

is subjected to very heavy bills which may not be entirely his own. To appeal against it, one has to pay the entire amount, and allowing the appeal and return of the amount is only a rarity. I have been suggesting to the Government to fix the telephone meter at the place of its user itself instead of keeping all the meters at one point in the telephone exchange. The user will know the number of calls he has made and will use the telephone accordingly to his needs. I had suggested that like electricity and a card noting the monthly consumption should be maintained by an inspector of the telephone department. But it has not been accepted by the Government on the ground of paucity of funds. Rs. 1,700 crores have been earmarked for 1988-89 for modernisation of telecommunications. Hence, I request that my suggestion may be taken up during 1988-89 as part of modernisation programme.

12.39 hrs.

COMMISSIONS OF INQUIRY (AMENDMENT) BILL—*Contd.*

[English]

MR. DEPUTY SPEAKER: We are now going to item No. 7. Already we have taken one hour and forty minutes. Only twenty minutes are left over. However, I request the Members to be very brief while speaking their view-points.

SHRI SOMNATH CHATTERJEE (Bolpur): Mr. Deputy Speaker, Sir, this Bill is another attempt to pervert the course of justice in this country. And in its objective of stifling all legitimate comments and criticism of any commission of inquiry, it seems to me that this is nothing but a mini-Defamation Bill.

In this country, we cannot and ought not to create islands of non-accountability. No one should be put consciously in ivory tower

and nobody should be treated as special class of citizens which this Bill seeks to achieve. Significantly by this amendment, the substantive law, as contained in Section 10-A of the main Act, is not being changed. And only a new procedure is being laid down. One would like to find out what is the reason which has promoted the Government. Along with the Bill, the Government has to submit a Statement of Objects and Reasons. If you go through the statement of Objects and Reasons, you will try in vain to find any justification which has been given for introducing this amendment. As a matter of fact, I find the recent tendency is that the Statements of Objects and Reason are treated by this Government as mere formalities. There is hardly even a lip service paid to the parliamentary norms and traditions. The result is that we do not know why a particular legislation is brought. This Government takes everything for granted because of its majority in the House and the Bills are sought to be introduced and passed without even taking the people into confidence as to the necessity of passing the Bills.

This Bill relates to the Commissions of Inquiry. The Commissions of Inquiry are not judicial bodies; these are not courts of law; these are merely fact finding bodies and they cannot adjudicate anything. On its own, the reports of these Commissions of Inquiry have no effect. The Commission has no teeth of its own. It is for the Government to accept or not to accept the findings of the Commissions of Inquiry and if the Government does not choose to accept, it need not give an explanation why it does not accept.

Although sometimes, the members of the Commissions of Inquiry are selected from the highest judiciary, they do not necessarily discharge and judicial function, nor do they act like judicial bodies. The Supreme Court has said in the well known case of Ramakrishnan Dalmia and if I may quote:

"... the only power that the Commission has is to enquire and make a report and embody therein its recommendations. The Commission has no power of adjudication in the sense of

[Sh. Somnath Chatterjee] passing an order which can be enforced *proprio-vigore*..... The Commission is merely to investigate and record its findings and recommendations without having any power to enforce them. The enquiry or report cannot be looked upon as judicial enquiry in the sense of its being an exercise of judicial function properly so-called."

This is the observation of the Supreme Court of India. Therefore, one would wonder why the present amendment is being brought to provide a special type of procedure for persons who are not discharging judicial functions, when such a procedure is not open to the persons in the courts of law. The real object seems to be that the Government wants to ingratiate itself to some judicial authorities who have been pandering to the wishes of the executive authority even at the cost of compromising their position as holders of highest judicial offices in this country. If this is the real reason of this amendment, this is very sad for our country. We are having separate procedure for a section of the people, handful of people in the country, for which I have not found and the Statement of Objects and Reasons does not give any basis or justification. Why are we getting worried about this? Recently, the functioning of the Commissions of Inquiry has raised very serious doubts in the minds of the people and there are very serious allegations, not without substance, of improprieties committed in the functioning of these Commissions, although they may be manned by high judicial authorities.

It seems that the amendment is being introduced to legalise the improprieties in the sense that anybody criticising these increasing impurities will be hauled up very easily before the High Court under the proposed amendment. You may recall that a weekly news-magazine in this country, had made certain observations about the way the Fairfax Commission of Inquiry was conducting itself. There were serious charges. It was all done in a hush-hush manner and there was no proper opportunity given to the

people to participate in it. After the publication of the report, it appeared in the newspapers that a member of the Commission who was a judge of the Supreme Court wanted the Government to amend the Act and incorporate in its provisions for contempt of court or provisions akin or similar to contempt of court so that the Commission could take action against any publication for criticising its conduct. As a matter of fact, we found in the papers that one of the hon. members of the Commission had gone to the extent of warning that no Supreme Court judge in future would take up the job if such power for contempt was not given to the Commission.

Shri Ayyapu Reddy has made a plea and I Join him and say that no sitting judge should be made a member of the commissions of inquiry when matters political, matters in which the Government has an interest, matters in which the Government's fingers are burnt and matters in which the Government is deeply involved are the subject matters that are referred to these commissions of inquiry. Government is finding it a very easy method by which it can bail itself out by getting reports from the commissions.

