraphs. 7.25 to 7.29 deal with other subjects which are not included in the present Bill. Paragraphs 7.25 and 7.26 relate to amendments to Imports and Exports (Control) Act and the Essential Commodities Act. These have been referred to the Commerce Ministry which is the administrative Ministry concerned. Paragraph 7.27 deals with the Constitutional amendment which we are dealing with subsequently, separately. Then, paragraph 7.28 refers to the power to summon witnesses and power for the production of documents. It is proposed to

replace the Public Servants (Inquiries) Act, 1850, wherein these provisions will be made. Paragraph 29 refers to the Central Excise and Salt Act which is being examined by the Finance Ministry. The remaining paragraphs will be paragraphs 7.5 to 7.24. This Bill deals with these paragraphs.

I shall now broadly mention the changes that have been proposed to be made in the existing laws. The laws that are being amended under this Bill are: the Indian Penal Code, the Criminal Procedure Code, the Prevention of Corruption Act, the Criminal Law Amendment Ordinance 1944, the Delhi Special Police Establishment Act, 1946 and the Criminal Law Amendment Act, 1952. These are the Acts which are sought to be amended by this measure. Clause 2 of the Bill deals with the amendment to the Indian Penal Code. The Committee has suggested two amendments: one in section 21 and the other in sections 161 to 163. Section 21 deals with the definitions of a public servant. When we are dealing with the eradication of corruption or amendment of the corruption law, the question of the public servant is the most important question, and it has been rightly suggested by the Committee that the definition should be expanded to cover different categories. Clause 2 deals with the amendment of section 21 where, firstly, we have thought of expanding the definition. Instead of the words, "every judge", we have said, as is recommended by the Committee, "Every judge, including any person empowered by law to discharge, whether by himself or as a member of any body of persons, any adjudicatory functions;" instead of restricting definition of a public servant, to only a judge, we are expanding it to all persons who are discharging adjudicatory functions.

Then, in clause 2 (i) (ii) in clause *Fourth*, after the words "officer of a Court of Justice", we are also including the words, "including a liquidator, receiver or commissioner appointed by courts," so that these people also will be included in the category of public servants.

Then, the ninth provision in the original Act read thus: "Every officer whose duty it is, as such officer, to take, receive, deep or expend any property on behalf of the Government," etc.; and the twelfth provision read thus: "Every officer in the service or pay of a local authority or of a corporation engaged in any trade or industry which is established by a Central, Provincial or State Act...." etc. Then there was an explanation to the effect that "The expression 'corporation engaged in any trade or industry' includes a banking, insurance or financial corporation, a river valley corporation" etc. We have expanded this definition to include, or, so as to cover the public servants in the service or pay of any statutory corporation which is not engaged in trade or industry. That also is covered now. Therefore, we have accepted the definitions as suggested by the Santhanam Committee.

I will not deal with those recommendations which we have not accepted; I shall not deal with them for want of time at present. I shall explain them later, if any point is raised, but I may mention here that if we have not accepted any of the other categories, it is because we thought that at present it will not serve any very useful purpose; rather it will cause inconvenience. For example, the Committee has recommended that all honorary office bearers of all educational, social religious and other institutions receiving some aid from the Government should also be included in the definition of public servant. Many of the people become honorary office-bearers in this sort of activity such as religious, social and all sorts of institutions. If they are also taken up in the category of public servants, perhaps the people might shirk to bear such responsibilities and to do useful work. Therefore, for the present, we have thought that it is better first to tighten the belt so far as the other categories are concerned and leave out the social and educational institutions where there may be very good social workers. For instance, take the Adivasi institutions where the institutions may be receiving grants, but very devoted social workers are in charge of them. If they are also included in the definition of public servants, perhaps they might not like to be associated

with those bodies as office-bearers and work would suffer. It is for that reason only that we have not taken up such categories; I have explained the reason.

By sub-clause (2), we are amending sections 161, 162 and 163 where the words were only "the Legislature of any State". Now we are including local authority, corporation, Government Company, etc. This is only a consequential change. These are the two amendments recommended by the Santhanam Committee so far as Indian Panel Code is concerned.

In the Cr. P.C., we are amending sections 198B, 222, 492, 495, 251A, 344, 435 and 540A. The important amendment is in clause 3, namely, amendment of section 198B. At present, the public prosecutors are empowered under certain circumstances to file complaints in respect of offences of defamation other than by spoken words against the President, the Vice-President, Ministers and other public servants in respect of their conduct in discharge of their public functions. It is proposed to amend section 198B so as to enable proceedings being taken thereunder, even in respect of offences of defamation by spoken words. It also provides that trial under this section may be held in camera. This was not recommended by the Santhanam Committee, but Government have added it on their own. We thought in cases of defamation, very often the complainant is put to harassment by publication of various things and so we have thought it fit to provide that if either party to the proceedings so desires or if the court so desires, the proceedings should be held in camera.

As recommended by the committee, we have said that the consent of the person defamed will not be necessary. Very often it happens that in the view of the Government it is necessary that certain allegations be cleared and it is proved to the country outside that the allegations are false. If it is obligatory that the consent of the person defamed should be obtained and if he does not give the consent, then the Government connot charge him in a court of law, though departmentally it can do anything. So, we have accepted this amendment recommended by the committee.

Another important amendment contained in clause 3(2) is amendment of section 222 of the Cr. P.C. After the existing words "dishonest, misappropriation of money", we have also proposed to add "or other movable property". Section 222 provides only for sums of money misappropriated. There is no provision so far as movable property is concerned. So, it does not come within the purview of the Prevention of Corruption Act. So, we have accepted the recommendation of the committee in this regard and we have added the words,

"it shall be sufficient to specify the gross sum or, as the case may be, describe the movable property".

The other amendment in the same clause is a consequential one. Under the present Act, the Central Government had no power to appoint a public prosecutor. That is sought to be amended by clauses 3(3) and 3(4).

The other provisions which are to be amended are in clause 6. They relate to the question of supplying of the list of documents by the accused also. Under the Cr. P.C. when a warrant case is instituted on a police report, it contains necessary provisions to ensure that the accused is supplied with important documents referred to in section 178 of that Code, on which the prosecution wants to rely. The reason is that the accused should not be taken by surprise and he should be able to know what he has to defend. But the section does not, however, cast a similar obligation on the accused to furnish the prosecution with a list of witnesses and documents on which he proposes to rely for his defence. Very often delays are caused because of this. We want speedy disposal of corruption cases. So, we have suggested that the accused also should give a list of documents and witnesses.... The prosecution will give him all the chances. During the course of the trial, the accused will know what case he has to meet. He should be ready with the list of witnesses he has to examine. Very often there is delay because the documents are not produced or the names of witnesses are not given. In the name of fair trial, the person who is alleged to have committed corrupt practices

takes two or three years. Therefore, it loses all the charm. Therefore, the Santhanam Committee thought that this amendment should be made. After due consideration whether it will mean any unfairness or it will in any way cause inconvenience to the accused, we have accepted this amendment. There are various provisions where we have departed from the normal practice. For example, in the Prevention of Corruption Act, the burden of proof lies on the accused. In certain offences under section 161 or 165 of IPC, certain ingredients are proved and the motive is presumed. In other criminal cases, the motive has to be proved. This House itself accepted this in the Prevention of Corruption Act, because otherwise it is very difficult to prove that he accepted the bribe with a view to do something. I shall deal with the points that may be raised when I reply to the debate.

Then, provision is also being made to avoid adjournment or postponement of trials or inquiries merely on the ground that an application under section 435 is pending. Very often it happens that from the lower court the party goes to the higher court and asks for a stay order. Till that is decided, the lower court cannot move. This is one of the main causes of delay. Perhaps the learned advocates who are Members of this House will appreciate whether this happens in actual practice or not. Our experience is that this happens very often. So, we have proposed that this amendment may be made.

The other amendment is with regard to calling of records. Often it happens that the higher court calls for the records from the lower court and naturally the trial stops. By this amendment, we are providing that ordinarily the records should not be called. But if they are to be called a notice should be issued to the other party that the records are to be called. Then the party should be heard and if the court finds that it is necessary and it cannot be done otherwise, then that should be done. This is only with a view to expediting the proceedings of the trials.

The other amendment is to section 540. To avoid delay occasioned by the absence of the accused it is proposed to provide that the court may, in its discretion, proceed with the

trial or inquiry and record the evidence even in the absence of the accused, while suitably protecting the right of the accused regarding cross-examination of the witnesses.

Another amendment is with regard to the Criminal Law Amendment Ordinance, 1944. There one more item in the Schedule is added—"An offence punishable under Section 5 of the Prevention of Corruption Act, 1947". The object of this is that under this Criminal Law Amendment Ordinance, for the offences included in its Schedule provision is made for the attachment of money or other property believed to have been obtained by the commission of offences in the Schedule thereto. But this offence is not included in that Schedule. We are, therefore, including this offence also—offences under the Prevention of Corruption Act—in this Schedule. Therefore, any offence committed or connected under this will also come within the purview of this. The court will then be in a position to order the attachment of money or property. To facilitate similar action in relation to the offences under the Prevention of Corruption Act, it is proposed to include those offences also in the Schedule. So far as clause 5 is concerned it deals with giving powers to the Delhi Special Police Establishment for investigations. The sub-inspectors of police can exercise the powers of police officers. Then comes clause 6. The House will find that under this, Section 4 of the Prevention of Corruption Act is sought to be amended. It provides at present that on proof of certain facts constituting an offence under Section 161, 165 or 165A, of the Indian Panel Code, when certain ingredients are proved, then the motive implicit under this offence will be presumed and it will be for the accused to prove that it was not his motive to accept a reward or something like that. But the new offence we are now proposing and the other offences referred to in (a) and (b) of sub-section 1 of section 5 of the Act are not included there. Therefore, we are also amending section 4 of the Act. Then comes sub-clause (2) of clause 6. It covers offences of criminal mis-conduct by public servants as defined under the Prevention of Corruption Act. Here the proposal is to delete the words "in the discharge of his official

duty". I shall read the relevant section so as to give a clear idea. It reads as under:

"A public servant is said to commit an offence of criminal mis-conduct in the discharge of his duty ....."

It may be that a public servant may be doing an act which may not be actually in the discharge of his public duty. For example a candidate may want an employment. The employing authority may be a public servant. A third public servant who is not the employing authority may influence the other public servant and get the employment to the candidate. The intermediary who approached the other public servant does not act in the discharge of his public duty. Therefore, that case would not be covered under this definition. Similarly, an officer who knows an official in the office of the Chief Controller of Imports and Exports may ask him for certain favours to be done to another man. The public servant who tells him to do this is not doing this act in the discharge of his public duty. But all the same he is a public servant. Therefore, this lacuna which did not cover the cases of public servants who were not actually doing the work in the discharge of public duty even though they were public servants is sought to be removed by this.

The second thing that this clause seeks to do is to make possession of assets by public servants disproportionate to the known sources of his income for which he cannot satisfactorily account for a substantive offence. For example, if his salary is Rs. 1000 and it is shown that he is in possession of Rs. 5 lakhs or a building worth Rs. 25 lakhs, then it is disproportionate. So, this offence will also be covered and it will be for him to prove how he got the money and it will not be for the prosecution to show that he did not get it through known sources.

The other recommendation which the committee made was that habitual commitment of offences under section 162, 163 and 165A of the Indian Penal Code should be made substantive offences. That has been accepted. Then it was recom-

mended that an attempt to commit an offence of criminal misconduct should also be an offence. That also has been accepted in this.

Clause 6(3) gives certain powers to the Delhi Special Police Establishment for the purpose of investigation.

Clause 7 deals with the cases where these new offences which are sought to be made will be triable by special judges. There are certain offences which are being tried by special judges. Under this Act, as I mentioned just now, we are creating these three or four acts of omission and commission as offences. They will also be tried by special judges.

Therefore, the theme mainly is that we are amending the Indian Penal Code. We are amending the Criminal Procedure Code. Where complaints for defamation against public servants can be filed by the public prosecutor without the consent of the person, for the purposes of safeguarding the complainant we are making a provision that it should be held *in camera*. We are also making certain changes for the speedy disposal of cases. We are also giving certain powers to the Delhi Special Police Establishment officers and also to other officers. For instance, under clause 6 we are giving them power to inspect bank accounts and to get certified copies thereof because they require them and these should not be delayed. We are also creating three or four new offences where the presumption will be that there was a motive if other ingredients are proved and it will be for the accused to disprove this.

On the whole, therefore, this measure deals with almost all the recommendation except recommendations Nos. 1 to 4 and 25 to 29. I have explained some of these. For example, we have not accepted the definition of "public servant" I know that this is a measure which deals with the amendment of certain laws where the trials and procedures regarding corruption cases are involved. I also understand and appreciate that hon. Members would like to deal at length on the question of corruption. I may, however, tell hon. Members that we are dealing with an Act, we are dealing with a measure, we are

dealing with provisions that amend some of the existing Acts and we are not dealing with corruption as such. It is with the object of checking corruption. But I may submit to the House that I shall be most grateful if suggestions are made as to how we can tighten the provisions of the law still further. If the hon. Members have any suggestions to offer to amend the existing law so that under the process of law we could check corruption, let them do so. We have tried to accept almost all the recommendations made by that Committee, which consisted of so many Members of Parliament. What I want to impress upon the House and the hon. Members is, that this is not the time or place for discussing corruption as such. It would not be within the scope of this amendment or Bill.

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It is not a question of being afraid of discussing corruption. I am bold enough and competent enough to reply to all the points that might be raised. At the same time, I am humble enough to accept any suggestion that they might make. But what I say is that we have to utilize this time of the House for giving concrete suggestions whereby we can tighten the existing law. I am prepared to accept all practicable suggestions. Hon. Members may kindly make those suggestions which they feel are necessary to tighten the laws and to expedite the disposal of cases and to bring corrupt people to book. I am not afraid of discussing corruption. Hon. Members are free to discuss this subject and make any suggestions they like.*

Mr. Speaker, Sir, the Bill has been discussed for the whole day yesterday threadbare**. Of course, hon. Members, who took part in the discussion, had their point of view to express. Some of the hon. Members supported the Bill and suggested certain amendments to the present Bill. Some of them, though not fully supporting the Bill and though they had criticized the Government for not accepting all the recommendations of the

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*Later, the Chairman moved the motion to take the Bill into consideration.

**Discussion on the Bill was resumed on 18 Nov., 1964 and also continued on 20 Nov., 1964.

Santhanam Committee, ultimatley welcomed the Bill in so far as it goes. The third category opposed the Bill forcefully, specially the hon. Member, Shri Dandeker, who demanded that the Bill should be withdrawn.

On the merits also some of the hon. Members have attacked the provisions of this Bill on the ground that they are against natural justice, that they are detrimental to the interest of the accused and that they are unnecessarily going to cause inconvenience and hardship to public servants. Most of the attack on the Bill has been from the Opposition which has challened the sincerity of the Government in so far as the present Bill deals only with public servants and strives to implement those recommendations which are meant for public servants and others but not for Ministers, Deputy Ministers etc.

I shall deal with all the points raised by hon. Members and it shall be my duty to endeavour to convince that there is no lack of sincerity on the part of Government to root out corruption and to consider the various points which have been raised during the course of the debate. I would, however, say that though we are bringing forward this measure, it is not the least intention of Government to condemn all the public servants as such or as a class. It is not the remotest idea of Government to say that everyone in the public services or in the Government machinery is dishonest or corrupt. There are a number of officers who are honest, able and efficient. There may be only a few cases; but there also, if there are a few cases, we have to deal with them.

I do not want, in the least, to give an impression that this measure is only meant for the public servants. It may be that a public servant may be involved when there may be one, who is not in the public services, who might have offered bribe. There is no question of demoralising the public servants at all. In fact, some of the officers whom I met said that after this various anonymous applications were coming and that they would be looked into by the Special Police Establishment. We have decided and instructed the Special Police Establishment that they should not take into consideration any such anonymous application. If it is only authenticated, it will go to the Depart-

ment and then only the investigation will be made. Therefore, I want to make it clear that it is only for the purpose of bringing to book those who are involved in corruption that action will be taken. So far as the honest and able officers are concerned, they have nothing to fear and they can go ahead with the work as sincerely and enthusiastically as they have done hitherto. I therefore, give this assurance to them.

Some of the Members have criticised that certain recommendations of the Santhanam Committee which are more strict have not been accepted. Others have complained that even the proposals to make the existing law stricter would cause hardship to the accused. For example, the hon., Member, Shri Surendranath Dwivedy has criticised for not accepting the recommendation to make abetment of an offence substantive offence and similarly the recommendation to make the offence non-bailable. According to that hon. Member these should have been accepted. I do not know what would have been the reaction of Shri Dandekar if this also had been accepted. But we have carefully considered those recommendations. What I mean to convey is that it is after due consideration that certain recommendations have been accepted while certain others have not been accepted. So far as this recommendation about making the offence non-bailable is concerned, if this had been accepted, it would have been a great hardship to the accused. Generally speaking, an offence deserves to be made non-bailable if it is a major offence involving capital punishment or life imprisonment or long term imprisonment and there is a possibility that the accused may try to abscond or tamper with the evidence. In the case of offences relating to bribery and corruption, there is no likelihood of accused trying to abscond and if he does, action will be taken. It will certainly cause a hardship to a person if he is kept in jail and not released on bail. We have, therefore, taken these factors into consideration before accepting the recommendations of the Santhanam Committee and have not accepted this particular recommendation. I shall deal with other provisions later on.

Then, the hon. Member, Shri Bade, observed that of all the chapters which deal with a number of things, the Government have taken action only on chapter 7 and on none else. He said that there are various other measures which the Committee have recommended but the Government has only taken this particular set of recommendations. He observed that instead of simply accepting the recommendations of the chapter 7, it should have been better if the Government had brought forward a Bill after accepting all the recommendations. He said that there are 12 chapters and the Government has not brought forward any legislation for the recommendations contained in the other 11 chapters. He therefore, doubted the sincerity of the Government. Moreover, he said that even in bringing forward this piece of legislation, the Government had delayed too much. He said that the Committee was appointed in 1962, its report was submitted in 1963 and the Bill is brought forward in the House in 1964. May I correct the impression of the hon. Member? The Committee was appointed in 1962, the report was submitted not in 1963 but in March, 1964 and it is in September, 1964 that we introduced the Bill in this House. It is, therefore, not a question of delay. Thus, after the submission of the report much time has not been lost.

I may also point out to the House that there are 12 sections of the Report out of which the first one deals with introductory remarks. There is no legislation involved there. The second section deals with the nature of the problem; the third deals with the extent of corruption; the fourth and fifth deal with the conduct rules and disciplinary rules. All these do not require legislation at all. Only section 7 deals with law and procedure relating to corruption. Again, section 8 is dealing with general recommendations; section 9 deals with Vigilance Organisation; section 10 deals with Special Police Establishment; section 11 deals with social climate and section 12 is on miscellaneous things.

I would like to submit to the House that so far as sections 4 and 5 are concerned, the recommendations have been accepted with regard to the revision of conduct and disciplinary rules applicable to Government servants and the revised rules

are being prepared. The recommendation that a thorough review of laws, rules, procedures and practice should be undertaken for the purpose of listing the discretionary powers, levels at which such powers are exercised the manner of the exercise of such powers, the control exercised within the hierarchy over the exercise of the powers, the points at which citizens come into contact with the Ministries and Departments and the purpose for which they do so and that a thorough study be made in respect of each Ministry Department/Undertaking of the extent, the possible scope and modes of corruption, preventive and remedial measures prescribed, if any, and their effectiveness has been accepted. For the present, study teams have been set up in the Central Public Works Department, Import and Export Control Organisation, D.G.S. & D. and the Director General of Technical Development which deal mainly with the public in issuing of licences, giving contracts and all that. Each one of these working teams headed by the Member of Parliament is looking into the irregularities, the bottle-necks and delays and all that. As one hon. Member had suggested, the root cause of corruption, if not the sole cause, the major cause, is delay and if delay is eliminated and the efficiency is there, the chances of corruption are also less. Therefore, these working teams are working and they will find out what could be done. Then, he said, we have not accepted the recommendations.... I may mention here that out of 137 recommendations, as many as 51 have been accepted with or without change and already implemented. 37 recommendations have been accepted with or without changes and the implementation is under consideration. Only 49 recommendations out of 137 recommendations are under consideration. This will show that we are not slow in accepting and implementing the recommendations of the Santhanam Committee.

There are certain recommendations which relate to the judiciary, to the Univesity Grants Commission, etc. These are being taken up with the Chief Justice of India and the other concerned Departments. It is, therefore, not correct to say that only this part has been accepted while the other recommenda-

tions have not been accepted by the Government and are not being implemented.

One of the important recommendations which the Committee has made is with regard to the setting up of the Central Vigilance Commission and the Vigilance Commission in the States. I would not go into the details. But the House knows that the Central Vigilance Commission have been established and in several States also Vigilance Commissions have been set up and these organisations are functioning in those States.

