

Amendment made:

Page 1, line 1, for "Nineteenth" substitute "Twentieth" (Shri K. S. Ramaswamy)

MR. DEPUTY-SPEAKER: The question is:

"That the Enacting Formula, as amended, stand part of the Bill."

The motion was adopted.

The Enacting Formula, as amended was added to the Bill.

The Title was added to the Bill

SHRI K.S. RAMASWAMY: I move:

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

MR. DEPUTY-SPEAKER Motion moved:

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

SHRI TENNETI VISWANATHAM: Sir, As I said, there are about 52 lakhs of persons who will be born every year, and hereafter, on the passing of this Bill, the parents children will have to be born each with Rs. 50 in its hands, the fingers, in order to pay the fine, because their parents or relations or their keepers or somebody else might fail to report about their birth. This is the great gift which the Home Ministry is giving to the masses of this country.

MR. DEPUTY-SPEAKER: I am putting the motion to the vote. The question is:

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

The motion was adopted.

12.10½ hrs.

UNION TERRITORIES (SEPARATION OF JUDICIAL AND EXECUTIVE FUNCTIONS) BILL

THE MINISTER OF STATE IN THE MINISTRY OF HOME AFFAIRS (SHRI

VIDYA CHARAN SHUKLA): Sir, I beg to move:

"That the Bill to provide for the separation of judicial and executive functions in Union Territories, as reported by the Joint Committee, be taken into consideration."

15.11 hrs.

[SHRI VASUDEVAN NAIR in the Chair]

This Bill was referred to a Joint Committee of both the Houses. The Joint Committee went thoroughly in the entire scheme of the Bill. After holding several sittings, this Bill was amended in certain respects and the Bill as amended by the Joint Committee is now before the House. Many amendments which have been moved, particularly by Shri Srinibas Misra, were also considered by the Joint Committee, but none of them has been incorporated. I will briefly explain why it is so. There is no minute of dissent and so it can be safely presumed that those hon. members who served on the Committee not only agree with the scheme which is unexceptionable but also with the details set out in the clauses.

Mainly this Bill seeks to achieve the object set out in article 50 of the Constitution. It is one of the Directive Principles that the "State shall take steps to separate the judiciary from the executive in the public services of the State." While drafting the Bill, we have taken most of the provisions from the Punjab (Separation of Judicial and Executive Functions) Act and the Bombay (Separation of Judicial and Executive Functions) Act of 1951. This provides for the classification of the magistracy into judicial magistrates and executive magistrates and investing judicial magistrates with the function of trial and disposal of cases and the executive magistrates with the power of enquiring into and disposing of matters of a non-judicial character. The principal regarding classification has been set out in clause 5. Clause 3 seeks to amend the Cr. P.C. in the manner and to the extent specified in the Schedule to the Bill.

[Shri Vidyacharan Shukla]

Some new territories were added to Himachal Pradesh by dividing Punjab into Punjab and Haryana. Therefore, certain Acts of the former Punjab State were applicable to those parts of Himachal Pradesh. In clause 6 we have tried to repeal those Acts so that there is complete uniformity about separation of judiciary from the executive. Our intention is, there should be no difference between one Union Territory and another. We have tried to do it by clause 6.

I will now mention some important amendments moved by Shri Srinibas Misra. His main anxiety seems to be that none of the judicial functions should be entrusted to executive officers and *vice versa*. That is also our viewpoint. He has given amendments regarding the power to take security for keeping the peace under section 107 and for good behaviour from vagrants and suspected persons under sections 109 and 110. He wants all these powers to be entrusted to judicial magistrates. Here his exception would have the effect of seeing that these powers would remain with the district magistrates and they will also remain with the judicial magistrates of the first class. But he wants to take away these powers from the executive magistrates of the first class. I would like to submit that these powers are law and order keeping powers. These are not judicial powers. The executive magistrate while he has the powers does not have to decide about any judicial matter. Supposing there is a bad character and a security has to be taken from him it is not a judicial function. If a person who has been convicted for theft and on whom there is police surveillance is asked to report to the police and for that matter a security is asked it is not necessarily a judicial function, it is more or less a law and order keeping function which should properly be entrusted to an executive magistrate. In our Bill we have kept all these powers to executive magistrates and we have not kept them for the judicial magistrates.