We have seen the recent case relating to the assassination of Smt. Indira Gandhi. Every citizen in this country is interested to know as to what happened and who was responsible. A Commission of Inquiry was appointed. But the Report of the Commission of Inquiry never saw the light of the day. The most serious and unfortunate thing is that the judge himself is supposed to have said that the report should not be published. If I am wrong, please correct me, Mr. Minister. A judge, who is a member of the Commission and who is presiding over the Commission suggests that the report should not be published. How does the Government react to it? Lo and behold, the Government came with an amendment by which the people's right to know has been taken away! You are aware that a commission of inquiry can be appointed by the Central Government or a State Government on matters of

definite public importance. Matters of definite public importance necessarily connote that there is public interest. The public is interested in this. How can the public interest be looked after and protected if people's right to know is taken away? This was precisely what was done supposedly at the instance or suggestion of a chairman of a commission that the report should not be published. The country has been completely kept in dark. All paraphernalia were gone through and it was all done in secrecy and people did not know anything about it. And then the Government came and glibly accepted the recommendation of the commission and passed a law by which the Government can decide whether to publish a report or not, for which act, they are not accountable in any court of law or to anybody else, except that the people will one day give their verdict at the appropriate time. This is the way things are done. Of course, the Government has not condescended to the demand to convert the commissions of inquiry into courts of law or to give them *suo motu* power of committal for contempt. Kindly see the amendment which is being done. The amendment relates to the substitution of sub-section 2 of Section 10A of the Act, and new provisions are being introduced. Sub-section (2) of Section 10A refers to the procedure that was laid down in Section 198B of the Criminal Procedure Code of 1898, which is now substituted by Section 199 (2) to (5) of the present Criminal Procedure Code. If you go through the present Section 199 you will find this:

"... So far as the President of India, Vice-President of India, Governor of a State, Administrator of a Union Territory, Ministers of the Union/State/ Union Territory or any other public servant employed in connection with the affairs of the Union or of the State in respect of his conduct in the discharge of his public functions..."

If they are defamed, if these people are defamed, and libel is committed on them, they have to follow the procedure laid down in Section 199. That means that a complaint

has to be lodged before the appropriate magistrate court. Sanction has to be obtained, if it relates to Central Government officers, of Central Government, and otherwise of the State Government. Therefore, even if the President of India is defamed, he has to follow the particular procedure—the Prime Minister, Ministers, everybody has to follow the particular procedure, with prior sanction.

What has happened in this matter is that the Commissions of Inquiry which were originally governed by this procedure—they can take action if libel is committed on them; if they are defamed, they can take action which will come under Section 199 of the Cr. P.C.—the High Court is being selected in place of this well-established procedure which has stood the test of the time, and the High Court is being made a court to which a complaint can be made on behalf of the Commission; and then the High Court must decide it; the High Court can impose imprisonment.

Even from the Treasury benches, serious reservations have been expressed as to the procedure that has been adopted. I would like to know from the hon. Minister a single reason why the members of the Commission of Inquiry or the Commissions are being put on a higher pedestal than even the President of India, or the Prime Minister of India, or the Ministers. Why has the necessity of obtaining sanction been done away with? This will also avoid frivolous complaints.

What is the necessity for the sanction which is there in Cr. P.C. for ages? It was there in the 1898 Code; it is there in the 1973 Cr. P.C. Now an extraordinary, simplified procedure only for the members of the Commissions of Inquiry or the Commission of Inquiry has been adopted. I submit that this is a very serious matter; and I request for a complete and full statement by the Government justifying this necessity.

This innovation of a special procedure for a handful of people in this country is

[Sh. Somnath Chatterjee] destructive of the rule of law in this country, if it is still there under the benign dispensation that we are having. Whatever semblance is there, is being totally destroyed. Therefore, I cannot but oppose this Bill. This is a Bill which is creating a sinister distinction between persons and persons, even in high authority, and by this, a sort of fear psychosis is attempted to be created, as was sought to be done by the Defamation Bill which, because of people's revulsion and people's opposition, Government had to beat a retreat and they had to withdraw. The real object is that the hand-picked people who are chosen as members of the Commission should be beyond all criticism beyond all legitimate comment, although they may function in a manner which is destructive of public interest and public benefit. Therefore, I oppose this Bill.

I say that this is nothing but an attempt to gag the Press and stop all legitimate criticism. The Government would do well to withdraw this mini Defamation Bill as it did in the case of the real Defamation Bill.

KUMARI MAMATA BANERJEE (Jadavpur): I rise to support this Bill. This Bill seeks to make two hangs in the Constitution of; the Commission of Inquiry Act 1952. I support this Bill because we know that this Commission is a fact finding body appointed by the Government. So, the Commission of Inquiry Act originally was intended to serve the public interest. So, the government should give more protection and more confidence to them to work properly in the interest of the country and also in the public interest. That is why I am supporting this Bill.

In this Bill, more scope and protection was given to the Commission so that it can function judiciously and with confidence and also to ensure that the Commission is not ridiculed in any way. I would request the hon. Minister to see that this Commission should work properly and they should publish reports in the public interest, and also that there should be some time-bound programme so that people can know what is the Report of the Commission.

When the Janata Government was in power, we had seen that they misused their power; and they humiliated Mrs. Indira Gandhi like anything by setting up this commission or that commission or through these commissions. Shah Commission, Reddy Commission and so many other commissions were appointed to humiliate Mrs. Indira Gandhi. So, we have to see that this should not humiliate any responsible person who is not guilty at all.

Now I want to raise a very vital question and would request the Minister of see this matter very seriously. We have always seen that whenever any allegations are raised against any responsible persons, then the government has every right to find out the real facts, what are the allegations. In my State—I am not mentioning the name of my Chief Minister, because I cannot—one Cabinet Minister had resigned on protest against some scandal against the head of an institution. I think this government has every right to find out the real facts. (*Interruptions*)

SHRI BASUDEB ACHARIA (Bankura): Is it relevant here?