As I have already stated in my remarks while making the motion for consideration, that certain recommendations, namely, with regard to Section 311 with regard to the amendment in the Public Servants (Inquiries) Act, 1850 have been considered separately. Some of the specific recommendations pertaining to some important departments with which public is greatly concerned relate to the four departments which I mentioned and these recommendations have been separately examined.

I had discussions with the officer of all these four departments in order to find out how far these recommendations could be accepted with a view to see that efficiency is increased, delays are eliminated, and ultimately we came to the conclusion that it would be better if a working team is appointed which makes a sample survey into these cases.

Regarding the social climate to which reference has been made, I am coming to the question of Ministers and public servants. I may say here, let a controversy not be created between public servants and Ministers and politicians and others. After all, we are all....,I will try to clear all the doubts and I hope to convince the House that there is no intention of making any discrimination so far as this aspect is concerned. But let me be heard.

Then, about this code of conduct for Ministers, it has already been evolved and a copy of it has been laid on the Table of the House. Thus, Shri Bade's complaint that we have made unnecessary delay and half-heartedly brought this measure before Parliament, I think, is not justified. I am, however, glad

that on the whole he has welcomed the Bill. I shall deal with the points regarding the definition of public servants later, because this has been referred to by almost all the Members. Shri Banerjee has cited several instances of favouritism, nepotism, about the method of licensing, showing favours to certain parties and so on. I do not think I can deal with them individually. But so far as licensing is concerned, we are going into this, the procedure, the method, etc. It is the organisation of the Director-General of Technical Development which first scrutinises the applications and then processes them to the committee. Therefore, at that level, first, if there is any scope for any corrupt method, what could that be? One of these is people from the general public going and meeting the officers very often; and the greater the contact the greater are the chances of corruption. We do not want that an officer should not meet anybody. But we have, in these four Departments, set up information-cum-public reception offices. Whenever a person wants to find out where his case is, he contacts the officer and gets in touch with the officer there who gives him information. If that information is not available, he gives the person a date, and he notes that. But the direct contacts are therefore eliminated. But it may be that discussions may be necessary in some cases. There they register the name and then they go there. But it is not that anybody could go and contact the officers or the lower staff and try to meddle or interfere with the work and thus get any information which he should not normally get.

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The question is, we cannot possibly stop officers from meeting individuals. That we cannot do away with. But we have evolved a system whereby at least the contact with the officers in the offices would be restricted or would be mentioned in the book of visitors, where he goes, the nature of the work, the officer whom he meets. And the officer has to keep a diary. That is the only thing that we can do. We cannot stop people meeting them. But certainly if there is any suspicion, the movements of the person could also be watched. So far as

licensing is concerned, we have already appointed a team under the chairmanship of Shri H.C. Mathur. The team is on the job. We have requested them to examine the causes of delays, bottlenecks in procedure the focal points of corruption and such other things as the Committee may think necessary to go into in order to see that the procedure of issuing licences is amended wherever necessary and that delays do not occur.

I also mentioned the recommendation about the ban on the employment of public servants after retirement. This recommendation has been made by the Santhanam Committee that for two years after his retirement a public servant should not be permitted to accept employment in a commercial enterprise or business. That we have accepted in principle.

Shri Dwivedy has said that this law is imperfect and that it is a misnomer to call it as an anti-corruption Bill. He is not here unfortunately. He has attacked the Bill on the ground that the specific recommendation about the definition of public servant to include Ministers has not been accepted and included in this Bill. So many other Members from the opposition also have taken up that question. Ministers, I may say, are not only public servants but something more than that. They have a greater moral, social and political responsibility towards the people. As Shri Mukherjee said, they must be above suspicion. Their case has to be judged from a different standard. They need not be declared guilty by a court of law before action is taken or before they take action on their own. Have we not had instances where Ministers have resigned without being adjudged guilty by a court of law? On the very remote possibility, on the mere likelihood of something touching remotely even in the slightest manner upon the integrity of the Ministers, have they not resigned.... Why talk of any double standards. Even when a Minister was not the least connected and when he feels that he has not faithfully discharged his duties, has he not voluntarily resigned? Hon. Members opposite may understand that Ministers are today working here not as mere public servants; we have some liability or responsibility greater than that. It is therefore that the Ministers should not be that way clubbed with

public servants or with ordinary people. Suppose they are included in the category of public servants. What will be result? First, before any prosecution is launched, sanction under section 197 is necessary...

At that stage@; when the question of permission comes, then also it may be that the opposition may say that Government has withheld permission on political grounds. After the permission is granted it will come before a court of law. After that the fact constituting the offence have to be proved. In the case of the public servant, after all these stages have been reached, then the question of motive comes; it is presumed that the motive was this. Here what we are proposing to do or have proposed to do, or what the convention is, is that if there is a *prima facie* case, as the Prime Minister has said, the Minister would resign. But there must be a *prima facie* case. There is a distinction between allegation and *prima facie* case. Somebody has to decide that there is a *prima facie* case. Today in political life there may be allegations. But these allegations, merely because they are allegations, do not constitute a *prima facie* case. And unless it is decided that there is a *prima facie* case you cannot expect any Minister to surrender to the political pressures. That, I think, should be made very clear. But I am sure hon. Members opposite would not like or appreciate this distinction or this explanation of mine. They would ask, why have the Government not included that in the definition of 'Public servants' in this very Bill when the Santhanam Committee has recommended it. Now, I say that though they are only not government servants they are public servants and something more than public servants. But this would not go down their throat, I can understand.

I may, therefore, say that we thought of this, that is of incorporating this recommendation of the Santhanam Committee into the Bill, but we were advised that there is already the

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@Clarifying a point, when a member, Shri Nambiar stated that they (Ministers) have to resign and face the proceedings.

decision of the Supreme Court in the case of Rao Shiv Bahadur Singh (1953, Supreme Court Reporter, No. 1188) where Ministers have been held to be public servants. In view of the judgement of the Supreme Court, we are advised that this provision would be redundant. I think that this should clear all the doubts, all the allegations and all the criticisms that the Members have levelled in as much as they have said that we are making a distinction between public servants and that we are going to create a rift between them. This is the explanation which I have to submit before the House*** Hon. Members have judged the Government only from a political angle, and, therefore, I know that my explanation is not going to be appreciated*** I say under the prevention of Corruption Act. Minister is a Public Servant.

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This is the judgement of the Supreme Court. And this is the legal advice which Government have been given that the Supreme Court judgement, as have been mentioned by me a little while ago, has concluded this interpretation, and, therefore, any such further amendment would be redundant. This is the advice which we have been given.

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Shri Surendranath Dwivedy had said that the Santhanam Committee's recommendations regarding making abetment a substantive offence had not been accepted. The reasons are that the offering of a bribe or otherwise corrupting a public servant should be made a substantive offence and not merely as abetment of an offence... I shall read out the relevant portion of the advice. It reads thus :

"Section 2 of the Prevention of Corruption Act provides that for the purposes of this Act, 'public servant' means a public servant as defined in section 21 of the Indian Penal Code..."

"The Prevention of Corruption Act, is therefore, applicable to the Ministers who are public servants as defined in section 21 and can be prosecuted for criminal misconduct as defined in section 5(1) of the Prevention of Corruption Act. . . ."

I appreciate the point raised by the Chair. This point* was also considered by the Law Ministry, and the advice was that Ministers were already public servants, as had been concluded by the Supreme Court. If we today add something and put it in the Bill, it might mean that they were not included before, and, therefore, we thought that we should not make this amendment.*** So far as Government are concerned, the idea and the intention is that they are public servants as defined in this Act. That is the only thing that I can say. I cannot go further than that. What more can I say? If this does not satisfy the hon. Members, what more can I say? I do not think that I can go further than that.*** Shri Surendranath Dwivedy had said that the Santhanam Committee's recommendations to make abetment a substantive offence had not been accepted. The reasons are that the offering of a bribe or otherwise corrupting a public servant should be made a substantive offence and should not merely constitute an abetment of an offence. This question was specifically examined when the Criminal Law Amendment was under consideration and the existing section 165A was added to the Indian Penal Code. Under this section, offering of bribe can be punished as substantive offence and not merely as an abetment of an offence under section 161 read with section 109 of the Indian Penal Code, and so, a further provision as recommended by the committee was thought to be redundant.

Then coming to another point, Shri Oza said that so far as the prosecutions were concerned, a number of people were prosecuted, and cases were launched against them, but he would like to know how many cases had been taken up by the Special Police Establishment (SPE), in how many cases conviction had resulted, and he also wanted to know the number of gazetted officers out of the total number of public servants who had been proceeded against by the Special Police Establishment.

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*The point relates to reference made by Mr. Speaker regarding a judgement of the Supreme Court that Minister are included in the definition of 'public servant'.

The figures are as follows: In 1961, the SPE brought 278 cases before the courts out of which 204 resulted in conviction, i.e. 83.3 per cent; in 1962, out of 288 cases, 242 resulted in conviction, that is, 82 per cent; in 1963, out of 313, 227 resulted in conviction i.e. 87.3 per cent; in 1964 (upto 31 October), there were 198 cases out of which there were 170 convictions—85.4 per cent. . . . Out of 278, the number of gazetted officers was 13. . . .Out of 278 cases against public servants, 13 were gazetted officers. I talk of cases taken up by the SPE and not throughout the country. Let there be no misunderstanding on that point.

. . . .

In 1961*, out of 13, there were 4 convictions; in 1962, out of 13, 10, convictions; in 1963, out of 19, 6 convictions. These figures will show that the investigations which have been taken up are cases taken up by the SPE and have resulted in conviction to a very large extent, 80—85 per cent. Therefore, the complaint that there would be unnecessary harassment and while there would be nothing against people still they will be put to trouble and so on does not seem to be justified. . . Regarding the suggestion about amendment of sec. 251A Cr.P.C. there are three such provisions about which various amendments have been tabled. Hon. Members have shown their concern in this respect. One of the provisions is that if the procedure for warrant cases, after the charge is framed the accused should be called upon to produce a list of documents and of witnesses. There the observation made was that the accused should be given some time and should not be compelled at once to submit a list of documents and of witnesses. This might cause him some hardship. I have considered this argument; I feel there is some force in it. We do not want to give even an impression that the accused is being unnecessarily put to hardship. I am therefore giving consideration to this amendment that it might be proper to give some

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*When a member Shri Man Singh P. Patel asked about the number of cases of acquittal and convictions as regards officers, Shri Hathi continued....

time. But this should be at the discretion of the court—this is what I feel—and not an arbitrary thing. Let the court decide. Otherwise, cases will be prolonged documents are not being produced and delays will thus occur. Even then I feel this suggestion deserves consideration. I will consider this amendment.

The second thing was about trial proceeding in the absence of the accused. Here it is not that the trial will proceed when the accused is absent once, twice, thrice or more. It is not a regular procedure being laid down that the court can go ahead with the trial—No. There will be absolutely no harassment to the accused. If the court at any time is satisfied that the accused is unnecessarily delaying, he does not remain present in spite of opportunities, and there is thus unnecessary delay caused, the court can, at its discretion go ahead; but even then, it has to record reasons for doing so. It would not be an arbitrary decision.

The third was with regard to the question of holding the proceedings in *camera* if the parties so desire or if the court so decides. We gave ample consideration to this. We thought that in defamation cases, if the parties consider that the proceedings are such that the other party might have to answer so many questions in cross examination which might damage one's reputation—ultimately the allegations may not be substantiated, but the damage would have already been done—it would be in fairness to the public servants and to the accused and to everybody to agree to that. Because this is not only restricted to a public servant; there may be other people also who are not public servants who may, for example, be convicted or charged with abetment of the offence. To them also this protection should be given. Therefore it is that if either party wants or if the court decides, the proceedings should be *in camera*.

The other observation made was by Shri Dandeker. He said that if a man is in possession of disproportionate assets, that by itself would constitute an offence. It is not so. If a person is found to be in possession of assets disproportionate to his known sources of income, then he has to prove wherefrom he

got it. If he cannot satisfactorily explain, then only it will be an offence, not simply because he is in possession of such wealth. Therefore, the impression that mere evidence of disproportionate assets will be converted into an offence is incorrect.

I think I have explained most of the points raised by Members. I move..... I am glad that the hon. member Shri M.N. Swamy appreciated that this was not the proper forum and for the Minister to reply on questions of economic development and economic progress which would not fall within the purview of this Bill. I am glad he appreciated it, but very often even though one appreciates it, one wants to give expression to what is present and is pressing in one's mind.

The second point that the hon. Member raised was about the Ministers, about corruption going on in Orissa and matters like that. Yesterday, most of the speakers who spoke, especially, Shri Sundranath Dwivedy, also mentioned the Orissa question. They also mentioned about the honesty and integrity, and the recommendations of the Santhanam Committee. So far as the social climate is concerned, I may say that we have evolved a code of conduct which has been laid on the Table of the House according to which, as the hon. Members will see, the ministers have to disclose their assets and liabilities.

. . . .

Everything cannot be included in this Bill; there are other things also where they can go. After all, as I said, it is a question of the social climate and of moral standard. Everything cannot be done by law. There is something like moral character; there is something like morals. If we simply do everything under the threat of law or the threat of fine or punishment, it will not do; there is something like the social atmosphere; there is something like social status and there is something like moral character; and there is something like a code of conduct for everybody not only ministers and politicians but for everyone. I

think we should lay emphasis more on the question of character and code of conduct rather than pieces of legislation. This is all right but this alone would not serve the purpose.*

*On 20 November, 1964, the Bill, as amended, was passed.

II

# Code of Criminal Procedure (Amendment) Bill (Ommission of Section 109)

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This Bill, moved by Shri Ram Sewak Yadav, seeks to delete section 109 of the Code of Criminal Procedure. The Statement of Objects and Reasons of the Bill says:

Section 109 of the Code of Criminal Procedure, 1898 is against the dignity of the citizens of a free country. It makes unemployment a punishable offence, whereas the Government is not prepared to undertake responsibility for the unemployed. Moreover, it makes punishable not an offence but the likelihood of an offence which is against the fundamental principles of jurisprudence.....

The main arguments of the hon. Mover are, firstly, that this is against the dignity of the citizens of a free country; secondly; that it gives power to take security and even arrest persons who have no employment; and thirdly, that the powers are misused, that the police misuse the powers in a high-handed manner.

Of the Members who supported this Bill, Shri U. M. Trivedi and Shri N.C. Chatterjee made observations not quite to support the deletion of the section. Because they thought that there must be some power to regulate the society. Dr. M.S. Aney also was not quite opposed to giving some power to the Government to regulate the conduct of the society. Whatever may be the institution or organisation or form of government in

any walk of life, some regulatory powers are necessary to see that the society goes on smoothly without any danger or breach of peace. Some Members said that sections right from 107 to 111 or 117 should be deleted. But the main argument that was put forth was that this provision of law is being used by the police to harass the poor people, without any means and people who cannot explain their whereabouts. It would be proper for me to refer to section 109 which is divided into two parts. The first part says that whenever a presidency magistrate or a district or sub-divisional magistrate or a magistrate of the first-class receives information that any person is taking precaution to conceal his presence within the local limits of such a magistrate's jurisdiction and that there is reason to believe that such a person is taking such a precaution with a view to committing an offence, that there is within such limits a person who has no ostensible means of subsistence or who cannot give a satisfactory account of himself, such a magistrate may in the manner hereinafter provided, require such a person to show cause why he should not be ordered to execute a bond with sureties for his good behaviour for such period not exceeding one year. Therefore, if we look to the section it is not that the police can arrest anybody whom they see. Shri Chaturvedi narrated a story when the police arrested a man who was hiding in a tree, ultimately it came about that the man was released because the powers are not with the police. This is not an executive power. This a judicial matter. It has been held in a number of cases that this section is not to be used only for roping in somebody. That is the settled law of the country. Our judiciary is independent. This is a judicial matter. It is not an executive matter. It has to be proved that a man was hiding with a view to commit an offence or that the man was living with means which he could not explain. It does not mean unemployment; that means some thing different. So far as the law is concerned, the magistrate has to take particular care that the police do not make use of the other branch of this section to retain or rope in any person with whom they have some

displeasure and against whom they could not prove any offence. The law is clear. It is the judiciary which is in charge of seeing that the laws of the country are implemented in a manner consistent with the democratic system of government and the rights of the citizens. It is not merely the executive or the police that have got unfettered power to rope in anybody and put him in jail. There may be a man arrested by the police. But it is not that merely because he is arrested, he is asked to give a bond. The procedure is that he is asked to show cause why a bond for good behaviour should not be given. Even before, the magistrate should have reason to believe that this man is going to commit an offence. Unless the magistrate is satisfied, no order would be made and so it is not right to say that the police can arrest anybody.

Coming to second part, the emotional part, it is a part which would move everybody. Everybody would be moved naturally when the hon. Mover touched the finer sentiments in every one of us. If a man is unemployed, he is asked to go to jail and there are thousands of people who are unemployed. If 109 remains as it is, all these people will be sent to jail. That is what he says.... He says that unemployed people would be roped in. We have to make a very clear distinction. It is not as if a man simply because he has no livelihood, will be sent to jail. The meaning here is this. A man is living in a very fine way, in a way in which he could not normally live unless he was earning very much; still he is living in a pompous way....Supposing, he is living only by gambling or by dealing in stolen property or by smuggling. Would he reveal his means of livelihood if he were to be asked about it? He would not come forward and say that he lives on smuggling or gambling. If he could not give out his ostensible means of livelihood by itself that is no offence but when he is living in a way in which he could live only if he is earning quite well, by dishonest means it is only in such cases that this has to be used. This is a very settled and definite law. Shri N.C. Chatterjee who is a lawyer of repute is not here now. But I am glad that he did not say that the courts have abused this. I would like him or anybody to show a single case in all

these years where a man has been detained or arrested under section 109 only on the ground that he was unemployed....

One might have been suspected or it might have been apprehended that one was going to commit an offence, but it is a different matter. There is not a single case where purely and simply, on one single ground that he had no means of livelihood, a man has been detained or arrested or asked to give a bond of good behaviour. I have a number of cases where, in every judgment, it has been held that merely to be penniless or out of work is not an offence. Many an honest man find himself in either predicament. If a person is unable to prove the source of his livelihood, he cannot be brought within section 109 unless there is reasonable ground for suspicion that he is sustaining himself by dishonest means. The point to note is that to have no visible means of livelihood is not offence. The question is whether he earns his livelihood by illegal means. It is only to the latter that section 109 can be applied. So, in the absence of evidence of dishonest means of existence, a person cannot be bound over. A person who is doing no work cannot be bound under section 109. There are a dozen cases where courts have always held that unemployment by itself is not a ground for taking the surety under section 109.

Therefore, I can give this categorical assurance that section 109 is not to be used, and if there are cases here and there where that is being misused, it is a question where we have to go into it and see whether the powers had been misused by the police. But that is a different matter and that is a question of administration. If these powers are misused, every man has a right to go to a court of law. Some Members said that the magistrates are not in several cases independent, but then the district judges and the high courts are independent. There is no question about it. Therefore, the mere fact that section 109 is used to take security for good behaviour from people who have no means of livelihood is not a correct proposition of law. The correct proposition of law is that if a man has a livelihood but cannot show the ostensible means of that livelihood as to where from he gets money....That is the interpretation given by

all the courts of law. Therefore, the question is, if the police misuse the power, it is a matter not for repeal of the Act but for improving the administration. Supposing, for example, in a genuine case where a man is out to commit a murder of somebody—taking a hundred per cent sure case—or a man is found roaming about a certain place with a view to commit theft, and if in that one case the police has got this information and if they have not got the power to arrest and take the man before the magistrate, how will you stop this crime? Therefore, this is a measure for preventing a crime. I agree with the point that if the power is misused, it has to be looked into but the remedy is not by repealing the provision....If you repeal it, there will be no power with anybody to prevent an offence, and I am sure that everybody who has spoken has been in favour of giving some powers to prevent offences. Where powers are to be given to stop offences or to prevent offences, nobody is opposed to it. All that has been said is that this is being misused. The powers should not be misused, but that is a different matter.

Now, I shall read section 110. It says:

A person who is by habit a robber, house-breaker, thief or forgerer, or is by habit a receiver of stolen property knowing the same to have been stolen....

This is the provision of section 110. If you do not give the authorities the power to deal with these people, what will happen? Of course, we want freedom and we want the people to express themselves and to behave as they like, and we are for the dignity of the person. I personally do not at all say that the movement of a man must be restricted. Our Constitution provides liberty and we also respect the dignity of everyone of us. But we cannot say that the society is free of people who are given to commit crimes. If we have not even the powers to deal with these people, then there will simply be inaction of law and order and there will be nothing to regulate the society and nothing by which we can prevent, the offences.

As I said, if a man happens to be unemployed, that by itself

is no offence. There are certain other things to be collected. Then, it is not that the police can simply bring a person to the magistrate for orders. He has to satisfy himself. Shri D.C. Sharma asked how is one to know the intentions of the man. It is not a question of knowing the intentions merely with a divine power; the magistrate has to record the evidence which the man produces and after the evidence is recorded and he is satisfied, then only he issues the order, but before that, there is a procedure prescribed, and that is, he is bound to issue a notice to show cause why the person should not be bound. If the cause is shown, then there is no question of his being bound down by any bond of security. If the man cannot give sufficient reason for his movement, for his doing certain acts, then only, if the magistrate is satisfied, this section is to be used.

Therefore while I would agree that the powers should not be misused, I cannot agree to the deletion of section 109 by itself. Then there are so many other sections which will also have to be recast. If you say that section 109 is misused, you can as well say that sections 110 and 112 and so on are all being misused. Therefore, something has to be done. But I may say that we have already referred the whole of the Criminal Procedure Code to the Law Commission; they are examining it. Looking to the present state of society, we have even to include certain offences called social offences. We have referred the whole thing to the Law Commission and whatever is consistent with the present state of society, will be done. Now, as we are moving further and are developing, it is not simply a question of crime; there is a background to the crime and more of social crimes are coming. For that also we will have to see what could be done. As I said earlier, we are also thinking of dealing with social offences. These offences are more dangerous to society in a developing economy.

We are referring it to the Law Commission to suggest what amendments should be made looking to the needs of the society at present.

So far as this Bill is concerned, I am not agreeable to

deleting section 109 alone. I would, therefore, request Mr. Ram Sewak Yadav who is otherwise a reasonable person to agree to withdraw this Bill.*

*Shri Ram Sewak Yadav, the author of the Bill replied to the debate and pressed for the motion for consideration to be moved which was later negatived.

## ANNEXURE

Section 109 of Code of Criminal Procedure, 1898

109. Whenever a Presidency Magistrate, District Magistrate, Sub-divisional Magistrate of Magistrate of the first class receives information—

(a) That any person is taking precautions to conceal his presence within the local limits of such Magistrate's jurisdication, and that there is reason to believe that such person is taking such precautions with a view to committing any offence, or

(b) That there is within such limits a person who has no ostensible means of subsistence, or who cannot give a satisfactory account of himself.

such Magistrate may, in manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with sureties, for his good behaviour for such period, not exceeding one year, as the Magistrate thinks fit to fix.

# 3

# PARLIAMENTARY PROCEDURE

## No Confidence in the Council of Ministers*

Mr. Deputy-Speaker, I heard Shri Nath Pai and other Members. I may say that at least so far as this particular subject is concerned, I do not take it to be a subject for debate only; I take it in the manner in which we should all take it. It is a matter where one has to be serious; I think I can assure the House that Government is as serious as the Members who have taken part in the debate. It is from that point of view that I do not want to merely make debating points out of the various points raised by Shri Nath Pai and other Members. I would have been in a position to explain things in greater detail, I do not mean to explain in the sense that everything is all right. But the circumstances in which the two foreigners came and could go, the object with which they had come, and all the antecedents etc. have to be cleared. But I am handicapped in two ways. In the first place we are yet in a stage of investigation. Therefore, it may be that we may have information, but unless that information is corroborated by evidence which can be supported and which could stand the scrutiny of a court of law, there are chances, for instance, of these statements being misused. Mr. Trivedi being a very able lawyer would appreciate that if a statement is made today on behalf of Government as

*Intervening in the debate on Motion of No-Confidence in the Council of Ministers, "That this House expresses its want of confidence in the Council of Ministers", moved by Shri N. C. Chatterjee, Shri J.S.L. Hathi, Minister of State in the Ministry of Home Affairs made his speech, L.S. Debates, 17 September 1964, cc. 2269—2284.

having been made by a particular witness, another witness may make quite a contrary statement, then there would be contradiction between the two witnesses' statements, and perhaps the case may fall through. He can well appreciate it. It is therefore that if I do not at this stage give all the facts to the House, I would say and I would assure the House that it is not because I want to keep anything back from the House. Far from that it has never been my practice to keep anything back from the House or to hide anything. And what is there after all to hide? If things have happened, they have happened. If it was not proper, it was not proper. If lessons have to be taken, they have to be taken. If something more has to be done, it will be done. So it is not that I am hiding anything or that I want to keep back anything. But my difficulty is that today we are in a stage of investigation and therefore I cannot give all the facts, although we may have them.

I would also like to bring to the notice of this House through you sir, another aspect of this case, and it is this. Mr. Nath Pai said that we are negotiating with other countries for extradition. It is not a question of negotiation: it is a question of judicial proceeding. If there is an extradition case, then it is a question of proceeding by law according to the procedure laid down. And the procedure would be that we have first to prepare a *prime facie* case to fix the identity of the accused, to collect evidence to show that he has committed the offence. Now, in this it is not merely the newspaper report or the statement made by one person here or one person there; it has to be corroborated, it has to be proved, and proved at a judicial test that the offence has been committed. After we do it here in our court, it will have to be taken over to the British court or the other countries' courts from where the accused has to be extradited. And that court will also see whether the facts as brought out from the evidence are sufficient to *prima facie* establish the charge

which has been levelled against the person to be extradited. Along with that, when it is a question of surrendering an accused for trial to another country, that country would also wish to assure itself that the person extradited or the person surrendered by the nation to other nations will be dealt with purely according to the law and that the sentence imposed upon him will be according to the measures or the magnitude of the offence and that there will not be any extra-judicial pressure or consideration brought to bear in effecting a sentence on the person whom they surrender.

Therefore, if the absconde has committed an offence, he has committed an offence. But let it not be allowed to appear as if this man has done something which has ridiculed the country, for which this Parliament and the Members of this House and the whole country are so much angry, so much agitated that we will try to take vengeance for what he has done. So my point is this—there is an offence committed, he will be punished, he should be punished—but that impression we should not allow to go abroad that he will be treated not according to law but according to our vengeance or other considerations. That is the only thing which I wanted to bring to the notice of the House as a caution.

Mr. Nath Pai then said, why do we take the help of foreign countries or why don't we—he said we should bring an American. Mr. Nath Pai, I should say, is a very senior Parliamentarian, an eloquent speaker, he put his facts very strongly. But sometimes he also has a lighter side of him. And he wanted an American expert to look into the case of Walcott because he thought that our officers have been deputed abroad to take the help of foreign agencies; why should they go?

Now, I may just mention here that it is not a question of any expert aid or that our police are not competent, they have gone in order to collect evidence. Smuggling of goods means that some goods have been brought from other countries. Now, it is not only this country, but there are five or six other countries where we suspect a gang ought to have been working, and we have also information. Now, it will be a connecting of these

incidents and the various links, and therefore it is that we have deputed two police officers to investigate into this incident and to find out or collect the necessary information to build up the evidence.

Then, Mr. Nath Pai said, if everywhere we want foreign experts, what are our police doing. It is not a question of foreign experts everywhere. This agency which I have mentioned in the statement is already at it, because as the information goes, the name of John Philby is a forgery and it appears from the investigation that he has obtained a passport from the United Kingdom on a forgery. And therefore, it is not only that he has committed an offence here but it seems from the evidence that he has committed an offence there also so they are already investigating into it.....

As I was saying, Mr. Nath Pai is otherwise a master of facts. He collects facts from Ministers' statements, from official documents, from official reports, from newspapers and from all other sources available to him. But when he wants to use them, he can use at his will any fact that he has got.

Now, this morning's paper gives some report, and that was that the two officers have returned empty-handed. They have not returned, they are still there. I have seen the report in this morning's paper... The question is that these reports are not always correct. And it would not be safe—and specially, as I said, if it was a question which was on facts established facts or facts proved by evidence, then it would have been a matter for me and Mr. Nath Pai to debate on those established facts. Here, certain facts have to be established, and when these facts have to be established, neither would it be fair on my part to rebut authentically what he has said, because I cannot do so, because the facts have not been established, nor would it be proper for him to base his arguments on facts which have yet to be proved.

For example, he mentions that had one of the accomplices of these two foreigners been there according to the signal received, then they would have come and gone away. That a

signal was sent by this gentleman to his accomplice here, and that the accomplice failed to reach there in time, is a piece of evidence which has to be proved. I do not know the source of information of Shri Nath Pai.... If that fact can be proved and established, then it can be a debate on established facts, but that very point has to be yet proved. For that, evidence has to be obtained, and investigations have to be made. That clue might have been given by some interested party. When we have to deal with a man who has been notorious not only here, but notorious in all other countries, we have to be very careful and guarded to see that he does not take us on a wrong track by some information which he throws here and there. I do not know the source of his information at all.

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Let us not again complicate the issue. There are two issues. One is Mr. Walcott's escape from Safdarjung airport, Delhi. The other is the Murud incident. I am discussing the latter incident. The question which Shri Joachim Alva asked perhaps refers to the Safdarjung airport. The person may be the same, but as I said in my reply to Shri Nath Pai, we have yet to ascertain the indentity and prove it to the satisfaction of the court.....Whether the Murud incident would have or would not have happened if the Safdarjung airport, Delhi incident had not happened is a different matter, but I am not concerned with that. What I am saying is this, that we have connected the first incident with the second incident on the presumption that this gentleman who had come to Murud and who had gone away was the same gentlemen who went from Safdarjung airport and it is on this presumption that we have been working. As I said in the very beginning, had this fact been proved, then everything is very clear. That is my difficulty. Anyway, during the debate, various other points have been brought out about foreign exchange, about Birlas and Tatas.

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So far as the other incident is concerned, I will come to that,

because I think that is an important part. The incident can be looked at from the point of view as Shri Nath Pai has very ably stated. Two foreigners come, they land here, and then they go to Bombay, then they go away, escape. How did all these things happen? That is exactly the point. I have tried to make it clear in my statement, as clear as I could, and state the facts as they are. The plane landed at Murud. As soon as the plane landed, the villagers and the village headman gathered. They find two foreigners, they take them to the police station. The police officer on duty, a head constable, sees their passports, enters their names, and sends a message. Unfortunately, he took them as people in distress because they said their plane had engine trouble, and therefore they had to forceland. He sent telegram. It is a rather jumbled telegram, but still he mentions certain things in it. The telegram reads:

> "One British Royal Plane No. GASNS landed on sea beach of Murud (Ratnagiri) at 9 A.M. today due to some breakdown in engine. Pilot MISTER B. M. C. Allister and FITTER Fils John Agent, both of England are well. Plane kept under Police bandobast. No damage. Murud situated about 7 miles from Dapoli Pol. Stn., Harni Road in Ratnagiri district. Instructions solicited."

The two foreigners come and tell him they were going from Amritsar to Bombay, they had engine trouble, and they had to forceland, and they asked his help. The first thing that this man does is to see their passports. They were British passports. Then, he sends two policemen to keep a watch on the aircraft. Then, they wanted to go to Bombay to get a technical man from there. They came to Bombay. What happens in Bombay next day? They try to go away. Before they could go to Pakistan, they should have the stamp of having landed in India. They come to the international line where the East African passengers were, and they try to come out of the customs barrier. At that place, the immigration officer on duty checks the passports, the immigration cards and sees that these two passengers are extra. So, at this point, these two people were already located. At that point of time, he tells the IAC officer on duty that he has

got so many passengers on this passenger list, but there are two more passengers. The officer on duty there goes into the office, returns after some time, and adds the name of these two passengers in the list.

He thought that they were *bonafide* passengers and therefore, the immigration police officer who was on duty saw that their names were entered and allowed them to go. This officer has been arrested. It is something which requires a more thorough investigation as to why did that particular officer enter the names of these two passengers as *bonafide* passengers. Had he not entered them, they were already detected and they were found to be extra and they would not have been allowed to go. It may be due to some bribery; he may have taken money from these two people. I do not want to make public what statements he had made. Perhaps he gives some reasons which so far as the Government is concerned are not satisfactory and they are not sound reasons. We are not satisfied with his reasons as to why he entered these two names. That man was immediately arrested. Of course the passports were there. The police officer on duty allows them to go out because he gets the authority that they are *bonafide* passengers. This matter requires thorough investigations and we shall look into the matter further..... For two months, he is now in jail. We should understand that this is part of the whole story and it has to be linked with the other incidents. This is the weak link. But for the failure of this individual it would have been easier and they would not have been allowed to go. The weak link is here. When we talk about tightening the security, I fully agree with the hon. Member. I do not want to make a debating point of that. Even in spite of the tightening of the security measures, there is some human failure here or there. If one man acts wrongly, then what has the Government to do? Either sack that man or punish that man and do anything with that man. That does not mean that the whole security system or the method is wrong. I do not want to take shelter by saying that everything is safe and that nothing has to be done. In fact, I myself went to Bombay to enquire into the question which Shrimati Renu

Chakravartty asked. How did that happen? The question that struck you struck me also and I went to Bombay on the 10th to look at it as to how it had happened. The railings there are so low that they could be jumped over. These are points which could be looked into..... But who that some-body was or how he managed to do so are relatively less important as they were detected while they were coming out. Now what happened was that he was like an ordinary passenger, when he came out and then he bought a ticket and he went by an ordinary plane. The first was his landing and the second was his going away. In between has happened this failure..... We have to remember certain things. It was not an enemy plane. We had suspected that he had come with some particular motive. One motive could be smuggling. Therefore, we have carried out raids on as many as 39 places and we have been able to get certain clues. We got some precious stones and other things. Merely because we got some precious stones, it will not enable us to unearth the whole story; we cannot immediately locate it. Investigations are still going on. What I say is that we are not leaving these things unattended to or uninvestigated. We have tried to find out who are the other people who have helped him. We have been able to get two other persons' names and some other clues and we are trying to bring them to book and it will take some time. I cannot disclose all the facts as I said, not because I want to keep anything away from this House. Let the investigations be complete and we shall put them before the Court and get them punished. It is not that we wish to keep things from the House. For extraditing them we have to convince the other country's court that according to their law there is an offence; and therefore, our task is a bit difficult. But I may assure the House that we have never been complacent and I do not think that even Mr. Nath Pai meant it so. This should not unnecessarily be played up too much to create an atmosphere as if the whole country is trying to take vengeance on this gentleman because he has gone away. That would affect our extradition proceedings. This is a warning, caution or request which I would request the House to take seriously. Therefore, I think that there is nothing so serious in this matter

as to take recourse to a vote of no-confidence against this Government.

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So far as the newspaper-cutting saying that they are returning empty-handed, is concerned, it gives an impression that these officers were sent as if to bring back Walcott physically. They had gone there for the purpose of collecting information. Now, the newspaper also had very cleverly given two paragraphs, with the heading "returning empty-handed"..... "Empty-handed" means they were sent as if to bring back Walcott! They were not going to bring Walcott physically back here. They were only there for the purpose of collecting the data and doing investigation. They are still doing that. They are not returning; they have not returned. That is the first point. Yet, they are there, busy with other countries; they are busy in other countries, collecting data..... They have been collecting; they have collected. The second point that Shri Nath Pai asked was this: when the aerodrome officer got a message at 7.25 or so, what did he do about the foreigners. But the message he got was about force-landing of the plane and not about the two persons; the persons' names were not mentioned. It was only that the plane had landed; so, they relayed the message to all the neighbouring stations as to whether any such thing had come. It was sometime in the afternoon that he got one message from Beirut or so that one small plane had gone away and it was going to Iraq. It was after that that they suspected this. The names of the passengers were not mentioned in that message.

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I would not like to withold this information at least; it is important. But the message which went from Ratnagiri to the airport did not contain correct names. The message about landing was there, but not about their proceeding to Bombay.*

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*On Next day, 18 September, 1964, the motion was negatived.

# Matters Relating to States and Union Territories

## I

## Proclamation of President's Rule in Kerala

As the House is aware, the second proclamation of President's rule in Kerala was issued by the Vice-President discharging the functions of the President on March 24, 1965 and approved by the Lok Sabha on May 5, 1965, and by the Rajya Sabha on May 11, 1965. This is due to expire on 10th November, 1965. The proviso to article 356(4) provides for the continuation in force of such a proclamation for a further period of six months and for a maximum period of three years. So unless the proclamation is revoked, it would cease to operate on the expiry of the period of six months from the date of the passing of the second of the Resolutions approving the proclamation under clause 3. The proviso says:

"Provided that if and so often as a resolution approving

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—Moving the Government Resolution re. Continuance of Proclamation in Respect of Kerala, Shri J.S.L. Hathi, the Minister of State in the Ministry of Home Affairs and Minister of Defence Supplies in the Ministry of Defence moving the Resolution, "That this House approves the continuance in force of the proclamation dated 24 March, 1965 in respect of Kerala issued under article 356 of the Constitution by the Vice-President discharging the functions of the President, for a further period of six months with effect from 11 November, 1965," made his speech, Lok Sabha Debates, 3—8 November 1965, cc. 250-52, 356-63, 622-23, 661-64, 894-937.

the continuance in force of such a Proclamation is passed by both Houses of Parliament, the Proclamation shall, unless revoked, continue in force for a further period of six months from the date on which under this clause it would otherwise have ceased to operate, but no such Proclamation shall in any case remain in force for more than three years".

Government have carefully considered the question of further continuance of the Proclamation. It is really with reluctance that I am approaching this House with this Resolution. But having regard to all the conditions and the report received from the Governor, the decision which Government have arrived at is to extend it by a further period of six months. The Home Minister wrote to the Governor on July 13, 1965, requesting him to make a close study of the political situation that had arisen within the State and the existence of conditions in favour of or militating against the formation of a stable government in accordance with the provisions of the Constitution, and the feasibility or otherwise of holding a fresh general election. The report of the Governor dated 17th October, 1965 has since been received. In the light of the findings which are based on detailed study and consultations with the leaders of the political parties in Kerala, it has been decided to continue in force the Proclamation for a further period of six months. After a careful study of the present conditions, this step is being taken, very reluctantly. But there is no other alternative. I wish it had been possible for me not to approach the House with this Resolution, but as the Governor's report indicates that there is no possibility of forming a stable Government in Kerala, with reluctance I am approaching the House.

We are all wedded to democracy. We want that the democratic set up should function in Kerala when elected representatives of the people are in a position to run the administration of the State. But conditions as they are and as have been

reported by the Governor would not enable us, under present conditions to have a general election which would have a possibility of having a stable ministry. It may be suggested: why not have a general election and find out whether it will be possible to have a stable ministry or a coalition ministry? The last mid-term election in Kerala, which was held in the hope of providing a stable Government to that state, however did not improve matters in the least. If anything, it added to the confusion in the political life of the State, so much so, that the Proclamation of President's rule actually came as a relief to the people.

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Mr. Speaker, Sir, yesterday. I was dealing with the report of the Governor of Kerala and I stated that in making the study and considering the question basically the Governor, naturally, had this approach that under the Constitution the State Government should run through the popular institution, namely, an elected Assembly and a popular Ministry. When, however a situation arises in which the government of a State cannot be carried on in accordance with the provisions of the Constitution, the President has the right to assume the functions of government. The President's rule is not a substitute for a popular government and the duration of the President's rule should, therefore, be kept at the minimum. This was the basic approach of the Governor in examining this question. He, therefore, had discussions with publicmen, active politicians and others in Kerala. He specially invited the leaders of the political parties—Shri E.M.S. Namboodiripad; Shri K.M. George; Shri Chandrasekharan of the Samyukta Socialist Party; the leader of the Muslim League, Shri Ahmed Kurikkal; Shri Achutha Menon of the Right Communist Party; Shri K.C. Abraham of the Kerala Pradesh Congress Committee — for discussion on the question of holding fresh elections

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*When the House was adjourned for the day on 3, November 1955, the Deputy Speaker asked the Minister to continue next day, i.e., on 4, November 1955.

for the Assembly at the expiration of six months from the date of ratification of the President's Proclamation by the Parliament.

The question whether any single political party in the State had a chance to win sufficient seats to form a ministry, according to the Governor, could be easily disposed of because not a single party claimed during the discussions that any single party could form an absolute majority.

The next question which was considered was whether there had been a shift or there was likely to be a shift in the alliance of the political parties. Shri Namboodiripad said that he had met Shri Rajeshwar Prasad Rao and Adhikari of the PSP.....I am sorry, the SSP. During the course of a general talk they appeared of the view that if elections were held in normal times, they would be prepared to discuss with the Left Communists and that Shri Namboodiripad was hopeful..... He asserted that the three together could form a majority. He said that in the last mid-term election the Left Communists had secured 40 seats, the SSP 13 seats, Right Communists 3 seats and Independents supported by Left Communists 5 seats, making a total of 61 seats. But conditions in Kerala have since changed. Although the Left Communists had secured 40 seats, the present assessment is that they might fail even to get 40 seats if a general election were held.

The next question was whether there was any possiblity of any party coming together and forming a majority. What I am narrating is the report of the Governor which I have already laid on the Table of the House and in the Governor's assessment it was not possible even for one or two parties' combination that they would get a majority. For example, if the Muslim League, the Kerala Congress and the Kerala Pradesh Congress form a combination, it may be possible that they may be able to get a majority of seats; but the differences between the Kerala Congress and the Kerala Pradesh Congress Committee are such that it would take time before they are evened out and there is no possibility of their coming together. *(Interruption).*

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I understand the anxiety of the Opposition also. I myself have said that the President's rule is not a permanent measure. It has to be limited to the shortest possible duration. But what I am saying is there in the report which I have already laid on the Table of the House, and I am only quoting from it and narrating what the Governor has reported.