KUMARI MAMATA BANERJEE: I did not mention the name of the Chief Minister. (*Interruptions*)

MR. DEPUTY SPEAKER: It is not an allegation.

(*Interruptions*)

MR. DEPUTY SPEAKER: If there is any particular allegation, I can expunge it. (*Interruptions*)

KUMARI MAMATA BANERJEE: I did not mention the name of the Chief Minister. (*Interruptions*)

MR. DEPUTY SPEAKER: I will go through the proceedings.

KUMARI MAMATA BANERJEE: My previous speaker said that it is like a Defamation Bill. (*Interruptions*)

**SHRI SOMNATH CHATTERJEE:** There is a limit to everything. *(Interruptions)*

**KUMARI MAMATA BANERJEE:** When you spoke, I did not disturb you. Now you allow me to speak.

**MR. DEPUTY SPEAKER:** She was telling about only the head of an institution.

**KUMARI MAMATA BANERJEE:** Why I am raising this point is because my previous speaker said that it is like a Defamation Bill. I congratulate the government for introducing the Defamation Bill for the public interest. When these people were raising their voice, they were beating Reporters, non-Journalise and Journalists of Uttar Bang Samad for one month. Is it not? Some newspaper carried some stories. That is why they abused that cadre of editors of *Anand Patrika* like anything. In the same way, they are misusing their power. I would like to raise this question because one Calcutta Tramways scandal came in the paper that the Government of India was in the forefront when they took over this Calcutta Tramways unit from the British Government.

Now, who are the share holders there?

*(Interruptions)*

**SHRI BASUDEB ACHARIA:** Sir, how is it relevant to this Bill?

**SHRI SOMNATH CHATTERJEE:** There is a limit to everything. What has that got to do with this Bill?

**MR. DEPUTY-SPEAKER:** Come to the point. Do not go beyond the scope of the debate.

**KUMARI MAMATA BANERJEE:** I am speaking of the Government of India. Now what happened there? Though the unit was taken over by the Government of India, this country's shareholders have been deprived of the profits and the foreign shareholders are getting the money. This agreement was entered into by the Government of India.

That is why it is very relevant here. The Government of India was in the forefront of the agreement. That is why I am requesting you to find out the facts through a commission.

And there is another issue, the road rollers issue. Instead of giving the order for the road rollers to a public sector company it was given to a private sector unit. This is also a very vital point. And regarding Bengal lamps,.... *(Interruptions)*

**SHRI BASUDEB ACHARIA:** How is it relevant?

**KUMARI MAMATA BANERJEE:** I think this is very vital.

**MR. DEPUTY-SPEAKER:** Please, try to be brief.

**SHRI SOMNATH CHATTERJEE:** There is a limit to everything. We cannot ignore everything. *(Interruptions)*

**MR. DEPUTY-SPEAKER:** Be brief, come to the point. Come to the subject.

*(Interruptions)*

**KUMARI MAMATA BANERJEE:** This is very surprising. If there is any allegation against the Prime Minister, or anybody, it cannot be allowed. But I have not mentioned any names. This issue is related to public interest. Why, they are disturbing me, I do not know.

**MR. DEPUTY-SPEAKER:** You come to the point.

**KUMARI MAMATA BANERJEE:** They are objecting as if this is the Defamation bill. *(Interruptions)* This is about the Commissions of Inquiry Act. This is very much relevant to this issue. That is why I am requesting you, because you are giving adequate powers to the Commissions of Inquiry, through this amendment Bill, to look after the public interest, I am raising these vital issues. This is related to public interest and the

[Kumari Mamata Banerjee]  
public wants to know the real truth. This is not my point. One Cabinet Minister has recorded his note, which contained some allegations and they have to be inquired into. (*Interruptions*)

I very much support this Bill, and I request you to set up a commission of inquiry to go into all those allegations made by the Cabinet Minister of West Bengal.

14.03 hrs.

*The Lok Sabha adjourned for Lunch till five minute past Fourteen of the Clock*

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*The Lok Sabha reassembled after Lunch at Twelve Minutes past Fourteen of the Clock*

[MR. DEPUTY SPEAKER *in the Chair*]

COMMISSIONS OF INQUIRY (AMENDMENT) BILL—*CONTD.*

[*English*]

SHRI SOMNATH CHATTERJEE: With you, Sir, it is quorum now.

MR. DEPUTY SPEAKER: That is why I am here. Shri N. Tombi Singh.

SHRI N. TOMBI SINGH (Inner Manipur): Mr. Deputy Speaker, Sir, I rise to support this Commissions of Inquiry (Amendment) Bill. We have already had a long discussion on this Bill and I do not have much to say.

I am deeply opposed to the Opposition's tendency to read politics into every proposal put up by the Government. In this Bill there is not much politics, as Mr. Chatterjee sees, because the commissions of inquiry are temporary bodies. They are supposed to work within a short period, and to work within that given short period, they

deserve protection and all the facilities so that they can make best use of the given short time. In section 10A, sub-section (2), we see that the need for sanction of the State Governments in the case of commissions appointed by the State Government and of the Central Government in the case of commissions appointed by the Central Government, has been removed here. This is a necessity. Side by side, this amendment is a two-edged weapon as we see it. This is really very good because if we see sub-section (4), we see that the period for complaints to the High Courts for taking cognisance of certain offences by a commission or by any member or any officer thereof, is limited to only six months. This means that the commission is supposed to enjoy this protection for a short period. Otherwise, if we do not provide this protection, then very few competent people would like to serve as Chairman or member of any such commission, because when they work for a short time, they will be subjected to so many accusations and other things which will bring them into disrepute during the discharge of their duties. In this regard, the Amendment has removed these disabilities inherent in the present set-up.

Now, I would like to express my agreement with many of my friends from both sides of the House regarding the implementation of this law. This is not an exception, this is not the only law where we receive complaints about incomplete or insufficient implementation. Wherever the Commissions of Inquiry are instituted, they are supposed to give help. Public memory being short, it is apparent that so far during the last several years the State Governments as well as the Central Government whatever is the Ruling Party there, apart from the colour of the party ruling in the State or in the Centre, when certain events, certain accidents or failures are there, they require an inquiry and Commissions of Inquiry are instituted. Then time is given to it. Then when the report comes, it goes to the State Government, to the Ministers according to the desire or the sweet pleasure of the Government. Now, the public sensitivity has gone away

and taking full advantage to this, automatically the implementation of the recommendations of the Inquiry Commission is not given due notice or attention. In this regard, I would only suggest to the Government and also to the State Governments concerned that whatever inquiries have been made on any subject at any time, the findings should be given due notice of and due action should be taken on them. In this regard there is no difference among the Members on this side or that side. We like that Commissions of Inquiry must be given due protection like this and then, side by side with that we should also give due notice of the findings and take appropriate action on these findings.

SHRI SHANTARAM NAIK (Panaji): Mr. Deputy-Speaker, Sir, I stand here to support the Amendment Bill in respect of the Commissions of Inquiry Act.

When Mr. Somnath Chatterjee spoke, he referred to the Statement of Objects and Reasons not being detailed. In fact, I have also many a time stated that any Bill should contain an exhaustive Statement of Objects and Reasons, It helps the Members to understand the Bill in a very clear manner. But Mr. Chatterjee's criticism was tainted with his own colour because in the past wherever the Statement of Objects and Reasons was in detail, the Opposition Members, specially Mr. Chatterjee, have stated that 'although the Government has enunciated these objects as objects of the Bill, the real object is something different.' So, where a detailed Statement of Objects and Reasons is given, they will say that the object of the Government is different and if it is not given in detail, they will say, 'Why not give a detailed Statement of Object and Reasons?' (*Interruptions*). So, in principle I agree that the Statement of Objects and Reasons should be in detail, but question is whether your contention is bona fide or not. (*Interruptions*)

Secondly, Mr. Deputy-Speaker, Sir, I refer to the exact Amendment whereby this Section 5B has been proposed to be added. In this case what I have seen is that whereas

under the Act, if the Commission takes the services of, say, any officer of the Central Government, any agency of the Central Government or State Government, under section 5A, that agency or the officer will have powers of issuing summons, enforcing attendance etc., production of document, requisition of any published record, or copy thereof. But as far as the assessors are concerned, assessors services are taken but I do not know, in what form they are utilised. If under the law, assessors have also been given some powers, just as the powers given to any other officers whose services are requisitioned by the Commission under section 5A, then according to me, the assessors would have been able to function in a better manner. Ultimately the assessor is somebody above the normal officer who will be doing some paper work, collecting some materials. But the assessors will be really gathering the materials as such in technical cases. Therefore, the powers which are given to other officers whose services are requisitioned by the Commission, should also be given to the assessors so that the services of the assessors would be best utilised.

Secondly, as far as the other amendment proposal is concerned namely giving jurisdiction to High Court, first of all, we have to admit that whenever we have given powers for adjudication—maybe a court, maybe a House of legislature—we must make our submissions with due respect and in case we do not respect the institutions, the institutions themselves will collapse. Therefore, to strengthen those institutions, we must amend our laws suitably to that line as far as our experience goes. Even; here in this House, we make our submissions under the law with due respect. Sometimes there are disagreements. Even then, I would say that we submit to your decision but we would like the decision to be reconsidered or reviewed in that manner. Except a few instances, by and large, Members do give respect to the chair, give respect to the court. If we treat our judicial officers or institutions which are to adjudicate in a different manner, why should the Opposition Parties grumble? Now, with

[Sh. Shanta Ram Naik] regard to disrespect to Inquiry Commission, if the jurisdiction is vested in the High Court, why should Mr. Somnath Chatterjee grumble? Should we not treat these institutions at a higher level? Should we not treat these institutions which are supposed to adjudicate, in a different manner? In fact, I would agree with that judge or authority which said, "In case of acts of disrespect to a Commission, this should be treated just like contempts of court". In case, that is not done, our institutions like Inquiry Commission will not be strengthened. Tomorrow if anybody writes anything maliciously inputting motives to the Commission, has the Commission just to read it in the newspaper? Why should that happen? In fact, the Opposition Parties should have supported his contention. Many High Court and Supreme Court judges refuse to be on commissions because they do not have any respect subsequently when the reports are published, when they are criticised in a bad manner. It is not that the judgment of the courts cannot be criticised. Despite the contempt of court, you can criticise the judgement. You can say that you do not agree with this point of submission of the judge, you do not agree with this reasoning. You can very well say that and that does not amount to contempt of court. Similarly, even if contempt of court provisions is applied to Inquiry Commission, still you are entitled to disagree with the report of the Commission in a different manner. You need not impute motives to Inquiry Commission reports or findings. Therefore, I would strongly recommend that further amendment to Inquiry Commissions Act may be made whereby any proceedings of the Inquiry Commission should be treated just like proceedings of the court and the Contempt of Court Act should be made applicable.