Then the question is whether today the Left Communist Party could even secure the same number of seats as it had secured at the last general elections. We all know the statements made by the leaders of the Left Communist Party, especially Shri Namboodiripad on the present condition or situation in the country; his statements have really not only been not welcomed but even resented to by many people not only in Kerala but outside. Therefore, the conclusion to which the Governor has arrived in his judgement is that at present there is no possibility of any single party forming a majority, and that there is not even a possibility of other parties coming together and forming a suitable majority to form a government.

Then, the question was this. Of course, the Governor had examined the question from both ways. Even apart from this, he had asked the leaders of the various parties whether the elections should be held at this stage. Except Shri Namboodiripad, all the other parties with more or less unanimity said that they would not insist on a general election at this stage; Shri Namboodiripad said that he would be in favour of a general election, the other parties said that they would not insist on a general election. Shri George had filed a writ petition, but he said that looking to the present condition of emergency he would not insist on a general election. The Muslim League leader had definitely said that elections would disturb communal harmony and therefore, he was not for any general election now. So, these are the two basic questions. One was the assessment as to whether it was possible to form a stable Ministry with any party getting a majority. The second was whether it would be desirable to have a general election at this stage. Except Shri Namboodiripad, almost all the parties, with more or less unanimity have agreed that if the general elections

are not held they would have no objection. Some leaders like those of the Muslim League and the Congress said that elections need not be held now because they might disturb communal harmony.

From both these points of view, the Governor has come to this conclusion that it would not be proper to have a general election. Therefore, according to his assessment the present Proclamation which is due to expire should be continued for a further period of six months. But when the period is extended. It only means that the responsibility of the Central Government will also be in a way greater, because it means that the Central Government will be responsible for the administration of Kerala.

Last time, when the House approved of this resolution, we had a committee, and I may inform the House that we have expanded the scope of this committee. It was done at the suggestion of some senior Members like Shri Ranga and others. At that time, this committee was not only to deal with the legislative business relating to Kerala but it had also to deal with or discuss and advise the Government on various other problems. This Committee was meant to expedite the implementation of the scheme sanctioned in the Plan so that bottlenecks and difficulties could be overcome at the highest level. At that time I had also stated that this Committee had been constituted in the Government's anxiety that Kerala's development should not suffer on any account.

The House is aware that this Committee has discussed various problems of Kerala like encouragement to inland, fish farming, dealing with the epidemic, cholera in the State, development of irrigation and power projects, construction of railway lines, acquisition of private forests in Malabar, problems connected with the Cochin Shipyard, provision for landing facilities, encroachment on forest lands. All these questions were discussed.

The third meeting of the Committee was held on August 12-13, 1965. Members of the Committee who were present know that the Deputy Chairman of the Planning Commission gave the

views of the Commission regarding the scope of the Fourth Five Year Plan in relation to Kerala. The first session was devoted entirely to a discussion pertaining to Kerala and suggestions for the development of the State ranging from development of fisheries to anti-sea erosion works and encouragement to tourism. The Committee was able to discuss almost all the problems of development of Kerala with great advantage. Members of the Committee raised discussions on other miscellaneous points like the Water Transport Corporation. They also discussed at length the remaining problems of Kerala. In future, this would be done. Affairs of the Water Transport Corporation, eviction of people from government lands, liberalisation of conditions of detention of security detenus, exclusion of certain books from school libraries, conditions of service of language teachers, expediting of irrigation and power projects—these were some of the important problems discussed. Although there has not been a state legislature, the association of the representatives of Kerala has been very close and effective. The Committee had also the benefit of the support and cooperation of Members of Parliament, many of whom did not represent Kerala. It was thus a miniature form of Parliament where almost all questions were discussed.....Other Members were there. They know-how thoroughly we discussed the problems.

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We feel that although a popular government is not there in Kerala, the representatives of the people have ample opportunity of raising questions and discussing important problems and developments in this Committee. The Cabinet Committee has been giving close attention to the various problems pertaining to Kerala. An indication of the effectiveness of the meeting of the Cabinet Committee on Kerala can be got from the fact that as a result of their deliberations in their first meeting, an additional allotment of Rs. 5.63 crores for 1965-66 was decided upon. This is in addition to the plan expenditure for the year. As disclosed in the meeting of the Consultative Committee on Kerala legislation. Officials of the Planning Commission and the

Finance Commission recently made a tour of the State. Various schemes and projects, particularly those relating to irrigation, power, agriculture, forest, fisheries were examined. Many new schemes are already under consideration for speedy development of Kerala while the implementation of those on hand is going on at an accelerated pace.

Thus during the period, we have tried to see that for lack of an elected legislature the welfare of the people of Kerala or the development projects have not suffered. Although these committees exist, it is with great reluctance that we have to extend President's rule. It would not have been extended had we been satisfied that it was possible in Kerala to have a stable Government that any party could have a majority which could form a stable Government. In the absence of that, it becomes my duty....to move for this extension before the House. I move.

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*During the discussion, several questions have been raised by Hon. Members from the constitutional point of view, from the legal point of view, and from political, administrative, economic and financial points of view. I shall try to reply to these questions as sufficiently as I can. The first question was raised by Shri N.C. Chatterji, for whom I have the greatest respect and regard as a jurist. He said that under Article 356 of the Constitution it was only when there was a Ministry and that Ministry could not function and Government could not be carried on according to the provisions of the Constitution that this provision should come into force. But, as Shri G.N. Dixit pointed out very correctly, there is the second proviso.

"Provided that if and so often as a resolution approving the continuance in force of such a Proclamation is passed by both Houses of Parliament, the Proclamation shall, unless revoked, continue in force for a further period of six months from the

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*The resolution was then, moved for approval and the debate further ensued. Replying to the points raised by Members during the debate, the Minister continued....

date on which under this clause it would otherwise have ceased to operate, but no such Proclamation shall in any case remain in force for more than three years."

If, after six months again this has to be continued then both the Houses have to ratify it.

After the first Proclamation, the Assembly was dissolved. Therefore, at the time of the issue of the second Proclamation, there was no Council of Ministers since the Assembly had already been dissolved. Therefore, to say that the Ministry did not function at the time of issue of the second Proclamation is out of question. Mr. Dixit has very ably replied to that point and I do not want to go further.

Another question which was raised by Mr. Ranga was about having an all-party government, of the Swiss type. That is an experiment and that experiment can be made only if there is some evidence to show that this would function. We had an experiment of the coalition Ministry which failed. Even for the formation of a coalition Ministry the leaders of the parties, who were called were not prepared to combine together but there is one thing. I would agree with Mr. Vasudevan Nair that we should have a democratic form of Government. On that there is no dispute. It is only under the present circumstances when Government could not be carried on according to the provision of the Constitution, that this step had to be taken.

When I said that people heaved a sigh of relief it was not at the issue of the Proclamation of the President's rule. If I had created that impression, I am very sorry and I would like to correct it. What I wanted to say was that the administration that was run by the Governor was carried on in a way that people felt satisfied.

Some mention was made about a slip that had occurred in the Governor's report. Shri H.N. Mukerjee said that the two Communists were put as belonging to PSP. Actually what happened was that there was typographical error—the words 'and leaders of' had been omitted by mistake. I think that clears the position....

So far as Mr. Ranga is concerned, I am obliged to him on one point. He at least appreciated the work of the Consultative Committee. So far as the Swiss type of Government is concerned, we shall study that; I have gone through some literature but I have not been able to go through the whole of it. Shri Chatterji expressed his view yesterday that he was not in favour of that. That is one view. I have not gone deeply into the subject. We are all thinking now of today's position. We have to see the position that existed about two months back when the decision had to be taken or elections had to be arranged. So that question did not arise. But one thing is certain that there should be either a majority party or if that is not possible, a coalition Ministry, i.e., some democratic form of government should be there. On that there is no dispute. If the present form of Government is not suitable to any particular area, we cannot change for that area alone; if we have to change, we have to change for the whole country. In the present circumstances, we feel that it is not possible to do that.

Then an observation was made by some Members that we bring in emergency here. While at one time the Congress President or somebody said that we should have immediate elections it was said that Congress wanted to take credit and get through the elections. I may say that, if there is any credit, it should go to the whole nation. It was not one Party but the whole nation that stood as one. So the credit goes to the whole nation. I would not like to say that it was Congress and therefore, we were unanimous. The country has shown that it is a mature nation. And I would only make this appeal let the maturity that the nation has shown, let it be shown continuously and let it not be said that we wanted to take advantage of that.

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Mr. Speaker, Sir, I am glad that Shri Kamath and Shri Mukherjee have specifically taken up the question of the Governor's report. It is not only as they say a question whether the words "and leaders of the SSP" were there or were not there but the question is that the whole assessment of the Governor leads to certain facts; that itself is not sufficient or that

the assessment is wrong, because it is not based on certain facts. That is what I feel they want to say. I will come to those points and I will try to submit that on the one hand is the Governor's report. The Governor's report was called for by the Home Minister, because before coming to a decision whether the proclamation should be further continued or not, he should be in a position to have as many sources of assessment of the situation as possible. Therefore, the Governor was requested to send his report. That report was considered along with other points also. It is not that the decision of the Government is required to be on this clause or only on the report of the Governor. It may be otherwise also. As I said, it is also on other circumstances which are narrated and also the existence of the emergency. Taking all these into consideration the Government come to the conclusion that it is necessary and that there is no other alternative but to further continue the duration of the proclamation....

By all* means: in fact it is exactly so. The Home Minister wrote to the Governor requesting him to send a report. Definitely a letter has been written to him. There is no question of that. It is there.

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As I submitted, the Governor was requested by a letter to submit his report on the assessment of the situation. Not that the Government wrote to the Governor to say that he should send a report in such a way as to justify the action; that would not be there....So far as the letter of the Home Minister to the Governor is concerned, it may contain various other points also, and I cannot say now that I will place it on the Table of the House; it may contain so many things. Coming now to the various other questions raised by hon. Members, mainly by Shri Vasudevan Nair and Shri Warior and other Members from Kerala, I wish to say that they raised certain questions and pointed out that some chemical projects had been abandoned;

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*Meanwhile, when Dr. M.S. Aney asked, You have stated that the Governor's report was asked for. So, a letter has been sent to the Governor for the sake of getting his report. Could that letter be placed on the Table of the House?

that the plan development projects were not being pursued as expeditiously and as swiftly as they should because of the want of funds. They also complained about the banning of certain books from the schools. They also talked about certain deficiencies in administration. I submit that the Central Government has been constantly watching the progress of the plan, and wherever it is found that the projects suffer for want of finances, we have tried to see that only because of lack of resources, these projects do not suffer. In fact, the balance of Central assistance available for the last year of the third Plan was Rs. 23.9 crores. The State's estimate on their part for expenditure available was Rs. 13 crores. Normally, the State would have, therefore, only a plan of the order of Rs. 36.90 crores in 1965-66. In order to maintain the current trend of development and keeping in view the backward economy of the State, the Government of India approved an outlay of Rs. 41.65 crores for the State in 1965-66, i.e. an addition of Rs. 4.75 crores. In addition to that, when we again reviewed it, we found that if more money could be made available, more projects could be implemented. Some of the productive projects undertaken by the State Government under the plan had been proceeding slowly according to our review. So, we again sanctioned this year an additional amount of Rs. 5.63 crores. That means we have given assistance of nearly Rs. 10 crores during this period, only because we want that certain projects which were not proceeding well for lack of finance should be completed.

Another complaint was about the abandoning of the petrochemical project. It is not that the Centre abandoned the project because they did not want that project to go ahead. On the contrary, we tried our best to see if the project could be proceeded with. But if there are technical difficulties and it is beyond the power of the government, then it becomes impossible for the Centre to go ahead with the project, even if they want it. I shall narrate the facts briefly which will show to the House that in spite of our best efforts to go ahead with it, it was not possible. This was one of the four drug plants to be set up in the country with Soviet collaboration. The site near

Neriamangalam was chosen because of its proximity to the Munnar hills, which was to be the main source of supply of raw materials for caffeine, which was to be the largest item of manufacture. The Russian experts drew up the detailed project report. On scrutiny of the report by the Indian Drugs and Pharmaceuticals Limited, who were entrusted with the implementation of the project, it became clear that the plan was not likely to be an economic unit. A ton of this product would cost about Rs. 1 lakh while the imported cost comes to only Rs. 18,000. Even the Bengal Chemicals produce it at a cost of Rs. 50,000. Then we thought, if caffeine becomes rather uneconomical if it is produced from tea cuttings, we might try to have it from waste products, so that it might be cheaper. For that they wanted some time to prepare the project report. We gave them time and they prepared it. Even then it was found that it would not be economical. We have still in mind a smaller project, instead of a bigger project, and we would like the State Government to look into it, because we want that some project should be there. It is not indifference on the part of the Central Government. On the contrary, we have tried and tried, but if the project becomes uneconomical and technically not feasible, if the raw material is not available or it is costly, then if we invest money, it will only mean a continuous drain on the State. From that point of view, the bigger project had to be abandoned. We have asked the State Government to look into this question whether a small project is possible. If a smaller project is economical and technically feasible, we would certainly wish that that project is proceeded with.

About banning of certain books, as soon as this was brought to our notice, we immediately looked into it. The order was withdrawn and the books are now among the school books. So, there is no complaint of Central Government neglecting it. About the Water Transport Corporation, members know that we had devoted a good time over it in the consultative committee. We are confronted with various difficulties. It is not that the government official are not prepared to accommodate. This corporation has been wound up and there is an official

liquidator appointed by the High Court. His hands are tied down. He cannot distribute assets without the sanction of the High Court. In giving the sanction, the High Court would see that the discharge of the debts is done in a particular proportion. They cannot give priority to a particular class of employees who have been retrenched. We have promised and I still assure the House that we shall take as lenient a view as possible. We have offered that the State Government might purchase the boats belonging to the Corporation for Rs. 3 lakhs and this may be used for payment of dues. So, we are trying to do that. The question of giving priority was also discussed and we found there are legal difficulties. Where there are legal difficulties which are beyond the scope of the officers and they have to be guided by the directions of the High Court, the official liquidator could not do anything....Instead of loan, we are going to give them the amount outright. We will purchase the boats for Rs. 3 lakhs or so and this amount can be straightway given to them, not as loan, but as their dues. If that is not possible, then the other solution can be tried. But I thought giving away their dues straightway will be better than keeping them as debtors of the government by giving a loan.

The next question was about inadequacy of the food ration. As members know, this question was discussed in the consultative committee between the Home Minister and the members. Not only that. When we thought that there was a case for increasing the ration and the Food Minister himself said that he would try his best to see that they get something more than what is being given to them, the Home Minister requested the Food Minister himself to be present in the consultative committee. The Food Minister also came and it was discussed. The Home Minister said, now that he is in charge of Kerala, he is a Keralite and he will try to see that the problems of Kerala are solved, by taking personal interest. Complaints are made that because there is no popular government or a democratic set-up, the cause of Kerala goes by default. It was not a question of the cause of Kerala going by default. The Home Minister himself took up that question with the Food Minister. He

requested the Food Minister to come and hear the views of the members so that he can also know their views on the matter. But the whole question was that the Food Minister had to take into account the total availability and the total needs. Taking all these things into account if he could not do it, it was not because we were indifferent. At least I can say, and the members will bear us out, that the Home Minister or the Home Ministry was never indifferent to any of the questions which the members raised there.

The other question that they raised was about the encroachment on land. There too, we have looked into the question. This question was also discussed threadbare. We have appointed a committee consisting of members from kerala. We have stopped evictions, and I think orders are there that there should not be any fresh evictions till the report of this committee is received. The members of the committee, who are again from Kerala, who know the work, who know the problem would be really very sincere in their attempts for a solution of this problem. As soon as their report comes, we will certainly take action on it. In the meantime, we have said that there should be no fresh evictions. That order stands..

Therefore, these are the points that were taken up. All these points we have looked into. As I have pointed out, if there is something which is holding up it is not because we are not in any way in a mood not to help them or in a mood of indifference. On the contrary, we certainly wish to help them because it is our responsibility to see that the problems of Kerala. especially, are solved.

They say, it is unfortunate that when the Plan is being discussed every time there is no popular ministry. It is unfortunate indeed that there is no popular ministry. But even there, if the Plan was to be discussed here or in the State the members of the Assembly would certainly give their views but ultimately their views have to be conveyed to the Planning Commission. The members of the legislative assembly I do not think would have an opportunity of discussing it with the Planning Commission. Here Sir, we again invited the Deputy Chairman of the

Planning Commission to the Consultative Committee and asked the members from Kerala to put their views, whatever they are, before him. Therefore, he has got a first-hand impression of the views not only of the officials but of the members representing Kerala in Parliament and of other Members. Ultimately of course the Plan would be a national Plan and it will have to look to various categories and various priorities. But it is not correct to say that because of the absence of a popular government the Plan of Kerala would suffer. On the contrary, I would say, it gets the advantage of representing its case to the Planning Commission through its representatives elected to the Parliament. It is Kerala alone which can do that and perhaps no other State will have that benefit. But even then I would say that it does not mean that the President's Rule is in any way a substitute for a popular ministry. I do not say that. All that I say is that because there is no other alternative we have to do it, but while doing it we are fully alive to the responsibility that lies on the Central Government with regard to the development of the State and the welfare of the people of Kerala. I have cited enough instances to show that whatever their problems are we have tried to look into them, understand them and appreciate them. If something cannot be done for technical reasons or for some other reasons, that is a different matter. That may happen as it happened in the case of the phytochemical plant. Nobody could help it.... There also, about the thermal plant, the Minister of Irrigation and Power, who represents Kerala so far as the Central Government and the Kerala State is concerned, looked into the question. He did suggest that a thermal plant would be beneficial too. There are so many States where so many things are necessary and beneficial. The only question, after all, is of availability of funds. There are so many schemes and all the schemes are good, but the question is of finding the necessary finances and the resources available in the country. I can understand the complaint if the Minister of Irrigation and Power had turned it down and said that the claim is false, Kerala has surplus power, there is no need for this thermal plant and that we can expedite the Idiki or

Sabarigiri project. Even then, as you know, we have given an additional amount of Rs. 2.5 crores to complete these projects.

There were certain points raised by Dr. Lohia. When Dr. Lohia was speaking, he touched a very fine ground. On, I should say, humanitarian grounds, he said, that whatever may be our attitude towards the Marxist Communists, there should be some trace of humaneness in our dealings with them. it was really gratifying to hear that. As Dr. Ram Manohar Lohia is always humane in his approach, no other suggestion could have come from him, and he wanted that Shri Gopalan and Shrimati Gopalan should be lodged together. That has already been done and orders have been issued a month before Dr. Lohia complained that nobody is replying to his points. I, therefore, thought that atleast I should reply to him. But there are certain points which he raised and which are incomprehensible to me. That is my difficulty. I am unable to appreciate some of the points that he raised. Therefore, his other points I cannot reply and it is not because I do not want to reply to them Sir, as I have said, if I am not replying to his other points it is not because I do not want to reply to him. I would like to reply to every point that everybody raises, but if certain points are not comprehensible to me it is difficult for me to do it....

The last point I would like to submit would be this, that certain hon. Members said that all this talk of emergency is simply when we do not want the elections to take place. They attributed some statements to the Congress president, that he was in favour of having the general elections earlier. In fact, the Congress president has not made any such statements though in the newspapers such statements might have been attributed to him. Hon. Members said that when this question of elections in Kerala comes we bring in this question of emergency, otherwise the Government was prepared to have elections for the rest of the country. It pained me to hear that. While parties and members are free to put forward their arguments, was it not a fact that the Prime Minister very soon rejected and dismissed the idea? If we have done something, if the nation has done something today, he does not want that the credit

should go to the Congress alone, the credit should go to the whole natiton. it is the whole nation that stood as one end it is the unity that has shown to the world that India is a mature nation, it can stand together in the face of any aggression by any enemy and that it can not only defend itself but even strike a blow. The Prime Minister has paid tribute to millions of our men and to the whole nation for the unity that it has shown. It is that unity that we have to sustain and I would be the last person to agree to any election if the unity that we want now is going to be lost. It is a valuable asset. Let us therefore, not say that the Congress was trying to make capital out of this. That was far from the intention of the Prime Minister when he rejected the idea of election. I only wish that that part of the story should also have been stated by the members when they referred to other subjects. I think I have replied to all the points. I would request the House to approve this resolution. I was rather surprised to hear from Mr. Chatterjee, for whom I have the greatest respect, that it was obligatory under the provisions of the Constitution that a decision should be taken on the Governor's report. Article 356 is very clear:

"If the President, on receipt of a report from the Governor of a State or otherwise, is satisfied. . . ."

Therefore, it is not merely on the basis of the Governor's report alone that a decision can be taken. (*Interruption*). The President can take a decision on the advice of the Council of Ministers who may have their own assessment and the President can take into account that assessment also. (*Interruptions*). . . . The second point is that it is only when the Proclamation is issued for the first time that this provision comes, *i.e.* "If the President, on receipt of a report from the Governor of a State or otherwise, is satisfied. . . ." When the question of extension comes, then the provision is :

"A Proclamation so approved shall, unless revoked, cease to operate on the expiration of a period of six months from the date of the passing of the second of the resolutions approving the proclamation under clause (3):

Provided that, if and so often as a resolution approving the

continuance in force of such a proclamation is passed by both Houses of Parliament, the Proclamation shall unless revoked continue in force for a further period of six months from the date on which under this clause it would otherwise have ceased to operate, but no such Proclamation shall in any case remain in force for more than three years."