SHRI SRIBALLAV PANIGRAHI (Deogarh): We are discussing the Commissions of Inquiry (Amendment) Bill, 1988 which seeks to amend three provisions. Firstly there is the appointment of assessors. That should be revived with the authority given to the Commission to arrange payment of TA and

DA etc not only for the assessors but also for the witnesses concerned to produced the necessary documents, etc. be fore the Commission. The provision was there earlier but in the meantime it was done away with. The Subordinate Legislation Committee, after careful consideration, has recommended revival of the system and this would be done. When the assessors are chosen, sufficient care has to be taken to see that the right type of people are chosen and that they have the requisite qualification and experience in the field so that the purpose could be really achieved.

The important part of the amendment is about the change in procedure regarding Section 10A. When anybody tries to ridicule or brings any motive to the Presiding Officer, how that could be tackled and dealt with? I am really confused what for these Commissions of Inquiry are being appointed. This is a question I would like to emphatically ask and if we look at it dispassionately, in most of the cases, are we not making a mockery of these Commissions? Commissions are being set up on popular demand. (*Interruptions*)

The demand of the opposition is that there should be a judicial Commission. Again I have come across cases wherein appointment of High Court Judges and sometimes District Judges does not satisfy the Opposition. They say only sitting Judge of the Supreme Court or the High Court should be the Presiding Officer. That has been the demand of the Opposition in many cases. Now, Mr. Somnath Chatterjee says that sitting Judges should be forbidden. Retired Judges should be there. What is the logic behind this? Why are they trying to make a distinction?

SHRI SOMNATH CHATTERJEE: You have not understood.

SHRI SRIBALLAV PANIGRAHI: You are the only sole learned lawyer in this House to understand everything in the right perspective, and all other Members who sit in this House do not understand. Please

don't monopolise wisdom. (*Interruptions*) Many of the political leaders who have been indicted by the Commission have become heroes subsequently. Can I name them? What happened in Orissa? Those people are there. When the findings are not followed to their logical conclusion and when they are let-off, they become heroes. I mean to say that in a democracy when there is election for every five years, we can leave it to that. There is a purpose. When Government tries to find out the real situation and ascertain the correct facts, naturally there is a demand. Sometimes, *suo motu* also Government comes forward and declare appointment of a Commission considering the seriousness of the situation. Naturally, when such things are happening, we demand Judicial Commission and that should be presided over by a Judge. So, Judges are associated with this work. We give utmost respect to the judiciary in our country and we ought to give such respect. Judges have their own respect; they have their own dignity. Should we bring their image down? Should we unnecessarily resort to character assassination of the judges because their findings and their approach do not suit our convenience? Therefore, whoever tries to bring in motives, tries to ridicule them should be dealt with. Some people are out to ridicule, to make a mockery of the Commissions, in this country. There is nothing for the hon. Member Dora to feel happy about it. He was trying to do this initially when I referred to this point. Therefore, people who bring in motives etc. should be cut down to size. Such trends have got to be checked drastically. Now, we are observing that trend. Respectable people, self-respecting judges, who have reputation as good judges, are not coming forward to be associated with the Commissions because of such nefarious things that are going on. Concerned people will refuse to appear before the Commission of Inquiry, will refuse to swear affidavit and give evidence. How can the judges dispose of their cases? How can they complete the assigned working, time-bound work, within the period? They have to submit their report within the stipulated time.

Sir, then there is the question of personal appearance. Why should they appear personally? There are dignitaries like the President, the Vice-President and so many other people. Of course when they too have to depose and to be cross-examined, they will have to appear. But, why on each and every occasion they should appear? In that event, the work assigned to them would also suffer.

Sir, I support this Bill. There were mentions about jurisdiction of Court — whether it should be High Court or Sessions Court etc. There were arguments given in support of both. Therefore, the Government should carefully consider these points. As one hon. Member said, even the President, the Vice-President have to go to Session Court when such defamation cases arise. So, this has got to be considered.

With these words, I support the Bill. Further I would say that we should not bring in politics, narrow political considerations into this matter. We are all out to find out the facts. We demand that there should be some Judicial Commission to try something. We also demand that there should be judicial officers of High Court, Supreme Court—that too sitting judges—to be associated. So, when it is so, we should cooperate with them and should not try to bring in motives and make character assassination.

THE MINISTER OF STATE IN THE MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS AND MINISTER OF STATE IN THE MINISTRY OF HOME AFFAIRS (SHRI P. CHIDAMBARAM): Mr. Deputy-Speaker, Sir, I am grateful to all the hon. Members who have participated in this debate. This amending Bill has four Clauses. Clause 2 and Clause 4 fortunately, have been welcomed by every one in the House. Shri Shantaram Naik raised a question as to the purpose and role of assessors. I may bring to his notice that assessors are already provided for in rule 6 of the rules made under the Commissions of Inquiry Act and what we are doing through Clause-2 is only providing a statutory basis for rule 6,

[Sh. P. Chidambaram] following the recommendations of the Committee on Subordinate Legislation. Equally, Clause 4 is non-controversial. It only provides for payment of travelling allowance to assessors and witnesses.