It is only when the Proclamation is issued for the first time that the question of the President being satisfied on receipt of a report from the Governor etc. comes. I am replying to the point raised by Shri Madhu Limaye. Here it is not calling of Assembly again. Here the question is of extending the proclamation for a further period of six months. (*Interruptions*). The basis is assessment of the Government. Then on the point raised by Mr. Kamath and Mr. Mukerjee....

That only on the basis of the Governor's report, it could be done. I should say here that I never mislead the House, I have never tried to mislead the House and I have not mislead the House. It was after varification that I corrected that sentence. Those three words had been left out. I have clarified it.

What does the report ultimately say? What the Governor says is that he met Shri E.M.S. Namboodiripad.

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This* is the summary of the report received. I shall convince the House and you. If we read it this way, there is no doubt whatsoever.... This is what the Governor says: Shri E.M.S. Namboodiripad said that he had met, *i.e.*, Mr. Namboodiripad had met, Shri Rajeshwar Rao and Adhikari. Then you add the words "and leaders of the S.S.P...."

I said it on the first day. "....Shri Rajeshwar Rao and Adhikari

*Mr. Speaker put a few questions to Shri Hathi. These were "Has he, after this mistake having been pointed out, compared the summary with the original report that the Government has got? Does he find it to be an honest summary of that report? Does he propose to correct anything further in that if he finds that there is some mistake or does he hold that this is an honest summary of the report that the Government has received from the Government?" Shri Hathi replied.

and leaders of the S.S.P..." I am not going to make any addition. On the first day I said that, instead of P.S.P., it should be S.S.P. Then I varified it. I even confirmed it from the Collector. Therefore. I did not contradict it later. So, I did not contradict then. I contacted the Governor to ascertain what he wanted to convey. What he wanted to convey was 'Shri Rajeshwar Prasad Rao and Adhikari and leaders of the S.S.P...What he wanted to convey was 'Shri Rajeshwar Prasad Rao, Adhikari and leaders of the SSP'. The first two were leaders of the Communist Party.... There is no question of fighting shy or doing anything fishy. The Governor says that Shri Namboodiripad had met two leaders of the Communist Party and leaders of the SSP and that he was told that it would be possible for them to form a government. When the Governor met those people from the Communist Party and SSP, they said 'No' and that there was no actual talk like that. This is the substance. Therefore, the Governor has come to that conclusion.

# II
# Delhi Administration Bill

This Bill was introduced in the Lok Sabha on 18 November, 1965 and thereafter it was referred to the Joint Committee of both the Houses of Parliament*. The Report of the Joint Committee was presented to Parliament on the 9 May, 1966. As stated in that report, the committee invited memoranda from public bodies and individuals and also took evidence from the representatives of the public bodies, political parties and individuals. The scope of the Bill was thoroughly discussed, and a number of improvements have been effected. I would not like to take the time of the House in explaining the previous history of the administrative set-up of Delhi.

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A balance is kept between the requirement of democratic association of the people with the administration and the need for effective control of the national Government over the Government of the capital, to avoid conflict which may detract from the efficient working of the metropolis. It was also explained that keeping in view the fact that a large number of foreign legations, embassies etc., were housed in Delhi it was not expedient or advisable to have two sets of Government or a dual Government in the capital. I would restrict myself to the Bill as it has emerged after the deliberations of the Joint Committee. The House will notice that there were in the original Bill 37 clauses. As the Bill has emerged from the Joint Committee, as

*Thereafter, members continued to raise some points which Mr. Speaker clarified. Later, the House negatived the motion that the "further discussion be held over" and adopted the motion to extend proclamation dated 24 March, 1965 to further continue it for a period of six months.

—Moving the Government motion on Delhi Administration Bill that "the Bill to provide for the administration of the Union Territory of Delhi and for matters connected therewith, as reported by the Joint Committee, be taken into consideration." Shri J.S.L. Hathi, made his speech, L.S. Deb, 14 May 1966—c. 16956; 16 May, 18 May and 28 May 1966· "17123-17128 cc. 17512-17520, 17537-17540, 17554-17642.

the report of the committee shows, there have been two new clauses added, namely clause 15 and clause 36. One clause, namely original clause 24 has been deleted. 11 clauses have been amended, and two clauses have been amended because there are consequential amendments. In all 16 clauses have undergone changes out of 37 clauses. The new Bill has has 38 clauses.

I shall now deal with the important changes which have been brought about. The first is the amendment of clause 3. The number of elected members of the proposed metropolitan council has been raised from 42 to 49. That is one important change. The second change which the committee has brought about is that instead of associating three members of the interim metropolitan council nominated by the Government with the Election Commission for the purpose of delimiting the constituencies of the council, provision has been made for associating the Members of the Lok Sabha representing Delhi with the Election Commission for this work. It was found by the committee that it should not be left to the Central Government to nominate any of the members for this purpose.

Then, clause 12 has been amended to make a provision for the Deputy Chairman of the council. There was only a Chairman to be elected, but a Deputy Chairman has also been provided for by amending clause 12. Clause 13 is only a consequential amendment. All those provisions which applied to the Chairman have also to be made applicable to an extent to the Deputy Chairman. Therefore amendment of clause 13 is a consequential one. The new clause 15 specifically provides that every number of the executive council shall have a right to speak or otherwise take part in the proceedings of the metropolitan council or any committee thereof. The next clause amended is clause 20 (old clause 19), where a provision has been made regarding the powers and privileges of persons who have the right to speak in and otherwise take part in the proceedings of the metropolitan council and any committee

thereof, as they apply in relation to members. Then, clause 24 which dealt with the language or languages to be used in transacting the business of the metropolitan council has been deleted. It was thought that it should be left to the metropolitan council itself to decide what language or languages it should use. Clause 24 (original clause 23) has been amended to provide that the administrator shall make the rules after consulting the chairman of the metropolitan council. That has been added. Then, there were demands from various members that one of the members of the executive council should be designated as chief executive councillor and the other members as executive councillors. This change has been made in clause 27. Then, it was also thought that in order to avoid bye elections to the Delhi Municipal Corporation, clause 32 might be amended so that the membership of the corporation should not preclude the persons from being members of the interim metropolitan council. This provisions removes the bar on simultaneous membership of the interim metropolitan council and the Delhi Municipal Corporation. Then the other clause 35 is of a consequential nature, which provides that the electoral college for the Union Territory of Delhi shall consist of the elected members of the Metropolitan Council constituted for the Territory under the Delhi Administration Act, 1966, and until that Council is constituted, the electoral college shall consist of the elected members of the interim Metropolitan Council constituted under the Act. Then a new clause—as I said, there are two new clauses, one is cl. 15 and the other cl. 36—has been added to provide for the representation of the Metropolitan Council on the Delhi Development Authority in view of the representation of the Delhi Advisory Committee on the DDA. With the coming into force of this Act, the Advisory Committee will not be there. Therefore, the representation which the Delhi Advisory Committee has on the DDA will be given to the members of the Metropolitan Council. Clause 38 empowers the President to take necessary steps to remove any difficulty whatsoever for

giving effect to the provisions of the proposed law, particularly in relation to the constitution of the Metropolitan Council. The Committee, specially Shri Kamath, wanted that orders made by the President shall be laid on the Table of each House and would be subject to such modifications as may be made by both Houses. That also has been incorporated.

These are the main amendments to the old Bill as was introduced. It may be that at the time of the motion for reference of the Bill to the Joint Committee and during the Committee stage, suggestions were made that the Metropolitan Council should be given financial powers, that is power to approve the budget of the Territory and a provision that the Executive Council should be collectively responsible to the Metropolitan Council. In substance, this suggestion amounted to placing the Metropolitan Council in the position of a Legislative Assembly so far as the budget was concerned and making the Executive Council answerable to that body in the same way as the Council of Ministers is answerable to a State legislature. It was made clear that the theme as was envisaged and under which this Bill has been drafted and introduced is that it was not contemplated that there should be a Legislative Assembly for Delhi—art 239 stands in the way—and so if there is no Legislative Assembly, it is not possible also to give financial powers. Even then, we have given as much thought as could be bestowed to this question, we have consulted experts, and the Committee came to this conclusion that it was not possible to give financial powers to this body....without amending the Constitution. Therefore, the Bill which gives the maximum association to the people of Delhi in the administration of the territory has been the result of the deliberation of the Joint Committee as it has emerged out of the Joint Committee. I would not like to deal with other suggestions which are likely to come just now because I would be glad to hear the arguments and constructive and helpful suggestions. After that, if we think it feasible to accommodate, we may consider them. But so far

as the main theme is concerned, giving financial powers and making the Executive Council responsible to the Metropolitan Council seem not to be possible. I move

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Mr. Speaker,* Sir, during the course of the debate several points have been raised by hon. Members. I would broadly divide those points into four main categories. The first point was as to why Delhi should not be given a Legislative Assembly like the other Union Territories and if there is a Constitutional bar, we can amend the Constitution. The second point was that within the framework of the Constitution it is possible to give a Legislative Assembly and also financial powers. The third point that was raised was that if it is not possible within the framework of the Constitution to give a Legislative Assembly or financial powers. Certain amendments may be made whereby a kind of responsible government or a democratic set-up comes into existence. The fourth point was that some suggestions or amendments in the working of the present Bill for Metropolitan Council and the Executive Council were made. The last suggestion Acharyaji gave was why not have old Delhi separated from New Delhi and that old Delhi may be a part of Haryana. But that is not within the theme of this Bill

As to the first point, namely, why not give Legislative Assembly and Council of Ministers to Delhi, it has been explained here in the House more than once that so far as article 239A stands; the power of Parliament to give a Legislative Assembly or to provide for a Legislative Assembly is restricted only to five Union Territories mentioned therein. Article 239 says that in Union Territories the administration will be by the President through an Administrator. Now, it may be said, as had been argued, why not amend the Constitution.

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*When the motion that the Bill be taken into consideration was moved and members spoke, Shri Hathi continued.

Then the question is that the Constitution can be amended provided it is intended....

Shri Shiv Charan Gupta had touched this point which the hon. Member just now raised. He says that the interpretation of "Save as otherwise provided" is that although article 239A provide for giving a Legislative Assembly only to the five Union Territories, article 239 says that it can be given because the powers are given under articles 245 and 246 to Parliament to make laws for any State of India with regard to certain subjects and he says that the creation of a Legislature also would come within articles 245 and 246. He stated by saying that the Minister's statement is rather confusing. I do not know. I would like to know whether there is confusion here or there is confusion there. Articles 245 and 246 which give power to Parliament to make laws is not a power to have a Legislature in a State. That is to be given by the Constitution itself and because the Union Territories were to be administered by the President through an Administrator there was no question of a Legislature being given. Therefore article 239 was specially amended and new article 239A was brought in.

Then, the second point was that if this was not possible, give something which would have some essence of democracy. Shri Madhu Limaye said that this is a Bill which really destroys all the elementary principles of democracy which are that the government should be responsible to the people, that the ministers should be elected and they should be responsible. These are all the elements which we know, but let us be honest about it. The Government made it clear on various occasions and for reasons which we have said that in a capital it is not possible. It is not the intention to have a democratic, responsible government in Delhi. That is clear. Therefore it is not that

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*Replying to the question raised by Shri Maurya "I would like to have the interpretation of" "same as otherwise provided by Parliament by law". How do you interpret this?" Shri Hathi continued.....

we are dishonest about it. Are we saying that we are coming forward with a government which is going to be a democratic and responsible government and still we keep back certain things? That is not so. The constitutional position is that the President administers the Union Territory through an Administrator. That is the present position. We are going a step further as Subhadraji Smt. Subhadra Joshi said, and with this administration we are associating the elected representatives of the people....

Therefore all such suggestions which go to say, why not the leader of the party be the Chief Executive Councilor, why should he not nominate others, why should they not be responsible, why should they not be removed by a vote of no confidence—all these are permissible provided we come forward with a proposal that we are giving a democratic, responsible government to the people of Delhi. I will be honest about it. We are not doing that. Let us be honest. Even to Brahm Prakashji and others it has been made very clear that this is not the intention. The intention is to give some more power and to have an administration which will be a unified administration where, for example, DDA will be under this government. Therefore, that question will not arise now, as Acharya Kripalani has said, Shrimati Renu Chakravartty raised the question of multiplicity of various organisations. In any State, even in Bombay, there has to be the Electricity Board, there has to be the Transport Corporation, there has to be the local body, the Municipality and all that. These bodies are to be there. But they all will be unified in the Administration. Then, another question raised by Shri Kamath and Shri Madhu Limaye was with regard to my amendment which says that the Government servants....

It has been criticised and let me explain the position. The position is this that under clause 19 of this Bill, persons who are disqualified to be Members of Parliament under article 102 or the Representation of People Act are also disqualified. Therefore, Government servants also will be disqualified. That is

there. But here, we had mentioned it to make it absolutely clear. Under clause 3, it is provided:

"The Central Government may nominate not more than five persons, not being persons in the service of Government, to be members of the Metropolitan Council."

So, the idea is that the Government servants cannot be appointed. But this is being covered already by article 102 which disqualifies persons who are disqualified to be Members of Parliament. Clause 19 provides that those persons who are disqualified to be Members of Parliament will be disqualified to be Members of this Council and in the Executive Council, Members from the Metropolitan Council are to be appointed. Therefore, it was only to make it clear. This was only to highlight this that these words were introduced. But if it is going to create any confusion or mean that the Government is going to appoint them, I shall certainly drop it and not move it. Then, the question about the language was touched. There, the Joint Committee came to the conclusion that we should leave it to the Metropolitan Council.

I have touched the most important points that were mentioned by the hon. Members.

The Joint Committee, after full deliberations, has given the scheme which I would honestly say is not a democratic responsible Government for the people of Delhi. That, of course, is admitted. Instead of an Administrator or a Chief Commissioner in Delhi with different Departments under different Ministries, we are now having a unified administration, and we are associating the elected members of the metropolitan

council as members of the executive council, and they will be in charge of the Departments. Therfore, this is a step further, as Shrimati Subhadra Joshi has said, I think that we should all combine and co-operate in making this scheme a success*....

*Later, the Bill, as amended, was passed.

# 5
# LABOUR MATTERS

## Strike in Major Newspapers in the Country

Mr. Vice-Chairman, Sir. I am thankful to the Members for at least appreciating the efforts which the Labour Ministry had been making to solve this issue. I fully agree with Shri Niranjan Varma that it is too premature to congratulate the Labour Minister's effort. I myself feel that it is yet not time when these compliments should be paid. At the same time I can assure that it will be my endeavour to see that the workers get justice. We have the Wage Board's recommendations. In order to understand the proper perspective of the whole questions, as Members themselves have said, we must appreciate one fact and that is that this Wage Board is non-statutory and as such, it is not possible at present to make it enforceable under law. The only thing that could be done is to bring the parties together and try to see if a settlement could be reached. As the House knows after the recommendations of the Wage Board were announced, the employers, very few, implemented them both journalists and non-journalists.

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The Journalists' Wage Board is a Statutory Board and it could be enforceable under law. There, they went to the High Court and to the Supreme Court. Fortunately, both the High

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From the debate on Short Duration Discussion reg. Situation arising out of the strike in the Major Newspapers in the Country, (raised by Shri Banka Behary Das), Rajya Sabha Debates, 7 August 1968, cc. 2575—82.

Court and Supreme Court passed an order whereby they were to pay according to the recommendations of the Wage Board pending the hearing of the application.

Therefore, merely making it statutory is not an end itself. At the same time it should be understood that when it comes to the stage that legal powers have to be assumed by the Government in order that the Wage Board recommendations should be implemented it will have to be done.

On the 23rd April 1968 the newspaper employees were to go on a strike. It was at the intervention of the Labour Ministry that the strike was averted and an agreement was reached whereby the employers agreed to pay 70 per cent. of the difference between the existing wages and the wages to be paid according to the recommendations of the Wage Board. It was there stipulated that the parties would negotiate a settlement within a month. Unfortunately a controversy arose and the controversy was that the Indian & Eastern Newspaper Society. (I.E.N.S.) said that this agreement was not binding on the other constituents, and that it was only recommendatory. Naturally, the workers raised a protest, and rightly so.

The agreement was reached at an all-India level between the two organisations, the I.E.N.S. and the Federation of the Newspaper and non-journalist workers. So how could it be said that is not binding? In that case the workers also could as well say that it is not binding on them. It is an agreement which binds both the parties. So a deadlock arose. The negotiations went on from April to June but because of this controversy there was again a deadlock. I am only narrating to show what steps the Labour Ministry had taken in order to avert this deadlock right at the very beginning.

To solve this deadlock, again I called a meeting of the employers and the employees. I asked the employers to explain

how they sent out a circular that this was only recommendatory. Their reply was that they had no legal sanction to ask their other constituents to pay and, therefore, they could not say that it was binding; they could only say that it was recommendatory. My reply was that even if it was not legal, certainly it was moral and they could have told them that although it was not legal, morally we are bound and they could have recommended it for implementation. Anyway, this was the deadlock.

I then suggested a formula which was agreed to, again by both the parties. The formula was that the I.E.N.S. and the Federation should sit together and negotiate, and when they reached a particular point where the final agreement was to be signed the I.E.N.S. could go to the General Body and as many of them as were agreeable to that agreement could sign that this agreement would be binding on the parties herein mentioned. Therefore, it will be binding on both the workers and the employers.

Accordingly, negotiations started and from 70 per cent they went up to 75 per cent. Again, on 20 July 1968 the negotiations failed. Now again the deadlock arose and again I called them on the 27th and the 28th. In the meantime news appeared that the *Hindu* was prepared to settle at hundred per cent. The fact was that the Labour Commissioner, Madras, had offered to the parties that the management should implement hundred per cent and if there was a difference in the categorisation the matter can be referred to adjudication.

Within two days, both the parties had again to inform the Labour Commissioner, Madras, whether they were agreeable to this or not. The offer was not from the management. Unfortunately, when this formula was given to both the parties on the 28th July, 1968 the workers of the *Hindu* went on the strike and then again there was a deadlock.

I again called a meeting and had a discussion with the proprietors of the *Hindu* and told them that if they were prepared earlier why should they now stand on prestige? His reply was that he had not said that he was going to pay

hundred per cent. This was a formula given by the Labour Commissioner and he was to give his reaction. If the workers agreed to withdraw the strike....

I am trying to bring out that negotiations and discussions are always useful and we should never falter and give it up because it was after these discussions and negotiations that at Madras a settlement was reached between the workers and the management, and I would like to congratulate the workers for entering into negotiations and settling the issue. I am coming to that point. I am not going to say anything else.

When we all thought that there was a deadlock, it was on the 4th that this settlement was reached. Therefore, we should not say good-bye to negotiations and discussions. To ultimately settle things, certainly we shall have to do it.

Mr. Chatterjee referred mainly to the wages point. His main burden of the song was that Mr. Hathi is a good man but he is a weak man. Now the question is, let us understand the structure of the Wage Board. What is the concept of the Wage Board? The concept of the Wage Board is this. It is a tripartite body in a way which comes to some formula, some settlement of wages and ultimately it is to be implemented by the party. The Government does not come in the picture at all. Out of the 22 Wage Boards that have been formed up till now we have got 14 final recommendations and most of these recommendations, have been settled one way or the other. But we have to see that this wage Board which is non-statutory maintains its position and its nature: otherwise we can make it statutory. But then it will mean that the strength of collective bargaining will tend to go and it will only mean that everything will have to be regulated by law.

Shri Banka Behary Das mentioned about the *Amrita Bazar Patrika*. I do not hold brief for any paper. I had only said that they had implemented it. But that impression is not correct. And, therefore, I asked the *Amrita Bazar Patrika* management as to what was the actual position. I am saying what they have written to me. I had said that only because the paper was being

published the presumption was that the workers did not strike and that they are implementing. But I do not hold a brief for any paper. I do not want to praise one paper or the other. Those who are implementing are doing their duty. It is not a question of my praising or complimenting them. The Wage Board is there. It is their moral obligation. They should pay the workers according to the Wage Board recommendations. So it is not a question of praising or complimenting....

The Central Labour Secretary was also there. But the Labour Minister of Madras has also taken a very active part in that; he has also to be congratulated. The *Amrita Bazar Patrika* have said in their letter:

"The Second Wage Board for working Journalists who have also given award for Non-journalists, have said that the total financial burden (approximate) on account of implementation of the final proposals of the Wage Boards for Journalists and Non-journalists would be per year for *Amrita Bazar Patrika* Rs. 10,99,144 and for *Jugantar* Rs. 5,95,963—total Rs. 16,95,107.