I now come to Clause 3. What does Clause 3 do? Clause 3 retains Section 10 (A) (1) but amends sub-section 2 of Section 10 (A). Mr. Somnath Chatterjee very fairly conceded that the substantive provision of Section 10 (A) has not been changed. What we have changed is the procedure for trying an offence under Section 10 (A) (1). The question is why have we changed the procedure? I shall try to answer why we have changed the procedure. Let me first trace the history of Section 10 (A). In the year 1962, several questions were posed to Shri M.C. Setalvad, the then Attorney General of India. Among the questions were, whether a provision should be made to punish those who bring members of the commission into disrepute. Shri Setalvad's answer was: Yes, it is desirable to make such a provision so that if anyone intending to harm or knowing or having reason to believe that such imputation will harm the reputation of any such person commits the offence in respect of a member of that commission, he should be punished. The second question posed to Shri Setalvad was, what is the procedure that should be followed for trying the offence. Shri Setalvad opined that the offence should be tried by the High Court and he also opined that such a provision will not be discriminatory having regard to the high office and the status of the persons who constitute the commission. This opinion was given on the 3rd of August, 1962. Subsequently, the Law Commission had occasion to examine the Commissions of Inquiry Act and in the 24th Report of the Law Commission, these two questions were examined. The Law Commission also came to the conclusion that it was desirable to create a specific offence. And I wish to read only two brief portions from the Law Commission's Report. The Law Commission said:

"While we cannot constitute the

commission into a court for this purpose of contempt, we feel, at the same time that some provision should be made to protect members of the Commission from irresponsible and scurrilous attacks. Section 5, sub-section 4 of the Act already provides for the punishment of a certain offence under the Indian Penal Code committed in the view of the persons of the commission. We think that provision should be made for punishing persons who, by spoken words or words intended to be read, make or publish any statement or do any other act calculated to bring the commission or any member thereof into disrepute."

The Law Commission also said and I quote:

"Virulent attacks have been made on the commission and their members, a fact to which our attention has been drawn by several distinguished persons who have served at various Commissions of Inquiry appointed under the Act. We think that if the act itself create a specific offence to the kind suggested, attention of public will be focussed on the penal consequences of a defamatory attacks on the commission or its members. We consider it unnecessary to encumber the proposed provision with the various exceptions and explanations contained in Section 499 of the Indian Penal Code because we think that the Clause without the exceptions and explanations will be interpreted by the courts in a reasonable manner."

On the question of procedure, the Law Commission took a different view. The Law Commission said that the existing provisions of the Criminal Procedure Code were adequate and this offence could be tried in accordance with the provisions of the Criminal Procedure Code. Therefore, the Government in 1962 had two sets of opinions; concurring on one point that an offence should be created, but differing on the point about procedure for trying the offence.

In 1971 section 10-A was introduced creating the offence and providing for trial of the offence in accordance with Section 198B of the CRPC. In a sense we accepted the views of the Law Commission.

Now clause 3 does not touch the offence. Therefore, it is wrong on the part of Mr. Somnath Chatterjees unless he has some other purpose in his mind; to give the impression that we are doing something substantive to the law, although I did notice that he also said that the substantive law has not been changed. I think this point should be made clear. Lest distortions creep in when the debate becomes wider. The substantive law has not been changed. The substantive law as contained in Section 10 (A) is a law which was made in 1971 by Central Act 79 of 1971 and we have done nothing to that law. What we have done is to amend Sub Section 2. And why have we done it?

The Thakkar-Natarajan Commission in its Report at pages 79 and 80 said the following and this is the genesis of the Amending Bill. I wish to quote two paragraphs from that Report:

" Another point which the Commission feels compelled to make is in regard to the protection afforded by Section 10A of the Commissions of Inquiry Act, 1952 which reads as under:'

And that is extracted. The Commission then says:

" The commission wishes to bring into focus that while any person bringing the Commission or any member thereof into disrepute is liable to be prosecuted under Section 10-A of the Act the prosecution can be instituted only with the previous sanction of the Government, that is to say, the Executive. Ordinarily the Executive would not withhold a sanction in the case of character assassination which would directly attract the provision embodied in the said section . However, it would

be extremely embarrassing to place a sitting Judge in a situation where he is required to approach the Executive in a matter like this. In a given case the sanction granted may be challenged as defective. Besides, the prosecution would have to be in a subordinate court and would be subjected to further proceedings by way of appeal, revision, or writ petition in the hierarchy of courts. And this would be a long drawn affair resulting in publicity given to the proceedings which may result in greater embarrassment.

The Commission is impelled to place into focus these aspects so that when an occasion arises in future the incumbents of judicial office who are called upon to discharge such functions are not placed in an embarrassing situation. They may well refuse to undertake the assignment for the aforesaid valid reasons unless the relevant statutes are suitable modified and the officials concerned are assured of full protection from all quarters.

Sir, the Government have most carefully considered this recommendation. We respectfully agree with Justice Thakkar and Justice Natarajan. These arguments have great force.

SHRI SOMNATH CHATTERJEE: Judges of the Supreme Court are tried in the High Court. Then what happens to the hierarchy of courts?

SHRI P. CHIDAMBARAM : This argument is valid. This argument has great force and I have not heard any Member has criticises the rationale behind this argument.