Although we fully implemented the pay scales including point to point adjustments and fitments, we kept our existing D.A. which was in most cases short by Rs. 10 and in certain cases by Rs. 20 for non-journalists employees than the D.A. rates recommended by the Wage Boards. (For Journalists we have implemented fully including D.A.). On the other hand, we placed *Jugantar* in Class II as a gesture of good will instead of Class III placed by the Wage Board.

While paying less D.A. between Rs. 10 and Rs. 20, we saved some money but by upgrading *Jugantar* to Class II from Class III our burden increased considerably. To sum up we implemented to the tune of Rs. 16,16,000 as against the total burden of Rs. 16,95,107 as recommended by the Wage Board; which means we have overall implemented the Wage Board recommendations by more than 95 per cent."....

I do not want to take up much of the time of the House. The Government has accepted the recommendations of the Wage Board and it has asked the parties concerned to implement them. The recommendations have to be implemented by the parties. The position to-day is that the recommendations of the Wage Board are non-statutory and as such legally the Government cannot compel anybody to pay... For working journalists it is statutory, but they have gone to the High Court and the Supreme Court on writ petitions. That is why I have been saying that the Government may have to assume powers. Mr. M.V. Bhadram said that I should borrow teeth. But I should not borrow anybody's teeth; I must have my own teeth, though I am not fond of biting as he might be. Ultimately if negotiations fail and things are not settled, it will not be borrowing teeth, but Government will have to arm itself with sufficient powers to make the employers pay according to these recommendations....so far as the Government is concerned* there are three courses open. The first is that the matter can be raised as an industrial dispute and referred to adjudication. That is what I am going to say. If you hear me patiently, you will receive the same reply which you want. So that would mean that it will take another three years. Therefore, though legally it is open to us, I personally would not like that course to be taken because it would mean three years more. Then if the parties can settle it by negotiations even now, I would welcome it. If it is possible for both parties to agree to arbitration, the arbitrator being selected by both, that also I would welcome. If that is not possible, I do not think a Committee of Members of Parliament, as suggested by Mr. Ansari, might be able to bring about a settlement. So far as I am concerned, I would be prepared to receive co-operation from any member, whether from this side or from that side, if they can bring about a settlement. Failing that, the last course or alternative will be to bring forward a

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*Meanwhile, Shri Banka Behary Das raised a query: "I would only request the Minister to tell us whether during this Session, if negotiations fail, the necessary legislation would be introduced and passed." Replying to him, Shri Hathi continued,....

legislative measure. But we have to make sure that any legislative measure that we bring should be fool-proof so that it is not again challenged and the matter is not delayed.

# Payment of Bonus (Amendment) Bill, 1965

Sir, I do not want to go into the whole scheme of the bonus the concept of bonus what practice prevailed before the Bonus Act, how the Bonus Commission was appointed, etc. I do not go into these details at this stage. I would only say broadly that the Bonus Act contemplates a particular method of calculating the available surplus. And, from the gross profit, certain items have to be deducted. One of the items to be deducted is the direct taxes.

Here, there was, in a way a difference between the calculation which the employers made and the calculation which other people made according to us, and also according to the workers. It had been urged on behalf of the workers that in Section 6(c) the world 'is liable to pay' connotes the tax payable by the employer actually. The employers have on the other hand said that the tax to be deducted as per section 6(c) is a notional tax and not actual tax. This tax may be higher than the actual tax which actually the industrialist pays because according to him the calculation should ignore the tax rebates admissible to the employer under the Income-tax Act on the amount of bonus paid to the employees.

The latter view has been upheld by the Supreme Court though the national tribunal has upheld the workers' plea in the case of Indian Oxygen. But the Supreme Court held that this means notional tax and not the actual tax. And they also said that the intention of the Parliament seems to be that it is notional tax and not actual tax. As a result of this the tax

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From the debate on the passing of the Payment of Bonus (Amendment) Bill, 1965 (as passed by Rajya Sabha), Lok Sabha Deb., 22 March, 1969, cc.86—134.

deduction would be a notional amount, higher than the actual tax and the tax rebate admissible to the employer, under the Income-tax Act and the benefit will fully go to the employer. The House is already aware that there is another decision of the Supreme Court where Section 34(2) was struck down. Under this, the workers could get higher bonuses than that admissible under the general formula of the Bonus Act. That was struck down. Therefore the workers were agitating long before this matter went before the Indian Labour Conference and the Standing Labour Committee and we were thinking as to what could be done. But in the meantime came the decision in respect of Metal Box Company. I might only correct the impression of Shri Shri Chand Goyal that it was not in the year 1966 that it came; it was in 1968 that the Supreme Court gave the decision. It is not that it was given in 1966 and we had waited for 4 years and then brought the Payment of Bonus Amendment Ordinance, 1969 (Ordinance No. 2 of 1969). It was only in August, 1968 that it came. Then the workers naturally agitated and they were rightly agitated over this question. There was great unrest among the workers. Well, we tried to talk to them, to persuade them, and ultimately this ordinace had to be promulgated. It is not a day too late that the ordinance was brought or promulgated..... The only thing is that the civil appeal was of 1966, though it was decided in 1968. What the Supreme Court said was that from the Act it did not appear that the intention of Parliament was that it should be the actual tax. I may draw the attention of the House to the fact that when the Bonus Bill of 1965 was being discussed in the House, Shri N. Dandeker had moved an amendment in order to clarify the point, and he wanted that it should be the notional tax and not the actual tax. That amendment was rejected after the then Labour Minister had made the following statement:

> "Regarding the other point about the tax concessions contained in the Bonus Bill, we have considered that point also. Having given so much concession for improving the industries, we thought that this may not be allowed to the management. Therefore, I am not in a position to accept any of these amendments."

That was the intention of the Government and we also

thought the interpretation will be there that when it is said that a tax is payable it means that the person is actually paying it. But the Supreme Court has held that it is a notional tax. The reason why we did not accept that amendment was that on the basis of the Bonus Commission's report itself, we had made several concessions to the employers. For example, the Bonus Commission had given 7 per cent on the return on paid-up capital; the Act gives them 8½ per cent; where the Bonus Commission had given 4 per cent on reserves, we had given 6 per cent....

The Bonus Commission had suggested that for rehabilitation, the rebate on tax should be covered, but we said that at that time it was all right but after having given this, there was no need to give them more for rehabilitation purposes. Therefore, we did not want to give it. Therefore, we have said that the tax concessions will not go to the employers but to the workers. That was our idea. But that having been turned down, I have brought forward this amending Bill and I commend it for the acceptance of the House.

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*Mr. Speaker, I am thankful to the hon. Members who have supported this Bill. My only regret is that Shri D.N. Patodia did not find himself in agreement with this Bill as such. He criticised not only the promulgation of the Ordinance but also the provisions of the Bill as such. He asked what was the urgency of issuing such an Ordinance? According to him, it was the threat of agitation by the workers that made the government submit to that. Even though he is not present here, I have a right to ask him one question. Is not the satisfaction or contentment of labour an important thing in industry? Can an industry thrive, or even survive, if the labour is not contented?

This agitation was going on, not from 1968 but right from the time when Section 34(2) was struck down by the Supreme Court; but now it has taken a serious form. It is not the thinking

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*After the motion for consideration of the Bill moved Jaisukh Lal Hathi continued clarifying points made by members.

of Government alone. Even in the pamphlet which the employees themselves have issued, they have stated that a number of trade unions have renewed the agitation against the Payment of Bonus Act, which was enacted in 1965 and that memoranda and resolutions are being submitted to the government, demanding the amendment of the Act forthwith in the interest of industrial peace. Now, is not industrial peace necessary and important? If there is unrest, how will they be able to face it? Merely by denying their demands or by arguing with them?

I was surprised when he compared himself with an industrial worker in Bombay. After all, what does a textile worker get because of this amendment? And why should you envy if the textile worker gets a few more rupees, especially when you have got a part of this rebate? I would plead with him and his friends that this kind of attitude that any small measure which goes to benefit the workers should always be opposed because that never leads to industrial peace. On the other hand, you have to create confidence in them that you are trying to accommodate them if their demand is ligitimate. Since the original intention was that the rebate on tax paid on bonus should go to the workers, they should have ungrudgingly given it and supported the Bill. That would have led to mutual confidence and establishment of good relations between the employers and workers. Unfortunately, they have not done that. So, government by this measure are seeking to give the workers what is due to them. I think I should admit that this is the minimum that we are giving. But the employers are opposing even that. I would only say that this attitude is not going to help either industrial peace or good relations between employers and employees.

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The hon. Member quoted the report of the Bonus Commission. I myself said that the Bonus Commission did say that their idea in giving this rebate on income-tax paid on bonus to the employees was that they may get something by way of rehabilitation. I know the Bonus Commission mentioned it in paragraph 12 of its Report. But, after that, so many things have

happened. Government gave 8½ per cent instead of 7 per cent on capital, 6 per cent instead of 4 per cent on reserve; they also gave a development rebate. Taking into consideration all this, we thought that the tax concession on bonus should go to the workers and not to the employers.

That was what we thought and the national tribunal also gave the decision in favour of the workers. But, unfortunately, as I said in my opening remarks, the Supreme Court said that the intention did not seem to be there. We are here clarifying the intention.

Then, I shall come to the point raised by Shri S. Kundu and explain what it means. I will give an example so that he understands what the two paragraphs mean. Supposing, an industry makes a gross profit of Rs. 30 lakhs. Then, at the time of calculation they calculate Rs. 15 lakhs as income-tax which they will have to pay. Then Rs. 15 lakhs remain as the profit. This Rs. 15 lakhs is divided into 60:40 and Rs. 9 lakhs go as bonus. That is when they prepare a balance sheet. Now, when the actual assessment comes, which is not in the same year—it comes a little later—they deduct Rs. 9 lakhs out of Rs. 30 lakhs. This Rs. 9 lakhs they have paid as bonus and they deduct this as expenditure. This gives them Rs. 21 lakhs as profit. On this they have to pay Rs. 10½ lakhs as income-tax. So in the calculation they had taken Rs. 15 lakhs as income-tax while the actual payment is Rs. 10½ lakhs and Rs. 4½ lakhs is saved to them. Now we say that this Rs. 4½ lakhs will be added to the available surplus in the next year and will be distributed in the ratio of 60:40. This is what these two paragraphs say. If he reads them now, he will understand. I will read it for him. It reads:

> "The gross profits for that accounting year after deducting—
> an amount equal to the difference between"—

the two, that is, Rs. 15 lakhs which they had calculated they would have to pay as income-tax and Rs. 10½ lakhs which they actually paid. This is rather a technical way of explaining but this is the position. I hope, I am now clear and there is no need of any further clarification. This is what is meant. This has been

done in consultation with the income tax office, the Law Ministry and everybody concerned and this is the best way in which it could be put.

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Then, there are various suggestions made by different members. They are not quite pertinent, but Shri George Fernandes has made a suggestion that we should assess how it has worked whether it has worked in favour of the workers or in favour of the employers. Now, by the very fact that Section 34 (2) was struck down, that is when the workers were to get something more and it was provided that the ratio between the profit and the available surplus in that year could remain the same to that extent, the workers have suffered a loss. It goes without analysis. I do not think a review is necessary in those cases. But about the appointment of a Commission, we have already asked the National Labour Commission to look into this very question itself. If we were to appoint another Commission, it will take two years more. This will be quicker. If you want time, that is different matter....

Then, there were other suggestions made. These suggestions were mainly about the Act, that it should apply to other industries, to the public sector and all that. But that is beyond the scope of the present Bills..... Other suggestions which the hon. Members have made will be considered.

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*So far as Shri S.M. Banerjee's amendment No. 2 is concerned, seeking to substitue 1967 for 1968, the reply has already been given by Shri Fernandes, that that will create difficulties. As for Shri Fernandes's amendment, we considered it. The question is whether we can think of at least the pending cases. But there, you will recall, the Supreme Court has struck it down as discriminatory. Those that are settled are

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*After the motion for consideration was adopted, members moved their amendments. Clarifying the points made by members while moving their amendments, Shri Hathi continued. Later, the House passed the Bill.

gone; we do not touch them. For those that are pending, to which the Act may apply, it has been struck down on the ground that it is dicriminatory. Therefore, we have said, any dispute arising after 1968, accounting year. They will all be there....

The next amendment, No. 3, is about the insertion of 'one and a half times'. I have not quite understood it. This is on the basis of 60 and 40. Therefore, we do not say 'one and a half times'. We have got it in the same proportion as the available surplus is distributed, that is 60 and 40.

The next amendment seeks to do away with 'immediately preceding'. He wants that it should be 'that year'. When they calculate income-tax on paper, from Rs. 30 lakhs they say Rs. 15 lakhs will be payable in that year. But the income-tax is assessed not in that very year. It takes a year or so or two years for that. Therefore, that actual tax will be known in the next year. So it cannot be in that year. It must be the preceding year. Hence the words 'immediately preceding'. There is need for this.

With regard to Shri S. Kundu's amendments, I have explained at great length that this formula which he said is more complicated than which we have done. Here between A and B, A is the gross porfit. *(Interruptions).* You are confusing. You are confusing between rehabilitation and rebate. This rebate is not rehabilitation but the rebate is saving from direct tax on the ground that they have paid bonus. I will illustrate this. If an industry makes a profit of Rs. 30 lakhs, he calculates Rs. 15 lakhs as income-tax which he would be liable to pay. The available surplus is Rs. 15 lakhs, out of which he pays Rs. 9 lakhs as bonus. When the actual assessment is made, he deducts the Rs. 9 lakhs out of Rs. 30 lakhs and the balance is Rs. 21 lakhs. He pays income tax on Rs. 21 lakhs which is Rs. 10-1/2 lakhs. Now the difference between Rs. 15 and Rs. 10-1/2 lakhs is Rs. 4-1/2 lakhs. This will be added in the next year for the purpose of distribution of bonus. Now if you read A and B, the whole position will be clear.

# 6

# MATTERS RELATING TO IRRIGATION AND POWER

## I

## Inter-State Water Disputes Bill, 1955.

Sir, the House has already passed the The River Boards Bill, 1955 which dealt with the development and regulation of the river valleys in different parts of the country. This is another Bill which aims at setting up of a machinery for adjudicating the disputes about the utilisation of waters and such other questions. This Bill, Sir, was referred* to the Joint Select Committee and although the time at their disposal was comparatively short, the Joint Committee has been able to complete its deliberations and submit its report on the due date. It would be in the fitness of things that I should express my sense of gratitude to the Members of the Joint Committee for the valuable advice and very sincere co-operation that they gave us throughout the deliberations of the sittings of the Committee.

Sir, as the House will see, the present Bill, as it has emerged after the deliberations of the Joint Committee, does

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—From the Rajya Sabha debates on the motion, "That the Bill to provide for the adjudication of disputes relating to water of inter-State rivers and river valleys, as reported by the Joint Committee of the House, be taken into consideration", moved by Shri J.S.L. Hathi, Deputy Minister for Irrigation and Power, Rajya Sabha Debates, 12 December, 1955, cc. 2199-2288.

*Bill introduced in Rajya Sabha by Sh. Gulzari Lal Nanda on 3 May 1955 and referred to Joint Select Committee on 9 September 1955 in Rajya Sabha.

not contain many changes. There are only a few changes—some three or four—which may be mentioned here.

The first change of significance occurs in clause 4. Clause 4 as it originally stood provided that the Central Government may appoint a tribunal on the request of the parties to the dispute. But the Committee felt that once a request has been made for an adjudication of a dispute that is existing between the States concerned, it should not be left to the discretion of the Central Government, but that it should be obligatory on the Central Government to appoint the tribunal. At the same time, it was thought that when a disputing State approached the Central Government, the Central Government should have an opportunity of trying to settle that dispute by negotiations, if possible, and if that method of negotiation failed, then the Central Government shall appoint the tribunal. The change, therefore, that is sought, is only to this extent, that the Central Government shall appoint such a tribunal after first trying to settle the issue by negotiations. The clause as it now stands aims at making that change only and that is only fair, as I hope the House will agree, that there should be some scope for bringing the parties together and settling the dispute amicably rather than bringing them up directly before the tribunal. The amended clause therefore, reads thus:

"When any request under section 3 is received from any State Government in respect of any water dispute and the water dispute cannot be settled by negotiations, the Central Government shall, by notification in the Official Gazette, constitute a Water Disputes Tribunal for the adjudication of the water dispute."

The other change that has emerged out of this Joint Committee's deliberations is with regard to clause 6. But before I take up that change, I shall deal with sub-clause (2) of clause 4 which relates to the constitution of the tribunal.

Sub-clause (2) says:

"The Tribunal shall consist of one person only nominated in this behalf by the Chief Justice of India from among persons who are, or have been, Judges of the Supreme Court or are Judges of a High Court."

So far as this clause is concerned, there was not a unanimity of agreement. There was one minute of dissent. One Member disagreed with this particular provision and what he wanted to say was that instead of having one member on the tribunal, there should be two members on it. The Minute of Dissent recorded by that Member is attached to the report. The point to be considered is whether the tribunal should consist of one member or two members or more members. But I shall first deal with the question of having two members, and then go on to deal with having more members than two. As we see in the present provision, the tribunal is to be appointed by the Chief Justice of India, from among the persons who are or have been judges of the Supreme Court, or are High Court judges. The appointment is restricted to a particular category of persons. This category is firstly divided into two sections, namely Supreme Court judges and High Court judges. Then again, the Supreme Court judges, are divided into two parts—the existing judges and those who have retired. So far as the High Court judges are concerned, the choice is restricted to serving High Court judges. Originally, the idea was to have only the services of Supreme Court judges. The choice was restricted to that category only, and did not extend to the High Court judges.

It was felt that it would not be possible to get the required number of Supreme Court judges for these tribunals and that we can have the benefit of the High Court judges, perhaps, even where the number may not be more. Therefore, provision for the serving High Court judges has also been incorporated. The idea, however is not to go beyond that. This is not purely a question of the opinion of this Ministry, but the opinion of the Chief Justice of India with regard to the availabiliy of the judges. That is why we have restricted the principle. If we are to have

two members, then the question arises as to what happens when there is difference between these two members? Therefore, without thinking of two or three, we have restricted it to one. Having regard to the possibility of not being able to get sufficient number of Supreme Court judges, the Joint Commitee has come to the conclusion that we should have one member. Of course, he will be assisted by the assessors.

The next one is clause 6. This provides for the decisions of the tribunal to be published in the Official Gazette. The clause as it originally stood provided for the decision to be published "in such manner as it thinks fit." Instead of that, we have got a provision which is definite and this makes the position very clear as to the Central Government publishing the decision in the Official Gazette. The decision shall be binding on the parties to the dispute.

I then come to clause 13 which empowers the Central Government to make rules to carry out the purposes of this Act. The Committee felt that the Central Government should frame rules after consultation with the State Governments. As the House knows, the House had accepted, in regard to the previous Bill also, this principle that the rules should be framed in consultation with the State Governments.

There are, of course, other amendments to the Bill made by the Joint Committee which are of a very minor character or of a drafting nature. At the time of the introduction, the object and the theme of the Bill was explained at great length to the House and I do not think I need take the time of the House now in dealing with it again. I have restricted myself to the important changes made in the Bill and to clause 4 which provides for the appointment of tribunals, as some amendments have been given notice of with regard to this clause. The Joint Committee considered all these aspects and it was only after a good deal of discussion that this decision of having a one-man tribunal was arrived at. There are not very complicated questions involved in this Bill and I hope that the House will, while giving consideration to the whole Bill, give its support to this measure.

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*Mr. Vice-Chairman, I am really thankful to the Members of this House for the very keen interest and the very valuable and useful contributions they have made in the course of the discussions today. The question is naturally one which would engage the attention of hon. Members so far as it relates to a very vital question, namely, the settlement of disputes about the use, control or distribution of the waters of inter-State rivers. There is no doubt—and it is admitted on all hands—that the use of water is not the right of any individual State; when the river flows through more than one State, naturally the people of the different States are interested in the use of the waters. Not only it is the people of that particular area, but really the people of the country as a whole that are interested. If a particular river has got irrigation potentialities, the benefits of the irrigation may not be restricted to that particular small State. The food products that are the result of this irrigation may well be consumed by the rest of the country as well.

Similarly, if a river has power potential, that power would not be utilised simply in that particular State or States concerned, it would be available to parts far away. We envisage a day when we can have a grid system not for a State or two, but for a number of States. So, it is but natural that great attention has been paid and is being given as to how these disputes should be solved. And it is admitted on all hands that a machinery is necessary. We have seen instances where disputes have been pending for a very long time and have not been settled. It is chiefly because of this that this Bill was introduced and I need not dwell at length on this subject. I feel there is not any difference of opinion so far as the importance or the utility of the present Bill is concerned. I am also thankful to several other Members who have given certain suggestions which I have considered and, I think, some of them may be accepted to the extent that is possible.

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*After the Chair moved the motion for consideration of Bill, some members made certain points in their speeches. Shri Hathi continued his speech, clarifying the points raised.