Sir, after this Report come, we referred the matter to the Attorney General. the Attorney General had before him the earlier opinion of Mr. Setalved which suggested that the offence should be tried in the High Court and also pointed that a classification could be validly made. He also had before him the Law Commission's report which suggested

[Sh. P. Chidambaram] that the offence should be tried under the provision of the CRPC. The Attorney General to whom we referred the case has given an elaborate opinion. I am not going to quote from that opinion but I will summarise what he has said in his opinion. The Attorney General has clearly said that a classification can be made and the reasons he has given in support of his opinion are that there is a difference in the nature of functions performed by the other high dignitaries who are enumerated in Section 199. All of them, without exception, are holding an executive office whereas a Commissioner in a Commission holds a judicial office. So there is a valid distinction to make an classification between those who hold executive office and those who hold judicial office. In the first case, because you are holding executive office and it is the executive which has to give sanction, there is no embarrassment because it is that very executive which has to sanction, whereas in this case since the persons are holding judicial office and as Justice Thakker and Justice Natarajan pointed out it would be wrong and awkward to place them at the mercy of the executive in order to prosecute a person for an offence which is on the statute book since 1971.

The Attorney General has also given his opinion that since the Commission inquires into a definite matter of public importance and conducts an inquiry which is of a judicial nature — if not judicial proceeding — confidence in the judicial inquiry can be maintained only if the Commissioners are protected against scurrilous and vituperative attacks. Confidence in the judicial inquiry is a matter of utmost importance. Justice must not only be done but also seem to be done and, therefore, there must be a simple and quick procedure by which a Commissioner who has been brought into disrepute can lodge complaint before a court and have the offender tried.

Sir, look at it in another way. If a judge of a High Court or a judge of Supreme Court who are normally the Commissioners—lodges a complaint or causes a complaint to

be lodged through a public prosecutor before a sessions court, what is the confidence which the accused will have that he will get a fair trial. Therefore, the Attorney General has taken the view that he agrees with Mr. Setalved that the offence must be tried by the High Court. Therefore, accepting the views of Mr. Setalved and the Present Attorney General and accepting the views of Justice Thakkar and Justice Natarajan, Government have come forward with this Bill to provide for a procedure under which this offence will be tried in the High Court. We have provided safeguards. One such safeguard is that the complaint must be lodged within a period of six months. Another safeguard is that High Court will try the matter and an appeal on both facts and law will lie as matter of right to the Supreme Court. There can be no better safeguards. If an offence is tried in a Sessions court, there is only a revision to the High Court but for an offence to be tried in the High Court, we have provided that the as a matter of right both on facts and on law an appeal will lie to the Supreme Court. I think this is a simple provision based upon good advice, based upon sound argument and I do not see why my hon. friend Shri Somnath Chatterjee should try to see ghosts when none is there and should try to create an aura of suspicion around this provision. I sincerely hope he will withdraw his objections. If I do not sit down now he will not get a chance to speak. therefore, I will yield for a moment and then formally close my reply.

SHRI SOMNATH CHATTERJEE : May I know from the hon. Minister now? Is there any case since 1971 when Section 10A was introduced in 1971? From 1971 to 1988 because of the procedure, which is now there, has any injustice been caused to any member of the Commission of Inquiry? Because that should be the reason for changing it.

Secondly, the hon. Minister said they are judicial authorities. Qua members of Commission, they are not judicial authority. They are not discharging judicial functions. I have read even the Supreme Court judg-

ments. Therefore, how can it be there that they are judicial authorities? Therefore, they should be treated separately from the authorities mentioned in section 199.

Third, there can be, I believe subject to correction, Commissions of Inquiry which are not manned always by High Court or Supreme Court Judges. Therefore, why do you put such members of Commissions on such a high pedestal? An engineer may be a member of a Commission of Inquiry. An architect may be a member of an Inquiry Commission. This Act does not require that only judicial authorities will be members of Commissions. Therefore, they will be treated as judicial officers beyond the pale of a magistrate's court. And what the President of India does not get under special procedure, he will get. Therefore, certain assumptions have been made by the hon. Minister: They have to be judicial authorities. They are necessarily performing judicial functions. Suppose any injustice has been caused. Sir, on that, we have not heard anything from the hon. Minister. Can he enlighten use?

PROF. SAIFUDDIN SOZ (Baramulla): Could I seek a clarification? I can even speak at the time of Third Reading but I will save your time.

MR. DEPUTY SPEAKER : You never save my time.

PROF. SAIFUDDIN SOZ: I will save I promise.

MR. DEPUTY SPEAKER : What clarification you want? I am allowing you.

PROF. SAIFUDDIN SOZ: I feel convinced that there is a need for comprehensive amendment in the Commissions of Inquiry Act. As far as this Bill is concerned, Minister said rightly. There is no dispute about clauses 2 and 4. In fact, about clause 3, I will go the whole hog with the hon. Minister. But he will have to decide. By this clause, he is giving status to a Commission equal to the courts. It cannot be decided just as an offshoot of this Bill. They have to take

the decision on two or three, first. Then things he can bring this amendment. Number one, whether the Commissions enjoy equal status with the court? This will have to be decided. Number two, would the proceedings of the Commissions be conducted in camera or not? This will have to be decided because commissions will need to be away from the public gaze.

Third, whether the reports of the Commissions are to be made public? These are three vital decisions. Before taking these three decisions, there could not be a clause like this. By clause 3, you are giving an equal status with the court, which is not there.

SHRI P. CHIDAMBARAM : Answering Prof. Soz first, it is not within the scope of this Bill to deal with the question whether proceedings should be held *in camera* or whether the report should be published. For that, there are already provisions in the Commissions of inquiry Act and Parliament has passed those laws. Therefore, I do not think I am called upon to answer that now.

Coming back to Mr. Somnath Chatterjee's questions, Sir, some questions are common. The commission is not a court. there is no dispute about that. But invariably unless Mr. Somnath Chatterjee cites me an example from his experience, Commissions of Inquiry are manned by Judges of the High Court or Judges of the Supreme Court. I know one or two cases where they have been manned by senior District Judges but I do not know of any case...