Now, the question which has been discussed at length is the one about the composition of the tribunal. And the second is the constitution of the tribunal itself—the establishment of the tribunal. There has been a variety of opinions expressed from different quarters. From one group we have heard that it is not necessary at all to have such a tribunal. The other group has expressed the view that there may be a tribunal, but the tribunal should consist only of judges. There is a third view expressed that the tribunal should consist not only of lawyers but also of engineers. Another view was that there should be no lawyers at all. There are thus conflicting views coming from different sections of this House. Now, it is really difficult for anybody to co-ordinate and combine all the different views and make up a picture which would satisfy every section, one hundred per cent. That is really the difficulty...The first question could be divided into two parts—whether it should be a tribunal at all or should it be left to the Supreme Court? The second point that I would come to is, if it is a tribunal, what should be the number? I am dealing with part one—part one is whether there should be a tribunal at all? Shri Biswanath Das in his speech, suggested that under the Constitution, article 131, the States have got a right to go to the Supreme Court. Why do we bar the rights of these States? Why not allow them to have recourse to the Supreme Court and have their cases settled by the existing machinery of the Supreme Court? That is, well, as an argument. But as against that argument other views have been expressed that in court of law—however expeditious—the proceedings of the court are likely to cause delay and delays are inevitable. In a court of law, the rules of procedure are such that whatever may be the push of the presiding officers, delays are inevitable. It is none of my business to blame or to say how judicial reforms are necessary. It is not for me to say it here. But the other view—and a strong view—also has been expressed that it is better that such disputes should be referred to a tribunal. And, Sir, we have been passing through stages where we want that these disputes should be settled, as far as possible, either by arbitration, or tribunal, or panchayat, or by

somebody whom you trust, or to whom you can hand over the matter for an amicable settlement.

May be, the settlement may not be to the satisfaction of both the parties. I do not know whether, in every case, if both parties go to the Supreme Court, they will come out satisfied. One of them feels that something still remains to be done. From the Munsif's court, one would like to go and appeal to the district court; from the district court, he would go to the High Court; from the High Court—when there is a provision and the law allows it—naturally he will go to the Supreme Court. If there is a higher court and if there is a provision, naturally he will go beyond the Supreme Court, because that is the psychology. A man never wants to stop at a particular stage so long as the remedy is open to him...There is that psychology. But there should be some finality at some stage and where should that finality be? Hon. Member Dr. Radha Kumud Mookerji said that a tribunal would be better, but in that case, he says that the standard should be reached. Exactly that was the intention of the Government and that is the intention of the Government. And it was for that purpose that the Minister in charge, when he introduced the Bill, did express it very clearly that the original idea was to have only a Supreme Court judge in the tribunal and the Irrigation and Power Ministry had no intention to include even High Court judges. That was for a reason as Dr. Radha Kumud Mookerji suggested.

Now, the difficulty was, as I explained in the beginning and as the Minister had also explained in the beginning—and I am still repeating that—whether we would be able to get Supreme Court judges—serving Supreme Court Judges, not retired, I mean—for this purpose. As it stands today, with the present number of judges in the Supreme Court, it may not be possible to get three at a time. May be, you may get one today, the other after sometime and the third later on, but it will not be possible for the Chief Justice of India to spare three judges at a time. Then, if you cannot have Supreme Court Judges, it may be that the retired Supreme Court judges may be availed of. But it was not found possible by the Chief Justice that we

should entrust this to the retired High Court judges also. Although we wanted Supreme Court judges—that was the original idea—we were told that it would not be possible to make available more than one. We did not want to extend this to the retired High Court judges and therefore, the number was to be restricted. I appreciate the anxiety of the Members—and I also see their view point—that it would be desirable if we have more than one judge and that was also our original idea. An hon. Member said that according to clause 2(a), a member includes Chairman. Well, I shall be frank and it is always better to be frank. Our idea was to have more than one member. It is, therefore, that the clause does remain. But that clause is of no use now, and I am myself going to move an amendment for the deletion of it, because it is no use my saying that it is rather not desirable not to have more than one member. Well, we have to move in a practical way. If you say four people and we do not get them.

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I may also draw the attention of the Members to another provision, that is clause 4 as it originally stood and as it now stands. Originally, the scope for settlement of negotiation was not there. As the original Bill stood, it did not include these words: "When any request under section 3 is received from any State Government in respect of any water dispute and the water dispute cannot be settled by negotiations". Now, we thought that it would always be better to settle such disputes by negotiation. The Central Government will be there which will try to bring the parties together and settle the issue. A question may arise: Why should the Central Government not be able to decide such disputes till now? Why are they pending? The reply is—I may inform the House—that it has been possible for the Central Government to settle the disputes, and in a number of cases, it has been possible to achieve that object. But the only point was that there was some delay. That is because when certain investigations had to be made and when certain States were required to give certain information, naturally they took some time, and the Central Government had no authority or power to say that unless you do this, well we will have a

machinery which will decide the issue. Now under article 256 of the Constitution, the Central Government has been given that power and under that power, this machinery will be able to dispose of the case. So, in the first instance, all such disputes will be settled by negotiation, or the Central Government will make sincere efforts to bring the States together and resolve such disputes by amicable settlement. In most of the cases this may be possible, but there may be certain cases where there is some delay. It is not a question of the States not agreeing because, after all, as you know, at present there is what we call the National Plan—the Five Year Plan. All the schemes have to be approved by the Planning Commission. Schemes cannot be included unless the Technical Committee approves them. And that means that, whenever a river water has to be utilised, that has to be seen. I may cite for example the project at Gandak which is between Bihar and Uttar Pradesh. Now, one State has suggested one project for the particular river. The Planning Commission told them. "Well, this is a river whose waters could be utilised by the other State also. Therefore, unless you have a scheme in co-ordination or in consultation with the other State, this may not be included." Now, these two States have come together and they are trying to come to an amicable settlement. It may take time—four or five months or an year. But this can be possible if there is some machinery and the States feel that if they endeavour, there may be a settlement. That is a psychology which will expedite the bringing of amicable settlement and getting the desired results.

That is a point which I should like the Members to take into consideration. Let us not feel that the States are like individuals who are out after their personal interests which will fight out to the last drop. That is not so....Although there is a provision under article 131, how many States during these seven years have gone to the Supreme Court for—adjudication of their rights? I would be very much pleased to find a single instance where a State has gone to the Supreme Court. It is all well and good to say that the doors of the Supreme Court are closed against us, but let us be practical. I do not think during the

seven years any particular State has gone to the Supreme Court. That does not mean that if there is a dispute there should not be a remedy. There should be a remedy. But what that remedy should be is only a matter to be considered. The remedy which was considered a sufficient remedy, adequate remedy and a expeditious remedy by the Constituent Assembly was that the Parliament should be empowered to have a law which would set up a machinery to settle disputes, and not that the matters may go to a court of law. Otherwise there is no meaning in enacting article 262. So when we say that article 262 is meant for settling disputes, it is not with a view to shut the doors of the States, compelling them to come to this machinery for the recourse, but it is with a view that such a machinery would be able to settle the disputes more speedily and more expeditiously than it should be possible to be done under normal procedure of the Supreme Court. Hence the necessity of having the tribunal.

Thus, I have dealt with two parts of the question: Whether there is a necessity of a tribunal and what should be the number of the members....I will now come to clause by clause points raised by several hon. Members.

In regard to clause 2, mention was made about clause 2(a) :

"'member' means a member of a Tribunal and includes its Chairman;".

I have replied that

So far as clause 3 is concerned a suggestion has been made for a provision 'that the Centre should be given power to initiate these proceedings. Supposing, the States do not approach the Centre for appointment of such a machinery, is it suggested that there should be a machinery? Since this machinery is meant to settle the disputes, it pre-supposes the existence of a dispute. A dispute means something over which two States do not agree. If the two States agree, there is no dispute and none of the States has any grievance, the Centre need not appoint any machinery because there is nothing to settle at all. Unlike the River Boards' Bill, under a provision if the Centre feels that

waters of a particular river could be used in a particular way, the Centre by itself will appoint a Board to see how best the waters of the rivers could be utilised and to prepare a plan—this does not refer to the future plans; this refers only to the existing uses of the water of a particular project in a particular way—if the States do not have any grievance, it is not necessary for the Centre to do that.

Under clause 4, a member Shri J.S. Bisht suggested the fixation of a time-limit for the expeditious settlement of a dispute. But each case will depend on its own merit. In a certain case investigations alone may take two years. For that case a time-limit of six months would not do. If you fix two years, the parties may take advantage of that period and might prolong the matters unnecessarily. Therefore, it is better that each case should be decided on its own merit. But, I think, his point will be sufficiently met if we insert that if the Central Government is of opinion that the matter could not be settled by negotiations, then it shall appoint a tribunal or something of that sort. It means no specific time-limit, because it would not be proper to say five, six or three months. A case may take two years. If you fix two years, the State may take time of two years. So to meet that point, I wish to move an amendment to the effect that if the Central Government is of opinion that the matter could not be settled by negotiation, it shall appoint a tribunal.

In regard to clause 5, a Member Shri Jaspat Roy Kapoor wanted to substitute "shall" for "may". I think it may be "shall". That will dispose of the amendment itself.

In regard to clause 11, jurisdiction of the Supreme Court, the intention is to bar the jurisdiction of the Supreme Court for all purposes—for the purpose of appeal and for the purpose of article 136 also. That is what the Law Ministry advised us. That is why clause 11 has been introduced....

It is not that Article 266 gives that power. Another point was raised whether this would be *ultra vires* under article 262? It is given there.

I think, I have replied to almost all the points raised in regard to the composition of the tribunal and the jurisdiction of the court. If there is any other point that requires clarification. I shall be very happy to reply to those points.

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Sir, Government is prepared to save the States from all expenses. Under clause 4, this is an honest and sincere attempt on the part of the Central Government to settle disputes by negotiations. There is no question of arbitration there. Secondly, if it could not be settled, then naturally, it goes to the tribunal. And it is common knowledge that when there is a dispute between two parties, the court decides which party should bear the cost. It will be decided on merits. It is not then saddling the States with the intention of burdening them with the cost. That is just the natural consequence which always follows in a court of law. While discussing this Bill, the hon. Member was inclined to think that the States should be allowed to go to the Supreme Court; but that would have meant more cost than is involved in this procedure. This will be more speedy and less costly. Sir, I am not inclined to accept the amendment....

Later, amendment No.12* was by leave withdrawn.

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It is not my intention to lightly brush aside any suggestions made by Members, nor is it in a lighter mood, or without giving due consideration to the arguments that I replied in the earlier part of the day. The matter had been carefully considered; the point raised is whether the jurisdiction of the Supreme Court should be barred or not. That was a point which was considered at great length. The only question that is before us is whether we want a finality at any particular stage, and whether we want expeditious decisions. We know that delays are caused and that is why we want that there should be some way by which we could have some finality in regard to these

*"That at Page 4, lines 8 to 19 be deleted".

matters. After all, we have been praising the standard of our judiciary. In whom are we confiding? To whom are we entrusting this work? It is not to an engineer or a technical person—as was suggested by somebody—that this work is entrusted. We are entrusting this work to a person belonging to the institution which has the greatest confidence of our country. Even the selection of the candidate is done not by the executive—the Government—but by the Chief Justice of India, in whom all of us have confidence. That Chief Justice of India will appoint the proper man. Therefore, let there be no misunderstanding or apprehension on our part that there will be no justice done. I, therefore, request my hon. friend not to press his amendment but to withdraw it.

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Arising out of the amendment No. 14 of Shri Jaspat Roy Kapoor adopted to clause 13, I beg to move the following amendment in substitution of the said amendment:—

"That at page 5, for lines 8 and 9, the following be substituted. namely:—

'(3) All rules made under this Section shall, as soon as practicable after they are made, be laid for not less than fourteen days before both Houses of Parliament, and shall be subject to such modifications as Parliament may make, during the session in which they are so laid'."

The motion was adopted.*

*Later, the Bill as amended, was also passed.

II

# The Electricity (Supply) Amendment Bill, 1956

The Bill is a small one but it is an important one in that it aims at amending the principal Act in certain respects having regard to the fact that in the operation of the Act certain administrative difficulties were found during the past years. There were also certain loopholes found whereby advantage was taken by the industrialists to earn more profit than they were legally entitled to.

In order to have a proper background. Sir, we should know what the main Act aimed at. It was found necessary that there should be a uniform and sound policy for such development and that there should be coordination between different planning agencies for the development of power. At the same time if private enterprise was taking part in the development of power, the consumers should not be unnecessarily burdened and they should be able to get electricity at a reasonable rate. Under that Act, therefore, it was provided that a licensee would not earn more than 5 per cent profit on his capital investment. But in calculating what that 5 per cent was, there were certain loopholes. The basis of calculation was that there were certain items which were items of income and certain other items which were items of expenditure. Now, in items of expenditure for example, the expenditure of the Managing Agents, office allowance of the Managing Agents, were taken into consideration. Then, interest on loans and debentures were also taken as expenditure in calculating the 5 per cent with the result that it

—From the debates in Rajya Sabha on the motion: That the Bill further to amend the Electricity (Supply) Act, 1948 as passed by the Lok Sabha, be taken into consideration, by Shri J.S.L. Hathi, Deputy Minister for Irrigation and Power, Rajya Sabha Debates, 19 December, 1956, cc 3154-3178.



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was not 5 per cent but something more than 5 per cent which they were earning. Therefore, certain changes have been proposed.

Now, in order to have a uniform policy at different levels, the original Act aims at regulating the relations between the Centre and the States, the States and the Boards, the Boards and the licensees, the licensees and the consumers, etc. These are the four different categories of relations between one another. At the Centre, the Central Electricity Authority which takes into account the whole needs of the country for development also acts as an arbitrator between the States and the Boards if there is any difference of opinion. At the State level there is the State Electricity Boards which generally control the business of the various licensees. Between the licensees and their consumers, the profits to be earned by the licensees are regulated by certain financial principles, and similarly there are principles regulating the relations between the licensees and the labour. So these are the various relations which naturally flow between one section and another and which should be regulated.

Now, I will not deal with all the amendments which are proposed in the Bill but will only touch the important ones which have been proposed and which have been passed by the Lok Sabha. The first is about the appointment of a Rating Committee. Now, whenever it is found that particular licensee charges more rate than he is entitled to, a Committee is appointed which will decide whether the profits earned by the licensee are what he is entitled to and, if not, whether he should increase the rate or whether he should decrease the rate. That is the function of the Rating Committee. This Rating Committee has also to see if there has been any breach of the provisions of the law. Now, under the Act as it stood, two members were to be appointed from the Board itself and one was to be a representative of the licensee. The industry submitted that after those two members of the Board had said in the first instance that the licensee had committed a breach of the provisions of the Act, they would again be appointed as judges. Therefore, they wanted that there should be some majority of independent

people. The Select Committee accepted that and under the amendment proposed one member will be appointed by the State Government, one by the Board and one will be from amongst the licensees to be co-opted by these two members. But the Chairman of this body will be the person appointed by the State Government and he would be a judicial officer. That is an innovation and it will mean that the whole enquiry will be a judicial enquiry.

Then, Sir, the second amendment proposed is with regard to the relations between the State and the Electricity Board. The State has, in a way, financed the Board and, therefore, the State must have some control over it. Therefore, it is provided that all schemes which the Board wants and which cost above Rs. 15 lakhs should be submitted to the State Government for approval and the accounts also will be subject to the audit of the Auditor-General. The most important amendment proposed is that the rate of the profit which they could earn should not be more than 2 per cent, above the prevailing bank rate. If it is $3^1/_2$ per cent they would earn $5^1/_2$ per cent—not more than that. Therefore, no electrical undertaking can earn more than $5^1/_2$ per cent on the capital base which they have invested in the industry. That is, they must so adjust the rate that the total profit should not exceed this $5^1/_2$ per cent. But it is difficult to fix a rate at a particular point where the profit would be $5^1/_2$ per cent only. There is likely to be some margin here or there. The old Act provided that this margin will be upto 30 per cent of the reasonable return. We have now reduced it to 15 per cent, that is, if it exceeds 15 per cent then the licensee will have to adjust the rate suitably.

Then there is a certain reserve known as Tariffs and Dividends. Control Reserve to be created out of the excess amount which they make. Suppose, a company instead of making a hundred rupees as profit makes a profit of Rs. 105, that 5 rupees should not go to the company wholly. Under the old Act, one-third not exceeding $7^1/_2$ per cent should go to the licensee and out of the remainder, one-half would go to the reserve and one-half should be as rebate to the consumer.

Instead of 30 per cent, we have now reduced the excess to 15 per cent and instead of the $7^1/_2$ per cent, the limit has been reduced to 5 per cent. The balance will go to the reserve and the consumers. If Rating Committee is to be appointed, they will see whether the company or the licensee has been earning more or not. if it is more, naturally it would say that the rate should be reduced. But it was stated that it takes a lot of time for the Rating Committee to come to a decision—some times a year or two years or it may be eight or nine months easily. In that case, the licensee could not increase the rate and if subsequently it is found that the company was entitled to increase the rate, then in the remaining three months of the year that are left behind, they would demand all the arrears from their consumers at a time and the latter would find it difficult to pay them. Therefore an amendment is made which aims at allowing them to increase the rate. But if the Rating Committee comes to the conclusion that the licensee was not entitled to this he would immediately refund that amount. That is a provision which has been accepted and the amendment is there. So, this is an important provision.

Certain reserves which were called as the Development Reserve and the Deferred Taxation Reserve were referred to by the Select Committee. Hon. Members will see that these two Reserves were to be created. In order to understand what the Development Reserve is I would say this. The Income-Tax Authorities give certain concessions. For example, if new machinery has been purchased, a certain rebate is allowed from the income-tax assessment, only for the purpose of assessment of income-tax. But that does not mean that that is actually the profit. But for the purpose of calculation of the tax, that amount is deducted. Now, otherwise, they would have to pay this amount in super-tax and income-tax if this rebate was not given. They should lay it in the reserve so that they would be able to utilise that amount in the industry itself.

Similarly, the Deferred Taxation Reserve was recommended by the Select Committee to be given. That is also a rebate given in taxation, but if this Deferred Taxation were allowed, it

would mean increasing the rate for the consumers, and, therefore, it is not desirable that this should be done. But the Federation and various representatives of industries who appeared before the Select Committee thought and pressed that this should be there. The Select Committee permitted the creation of the Reserve. Subsequently, however, the industry found that it would not be possible to operate on this provision satisfactorily. On the industrialists' suggestions, the provision was withdrawn in the Lok Sabha. Now, these are the important amendments that have been suggested and passed by the Lok Sabha and the whole object of these is to have an administration at the Centre and at the State level in a way which would promote the progress of electricity and make it available at a reasonable rate to the consumers. At the same time, Government wants to see that the people who are investing money do not unnecessarily feel shy of dividends or returns and, for that purpose, the profit which they would be entitled to earn has been fixed at 2 per cent., above the existing bank rate, whatever the bank rate may be. So, the whole idea is that the consumers would not be taxed with unnecessarily higher tariffs and at the same time, the industry should not feel that the profits available to them are less and that, therefore, it is not worthwhile investing money. If the Select Committees Report has been gone through. Members will find that there are two dissenting notes. One is from Shri Tulsidas Kilachand, an industrialist, and the other from Shri Sadhan Chandra Gupta and Shri Bijoy Chandra Das who were members of the Committee. Naturally, there are two conflicting views. We wanted a middle way. Of course, the industrialists wanted some more profit for them—6½ or 7½ per cent., at least 6½ per cent. But we have to see that by allowing more profits, we do not unnecessarily burden the consumer because electricity is a commodity which is required by the common man, the agriculturists and, by industries—small-scale industries—and, therefore, we should not have rates fixed in such a manner as would cast a heavy burden on the consumer. We should also ensure that no industry is unnecessarily making heavy profits. There should be some machinery which should immediately check

these things and see that they do not exceed the reasonable return which they are entitled to earn, without in any way creating difficulties either in the way of the consumer or in the way of the industries. Sir, another point was with regard to the payment of bonus to the workers. Now, Sir, a certain tribunal had held that bonus was not an item of expenditure. Subsequently, of course, that view was changed. But we have made amply clear that payment of bonus will be an item of expenditure admissible. One objection was taken there, and it might perhaps be taken here also. The objection taken there was that bonus should be given only to workers, and not to other staff. Now, Sir, it would not be proper to discriminate between the employees of the same industry. And therefore ultimately what the Lok Sabha has agreed to is that bonus to the employees of the industry would be an admissible item of expenditure.

Then, Sir, there is one more point with regard to associating labour with the Board itself. There are State Electricity Councils where representation is provided for to the labour but no representation is provided for to the consumer. So, under the present Bill representation for the consumer is also provided for. If it is pleaded that labour should be represented on the Board itself, it would not be quite consistent with the theme of the enactment, because the State Electricity Boards are administrative Boards. There are three members on the Board.

One is an engineer, another is an administrator with commercial experience, and the third is an accounts man. They have to run the day-to-day administration, and the Act takes care to see that no person whatsoever has any interest in any of the electrical undertakings either as an employer or as an employee. Otherwise, so many difficulties would arise. These three members who are to be appointed will have no concern with any of the industrial undertakings. Therefore, to give any representation to labour on that Board would not be possible, but their representation will be there on the Advisory Council where the question of policy or the question of development and all other matters could be decided and taken up. So,

these are certain important provisions, Sir, and I commend this measure for the acceptance of the House.

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* ...The important point just made was about the power supply by the Damodar Valley Corporation to the public Hon. Member, Shri S.N. Mazumdar made the point that perhaps proper use was not made of these power stations and that power stations were not established. That was the point he made. Perhaps, that has not much of relevance here. That relates naturally to our planning for power. That point was taken into consideration when the Project, the Damodar Valley Corporation—the project for taming the river Damodar for generating power—was undertaken. It was felt that there was sufficient scope for utilisation of power having regard to the fact that it was a very rich area... The power that is being generated will be utilised; it may be by the railways; it may be by other industries and it may be used for irrigation but the point is that the power will be utilised. Now, so far as monopoly is concerned. Government has to see that that concern does not make huge profits or unnecessarily high profits and that there is an integration or a pooling of the various power undertakings. That has to be seen but that does not actually come within the purview of this Bill as it stands now. The second point that Shri Mazumdar referred to was the association of labour. Now, Government is not averse to associating labour with the management of industries. In fact, as I said, we are thinking more and more in terms of associating labour and we have provided, wherever possible, for labour to be associated with the management. If he goes through the provisions made in clause 16, he will find that it is not so very simple as all that. All questions of policy, administration, etc., will be discussed in the Advisory Council and the representative of labour who will be there would not necessarily by implication deal only with the labour problems. He would also be able to—and in fact the Board would welcome

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* After the Chair moved the motion that the Bill be taken into consideraton, some members including S / Shri S.N. Mazumdar, H.P. Saksena participated in the debate Shri Hathi, clarifying the points raised, continued with the debate.

suggestions—give suggestions as to how these industries could be run efficiently. So far as these Boards are concerned, it is not a question of industries. The industries are different from the Boards. The power house has an engineer and the workers and everybody under him but the Board has to look to the overall position, the integration of the various power houses and the power stations. Therefore, we have added that the Board will have the power of supervision and control, if necessary, not only over the power stations but also over the transmission lines. This is an administrative aspect but that does not preclude labour and its representative from giving suggestions in the matter of running the power houses. There will also be an engineer on the Board itself. Of course, he cannot be a representative of labour as such but he will be there to say how the machines should be run efficiently. So far as the relations between labour and the employees are concerned and the innovations that need to be made in the administration, labour's representative would be there. In addition to being a labour representative, he can also suggest and advise as to how most efficiently this industry should run. There is no provision whatsoever that labour should not be associated with the management. When I said that we have taken care to see that nobody interested in electricity undertakings is there. I meant that if a man has commercial experience and is otherwise eligible to be appointed as a member of the Board but if he has any shares in any electrical undertaking, he would not be entitled to be a member of the Board. That was what I meant to say because he has to give contracts and take service from others and, therefore, any person who has any share or interest in any electrical undertaking would not be eligible for appointment as a member. That is what I meant and I did not mean to exclude all experienced men.

The third point Shri Mazumdar made was about the payment of bonus. I find that he did not press for anything more but there is no question of that being deleted because of what I am going to say. The reason it could not be given so far was that there was a difficulty and that difficulty was that bonus was not

considered as an item of expenditure and, therefore, naturally they were hesitant but now that it is considered as an item of admissible expenditure, there will be no difficulty. Once they are to give bonus the only question that would remain will be the quantum and I do not think any State Government would withhold approval. The question is of approval of the State Government and I do not know why any State Government should withhold permission. On the contrary, they will be pleased to accord permission..... The diffioulty was that their clear profits would be reduced to that extent. Suppose their profit was 5 per cent. How was that calculated? It was the total capital plus the income on the one side and the expenditure on the other. Now income minus expenditure would be the surplus and if bonus is included as an item of expenditure, they would not have to spend anything from their pocket..... In case they give fake bonus. they will have to make up their books and accounts also that way. Then some arguments were advanced and suggestions were made by my friend, Shri Bisht. I think he wanted to know which States had set up such Boards and whether they were working and how they were working. The State Governments which have already set up Boards are Delhi, West Bengal, Bombay, Saurashtra, that is before the Ist November, and Madhya Pradesh. Now of course Saurashtra and Bombay are one, but all the States have agreed. The difficulty which the State Governments experienced was in the matter of finding suitable personnel and they had some other difficulties also. But I may say from the experience of two States — Madhya Pradesh and Bombay — that they have done well. The Madhya Pradesh Board has done well in rural electrification schemes and so has the Bombay Board. Similarly, Delhi Board has been doing. The provision relating to Electricity Boards were applicable to these States which had the Boards but you will see that certain provisions were applicable to all the States. Wherever Boards had not been set up, naturally provisions relating to Boards would not apply. The Boards that are existing have been functioning well inasmuch as they are running on commercial lines. One knows very well that if a corporation is run on a

commercial basis naturally it gives speed to the work. It has not to pass through the various procedures. Of course, whatever the sanctioned procedure is, that has to be adopted, but not the official procedure. It runs as a commercial concern and there is also the supervision by the State Government. Therefore, these Boards have done well.

Sir, the provisions of the Sixth Schedule are not applicable to local authorities and therefore the question of creation of reserve etc. is not applicable to them. That was the point. I think, which Mr. Bisht wanted to make..... They are not applicable and therefore it is not obligatory on them to create these reserves. My hon. friend said that they are having some loans which could be repaid and then they can go on for another loan. Why should they be charged with the burden of having any reserve? But that provision does not apply to them at all..... There is no general reserve and the development rebate had not come into operation. The other reserve was a reserve which had to be saved from their actual earnings. Supposing they were entitled to have only five per cent profit instead of five per cent, the rates were so adjusted that they got six per cent, and from the balance, that is, one per cent—whatever that may be—one third was to be kept aside as reserve..... That is nothing extra; that is actually the amount with the Board. Any way so far as the local authorities are concerned the provisions of the Sixth Schedule which deal with the creation of reserve do not apply but if the hon. member gives me further particulars I shall look into both the questions, the question of applicability as well as of non-applicability.....

....If you just look at section 57 (1) of the Act, that will reply to all the points raised by you. It says:

> "The provisions of the Sixth Schedule and table appended to the Seventh Schedule shall be deemed to be incorporated in the licence of every Licensee not being a local authority from the date of the commencement of the licensee's next succeeding year of account, and from such date the licensee shall comply with accordingly and any provisions of such licence or the Indian Electricity Act. 1910, or any other law agreement or instrument

applicable to the licensee shall in relation to the licensee, be void and of no effect."

And if you look at clause 14 that makes the intention quite clear. It says:

"The provisions of the Sixth Schedule and the Seventh Schedule shall be deemed to be incorporated in the licence of every licensee, not being a local authority—

(a) in the case of a licence granted after the commencement of this Act, from the date of the commencement of the licensee's next succeeding year of account; and

(b) in the case of licence granted after the commencement of this Act, from the date of the commencement of supply....."

And we did not think it advisable to change the original theme. So far as foreign companies and others are concerned, they are all to be governed by the provision of this Act and they also would not be entitled to earn more than the specified return*.

*Thereafter the House adopted the motion for consideration of the Bill. After clause-by-clause consideration Shri Hathi moved the motion that the Bill be passed. The motion was adopted.

# 7

# Welfare Matters

# Institution for Redress of Public Grievances

...Mr. Deputy-Speaker, most of the hon. Members have covered a field which is much beyond what the Resolution seeks to do. But as is my habit, I will not go into various other points which have been covered by several Members. I will confine myself to the Resolution, to the spirit of the Resolution, to the attitude and approach of the Government to the Resolution and to the subject matter of the Resolution and nothing further than that, I will not deal with either the CBI or the Orissa matter or any other matter not relevant to the resolution that has been referred to by hon. Members here.....

So far as the subject is concerned, Members have perhaps combined the two different aspects—one is the question of corruption and the other is the question of redress of public grivances. So far as the appointment of a committee is concerned, we had already a committee appointed, known as the Santhanam Committee, and that committee was charged with the task of not only looking into the eradication of corruption but also to recommend what other measures it

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From the discussion on Private Member's Resolution that this House is of opinion that a Committee of Members of Parliament should be constituted to examine the form and feasibility of bringing into existence suitable machinery for investigation and redress of public grievances, including the possibility of establishing an institution analogous to the institution of Ombudsman existing in Scandinavian countries as well as in New Zealand moved by Dr. L.M. Singhvi, Lok Sabha Debates, 23 April, 1965, cc. 10886—10898.

deems fit and in the wisdom of the committee and the members of the committee they recommended that there should be a central vigilance commissioner and this central vigilance commissioner should have three organisations under him—one would be a director for the redress of public grievances, one should be a police organisation for the purpose of investigation and the third to deal with vigilance matters.

If there is a question of appointing a committee of Members of Parliament, that Committee had already been appointed and the report of the Committee is already before the Government. Now the question is of implementation of that report. What is the attitude of the Government in this behalf? Shri Khadilkar was perfectly right when he said that if you appoint an officer in the Ministry itself, the hierarchy of officers is generally prone to support what its department has done and therefore though that remedy exists, that may not be a foolproof remedy.

There is also anotner aspect to consider and that is this. What is this redress of public grievance? That is in a way to see that the administration is responsive, that it looks to the complaints or grievances of the people, that it is geared up to such a strength that delays do not occur and that the administrative machinery itself is capable of dealing with matters that are entrusted to it in a way that the public may have the least cause of grievance. So, it is not that this officer who is sought to be appointed or who would be appointed will be in charge of grievances only; he will also see that whatever comes to him is properly disposed of and there may be a superior officer also who could look into all these things.

Now, these are the questions which are being considered. But as to what form that should take, whether it should be an Ombudsman in the spirit or in the form which exists in different countries or it should be something different, is a matter to be considered. Some of the Members have thought that in order to

eradicate corruption among people at the political level, such a machinery would be a cure for all evils. Even if we take the Ombudsman as it exists in Sweden, what is its function?

Its function is not to look to the corruption at the political level. I have an article by a very learned author here and there he has very ably said:

> "Supervision by the JO covers, with certain exceptions, all central and local Governement officials. However, members of the Government are exempted from his control. The reason for this is that members of the Government formally have no power of decision of their own. All matters belonging to the Government are resolved in Cabinet Council where according to the Constitution the King alone decides. From a formal point of view, the members of the Government are counsellors only. How the ministers fulfil their duties as advisers is controlled exclusively by Parliament which may order the prosecution of a minister before a special court...."

The other article which is even by one of the members of the Ombudsman has also said that the Ministers are not subject to the supervision of the Ombudsman.

If we refer to the brochure which has been prepared by the Lok Sabha Secretariat we find this:

> "The Swedish Ministers are not, either collectively or individually directly responsible for the individual acts of civil servants outside their relatively small Ministries and do not come under the purview of the Ombudsman."

Then, further, it is stated:

> "The Danish Ombudsman's jurisdiction comprises Ministers, as also others in the service of the governement. Ministers in Norway and New Zealand do not come under the jurisdiction of the Ombudsman."

Then it is said:

> "When judging whether there is need for J.O.'s control on the Ministers, it should often be kept in mind that Ministers have no responsibility, etc."

He has also said that this should not be a political ambit in the sense that there should not be any political pressure. if the Ministers are also brought within the purview of the Ombudsman, then there is likelihood of political pressures being brought in and it is one of the reasons why they have been kept apart.

Mr. Dwivedy put one question. He said that he did not want me to say that I accept the Resolution and that he would be satisfied if I say that we accept the idea of Ombudsman....Even if the idea of Ombudsman is accepted, the question will be of the powers, duties and functions. That may not perhaps respond to or satisfy what the Members want, that is, it may be the Ombudsman of the Swedish pattern where the Ombudsman may not have the jurisdiction over the Ministers. Then the very object with which Shri Surendranath Dwivedy suggests that the Ombudsman should be there will not be satisfied....

There should be some machinery for the redress of public grievances. We have accepted that. I said so last time and I say so even now. What my hon. friend said was that if I said that we accepted the idea of Ombudsman then he would be satisfied. Now, supposing for a moment I say that I accept the idea, but in regard to the constitution, we take the Swedish pattern, then what will he say....

.....As I have just pointed out, Shri Dwivedy's idea has not been accepted in three of these countries. Therefore, the mere fact that the Ombudsman is there may not solve the problem which members want to solve or provide an answer to the question that we have before us. This is the first point that I would like to make.

The second point that I am making is this that the Ombudsman by itself is a good name, but if we look to the functioning of the Ombudsman, we find that it has a very vast and wide function. It has the power of inspection. If one reads through the reports of its working, one will find that in those countries many of the complaints which have been investigated have not been complaints lodged by individuals, but they are complaints which have arisen because of the power of inspection. The

Ombudsman has got the power of inspection, and during these inspections, it has found such cases. The Ombudsman is given the power to inspect the courts also, and the judiciary is under the Ombudsman. I shall read out and point out what powers of inspection it has:

> "At the inspection of the courts it is checked that there is no balance of work and that the cases are decided as soon as possible. At every court, the files of 25 civil cases and 25 criminal cases are selected at random and examined in detail with regard to the preparation and decision. At an inspection at the public prosecutors' it is checked *inter alia* that the time between crime and prosecution is made as short as possible, that preliminary investigations are conducted in a correct way and that detention is ordered only in accordance with the law."

This is the duty of the Ombudsman. It has the power to inspect courts. Then, it is said:

> Ever since the creation of the office, the J.O. in connection with his tours of inspection visited the prisons and by conversation with the prisoners secured information with regard to their treatment. It is interesting to compare the minutes of J.O.s prison inspection 150 years ago with those of today. Previously, terrible conditions....."

So, we find that the Ombudsman gathers information from the inspection of various offices, various agencies and various departments, and finds out what is wrong, what the causes of delay in the redress of the grievances of people are, and having done that, the Ombudsman recommends to Government: the Ombudsman has no power to punish directly the man; of course, it has the power to prosecute, and it can institute prosecution. But it has no power to punish directly the man, and it has to recommend to Government.

Now, let us see the number of cases dealt with, by this organisation. Let me take the case of Sweden, for example. The population there is about 7.5 millions. The complaints that the Ombudsman disposed of in 1959 was 780 and the complaints disposed of in 1960 was 983. In 1959, therefore, we

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*Justite Ombudsman means an appointee of the Sweden for the Supervision of the administrator.

find that there were 780 complaints disposed of. Out of these, 39 were those arising out of the newspapers, 84 arising as a result of inspection, 619 investigated by officers concerned but no action taken by the J.O., in 8 proposals were made to Government and in 5 prosecutions were instituted. 780 cases in a year is all right in a country like Sweden with a population of 7.5 millions. But in a country like India, even one Ministry would have more complaints than 780. In each Ministry, therefore, we have started... to find out what should be done. We have taken steps to see that as far as possible, this is done. In each of the important ministries which have to deal with the public, we have opened a cell for dealing with complaints. So they are being dealt with. I have got figures.... What I mean to say is that we want the essence of the thing. We do not want the form. We want that the grievances of the people should be redressed....

We want there should be a suitable machinery to redress the grievances of the people. But let the two ideas not be combined—the question of corruption and the question of grievances. For corruption cases, we have already a Central Vigilance Commission. For dealing with corruption among government officials. So far as the redress of grievances is concerned, that also, is with Government. If a man has a grievance with any business firm, for example, for that this machinery would not be of any use. That is not even the idea. The idea is to redress grievances arising from the operation of government agencies or government machinery. For that, what should be the procedure and what should be the machinery.

One machinery has already been suggested by the Santha nam Committee, that there should be a Central Vigilance Commissioner and under him there should be a Director of Public Grievances who would look into the grievances. That idea is already there. Whether that itself would be sufficient or not is a question to be decided. Therefore, what do we do? If there is an arbitrary decision by an officer, there must be some forum where it could be challenged. If there is delay, there should be some machinery by which it could be eliminated. These delays occur because of certain procedures, certain

bottleneck, a certain way of handling things and inefficiency. What is the root cause of all these grievances? It may be because of a corrupt official who may not do justice, though justice should be done to the aggrieved. That is one thing. Wherever justice has not been done, a complaint can be made to Central Vigilance Commissioner. He looks into it. Wherever there is neglect of duty or dereliction of duty, there also he comes in. Wherever there is delay because of not any *mala fide* reasons, but because of certain procedures or a certain way of handling things, then comes the question of tightening up the administrative machinery. If we take steps to tighten the administrative machinery, much of the delay could be eliminated.

These other two grievances I refered to are—either dereliction of duty, neglect of duty or corruption, wherever there is a bias, wherever there is any prejudicial treatment to a person because of a certain bad motive or certain *mala fide* consideration. If that is proved that would be enquired into by the Central Vigilance Commissioner. Therefore, they have got the forum. Then comes the other question, the other difficulties which arise not because of any *mala fide* but because of certain other delays. We have to pinpoint why these delays occur. There you may say that the Ombudsman has powers to look into various cases. We have appointed, as the House knows, four committees. These committees do not go into those things but into the procedural bottlenecks, the cause of the delays, why they occur and so on and they suggest to the Government the remedy for these. One of the teams in which there is Shri Mathur, has suggested certain reforms and the Commerce Ministry has already accepted that. Supposing a man goes for a licence and he has to go there a number of times because of certain procedures that is a grievance and that could be eliminated if the procedure is set right. If the person does it not because of any bottleneck in the procedure but with a view to take bribe, then it comes under the case of corruption. For that we have already a machinery. But that is a complicated matter which is to be looked into in detail....

I will give you the figures, the number of cases that had been started against officials. The percentage of successful prosecutions is 87; that is to say, 87 per cent convictions. Some action might have been taken departmentally. I want to distinguish between two different aspects; let us not combine the two. Today, unfortunately they are combining two things. One is the redressal of public grievance and the other is corruption. All these combined together naturally affect the common man; I fully agree. Where a man is aggrieved because of corruption, we have already a machinery. Wherever a man is aggrieved not because of corruption but because of neglect of duty or dereliction of duty which does not amount to dishonesty, we have to look to the cases how these delays occur and if we take out the root of the delay, then this very cause of the grievance will not remain. It is a matter which requires further studies. I was going to say that Government's attitude in this respect was to move forward in a way that it should be possible for us to meet the demands of the people so that their grievances are redressed.

Mr. Deo made a point about the licences. There also both these thing are there. It may be corruption; it may be a public grievance not minus corruption. It is not that the Government has not moved or "when it will move". It has already moved. The House is aware that we have already a special consultative group of the Members of Parliament consisting of both the Houses, the Lok Sabha and the Rajya Sabha and as recently as the 14th April, if I am not mistaken there was a meeting of this committee. The Members of this group are, Shri M. P. Bhargava, Shri Sudhir Ghose, Shri A. D. Mani, Shri M. Govinda Reddy, Dr. Siddhu, Shri B. K. P. Sinha and Shri Gopi Krishna, Vijayavargiya from Rajya Sabha and from Lok Sabha Shri Chaturvedi, Shri Hanumanthaiya, Shri Ansar Harvani, Shri Hari Vishnu Kamath, Shri Y. P. Mandal, Dr. Sarojini Mahishi, Shri Masani, Shri Harish Chandra Mathur, Shri Vasudeven Nair, Shri Sham Lal Saraf, Shri D.C. Sharma—he was not there on that day unfortunately—and so on. At that meeting, this very question was discussed. The question of such a machinery as

Ombudsman was or what should it be was considered by this group on administrative reform. This special group on administrative reform which consisted of Members of both the Houses considered the question. At that meeting, the Home Minister, intervening, said:

> The Government did not want the Vigilance Commissioner's organisation to get mixed up with a machinery for redress of grievances. The idea of giving supervisory powers to an outside agency in respect of redress of grievances has still not been accepted and requires to be very carefully examined in the context of the demand made for Ombudsman. This question could be one of the matters to be studied by the Group if so desired....

Ultimately concluding the discussion for the day, the Home Minister said that on three items, this committee or group of Members of Parliament consisting of both the Houses where all the parties were represented, should concentrate in the first instance. Therefore, a panel of Members of Parliament from this group with certain other Members also can be there....

The three subjects were: firstly, the question of administrative delays, secondly, the question of having a machinery for the redress of grievances in the context of the demand for Ombudsman; thirdly, the question of controls. These three are the subjects which will be taken up for study by the special consultative group of Members of Parliament on administrative reforms. Therefore, what I mean to suggest is this. I am not at all opposed to the idea of having a machinery for redress of grievances. There should be some machinery. Last time also I accepted the principle and I gave an assurance that we are considering the matter. We have moved a bit further in the sense that we have had several cells in different ministries. In addition to that there is now this study group of Members of Parliament.

Therefore, Sir, for two reasons I cannot accept the resolution. One is that a Committee of Parliament had already been appointed. the Santhanam Committee has made its recommendations. Now the question is one of implementation. This special consultative group will advise, and I can say in all

sincerity that whatever the study group advises it shall be our endeavour to have some machinery which would redress public grievances. I would, therefore, request Dr. Singhvi to withdraw his resolution.*

*The Resolution was later put to the vote of the House and the motion was negatived.