SHRI SOMNATH CHATTERJEE: Retired Judges.

SHRI P. CHIDAMBARAM : Retired Judge also has a high status. I not know of any Commission of Inquiry where architects and engineers are appointed on Commissions of Inquiry under this Act, although theoretically it is possible to appoint architects.

SHRI SOMNATH CHATTERJEE : Members of the Central Administrative Tri-

[Sh. Somnath Chatterjee]  
bunal. I am not quarrelling with that. They are representing. Executive members are there. Departmental nominees are there.

They are not judicial officers; they are discharging judicial functions.

SHRI P. CHIDAMBARAM : I am not saying that architects and engineers could not or should not be appointed, but the working of this Act since 1952 when that the Commissions of Inquiry appointed either by the Central Government or the State Governments to inquire into a matter of definite public importance have always been done after a public clamour which more often than not is turned down. For example, Miss Mamata Banerjee and an appeal for a commission of Inquiry I do not know whether Shri Somnath Chatterjee's Government there would listen to the voice of the people and appoint a Commission of Inquiry.

SHRI SOMNATH CHATTERJEE : That you leave to us.

SHRI P. CHIDAMBARAM : We have created to offence in 1971 on the recommendations of both Shri Setalvad and the Law Commission . The only controversy is how should the offence be tried. It is not our case that the offence should be scrapped or it should not be there; we are agreed on it. The question is how that should be tried. Today, the offence is tried after obtaining sanction of the executive Government by a complaint lodged by the Public Prosecutor before a Sessions court under Section 199. Justice Thakkar and Justice Natarajan have pointed out that it is embarrassing and awkward to ask a Commission composed of high judicial officers to go to the executive and say;

" Please sanction the prosecution of my complaint". I think this is a sound argument.

SHRI SOMNATH CHATTERJEE : Without any instance of any injustice caused to anybody.

SHRI P. CHIDAMBARAM : I will come to that. I think the House represents the people. Is this argument sound or not? Shri Somnath Chatterjee has asked me why we have not given protection to other dignitaries mentioned in Section 199. The other dignitaries in Section 199 are all holding executive offices; President, Vice-President, the Prime Minister and Ministers are holding executive officers. The Public Prosecutor works under them. If any of them is defamed, and a prosecution has to be launched under Section 199, that very Government will direct its Pubic Prosecutor to launch that. It is the same executive. Here, it is another branch of the State Judicial branch of the State, the high dignitaries represent the judicial branch of the State. If they are defamed, should they come to the executive and ask for sanctioning of the prosecution? Justice Thakkar had made a point and I think that point is valid. This point appeals to everyone else except Shri Somnath Chatterjee and I cannot help it.

He asked how many such cases were there. Thakkar-Natarajan itself is the case. We do not have to wait for more cases to come before we accept this recommendation . Then he turns and asks if there was any case in 1960. Well, if the newspapers and magazines did not indulge in such writing in 1960 against the ; Commissions, I cannot find an example of 1960. I find an example and that is before you, and that is the example of Justice Thakkar and justice Natarajan. They have made a recommendation that is logical and sound and it appeals to every understanding person, if you wish to misunderstand it nobody can help.

I submit, Sir, this provision has the support of Justice Natarajan, Justice Thakkar and the Attorney General. It has been carefully examined and the legal provisions are valid. I request the House to pass the Bill.

MR. DEPUTY SPEAKER The question is:

" That the Bill further to amend the Commissions of Inquiry Act, 1952 be taken into consideration".

*The motion was adopted*

MR. DEPUTY SPEAKER : The House will not take up clause by clause consideration of the Bill.

The question is :

" That clauses 2 to 4 stand part of the Bill"

*The motion was adopted*

*Clause 2 to 4 were added to the Bill*

MR DEPUTY SPEAKER : The question is :

" The clause 1, the Enacting Formula and the Long Title stand part of the Bill.

*The motion was adopted*

*Clause 1, the Enacting Formula and the Long Title were added to the Bill*

SHRI P. CHIDAMBARAM : I beg to move:

" That the Bill be passed"

MR. DEPUTY SPEAKER : The question is :

" That the Bill be passed"

*The motion was adopted*

15.00 hrs.

**NATIONAL HIGHWAYS AUTHORITY OF  
INDIA BILL**

[English]

MR. DEPUTY SPEAKER : We will now take up the next item, National Highways Authority of India Bill.

THE MINISTER OF STATE OF THE MINISTRY OF SURFACE TRANSPORT (SHRI RAJESH PILOT) I beg to move:

" That the Bill to provide for the constitution of an Authority for the development, maintenance and management of national highways and for matters connected therewith or incidental thereto; be taken into consideration."

The development and maintenance of National Highways is fully finance by the Central Government as this function is included under "Entry 23" of the Union List of the 7th Schedule of the Constitution read with article 246 thereof. The National Highways System covering a length of about 32,138 km is the main artery of road transport in the country. Though constituting only about 2 per cent of the total road length, it bears more than one third of the total freight transport by road in the country. Under Section 5 of the National Highway Act 1956, the Government of India is empowered to entrust the function of development and maintenance of any National Highways to any authority under the Central or State Government. In pursuance thereof field activities such as survey, investigation and preparation of projects, award and supervision of works have been entrusted to State Governments. The Central Government have been looking after to the other aspects like planning, approval of design and estimate, standardisation, monitoring etc. This system is commonly known as 'Agency system' since the State Government are