As I said earlier, the Joint Committee gave very careful consideration to the provisions of this Bill. We have made some changes in the Bill mainly to clarify and emphasise the provisions that we have incorporated in it. During the delibera-

tions of the Joint Committee, I remember, there was almost complete unanimity about the provisions of the Bill and also the arms of the Bill. I am sure that unanimity would be reflected here also.

I want to assure the hon. House it is our intention that there should be a very effective separation of judicial functions from executive functions and if any hon. Member can point out that in any particular section or clause of the Bill that is before us this separation is not being made in a proper manner and certain functions which are entrusted to judicial magistrates should be transferred to executive magistrates or *vice versa*, we shall be prepared to consider that. It is not our intention to stand on prestige as far as this particular matter is concerned, but here we must be convinced that those functions which belong to judicial magistrates are going to be given to executive magistrates or *vice versa*. If the functions belong to law and order and if they belong to the executive field of administration they will have to be entrusted to executive magistrates.

With these introductory remarks, Sir, I would request this hon. House to pass this Bill which has been very carefully considered by the Joint Committee.

MR. CHAIRMAN: Motion moved:

"That the Bill to provide for the separation of judicial and executive functions in Union territories, as reported by the Joint Committee, be taken into consideration:"

SHRI SHIVA CHANDRA JHA:
Sir (Madhubani) I beg to move:

"That the Bill be circulated for the purpose of eliciting opinion thereon by the 16th August, 1969." (15)

MR. CHAIRMAN: Both the motions are now before the House.

SHRI M. MEGHACHANDRA (Inner Manipur): Mr. Chairman, Sir, I want to make a few submissions on this important Bill relating to the Union Territories. As a matter of fact, I do not want to go into the details because as a member of the

Joint Committee I have given my support to this Bill. I am sure the House will also support this particular Bill.

I only want to submit that this particular Bill has come after nineteen years. Our Constitution under article 50 envisages that the State shall take steps for separation of judiciary from the executive. It was since 1952 or 1953 that efforts were made for the separation of judiciary from executive in different States and the process has been going on. Now, in the year 1969 the position of separation of judiciary from executive in the Union territories is being recast in this particular Bill. As the Minister has said, this particular Bill seeks to separate the judicial functions from the executive and there has been amendment of the Code of Criminal Procedure, 1898 and provisions for appointment of judicial magistrates.

In this connection, I want to say something about the judicial, in the Union Territory of Manipur and Tripura. In clause 8 and many other provisions of this Bill there is an expression "in consultation with the High Court having jurisdiction in relation to the Union territory concerned", which is very important. In Manipur and Tripura we have Judicial Commissioner's Court which is a one-man's court. It does not function whole-time either in Manipur or in Tripura. The one-man judge will stay for 15 days in Tripura and another 15 days in Manipur. Moreover, there is inadequacy in the administration of justice when a one-man judge is giving judgments and carrying out the administration of justice.

In this connection, I want to submit that there has been a long-standing demand from the people of Manipur for a separate court. The Manipur bar also passed a resolution in the year 1968 and made a recommendation to the Home Ministry of the Government of India to this effect. Moreover, it is not possible to dispose of all the pending cases by one judge who is not working whole-time. In reply to Unstarred Question No. 6847, answered on 18th April 1969, about the disposal of cases in Judicial Commissioner's Court Manipur, it has been stated:

"396 cases as on 1.4.69 including two applications for leave to appeal to the Supreme Court."

So, even application for leave to appeal to the Supreme Court takes one year for disposal, which is not a satisfactory state of affairs. Nearly 400 cases are pending in the court of the Judicial Commissioner as on 1-4-69. Therefore, if this process of separation of judiciary from the executive is to be carried to its fullest extent, then the question of upgrading the Court of the Judicial Commissioner to that of a High Court should also be taken up.

In clause 8, relating to power to remove difficulties, it is stated that the Central Government can do it "in consultation with the High Court having jurisdiction in relation to the Union territory concerned". Therefore, I would appeal to the House and the Home Ministry to take action to see that there will be a High Court in Manipur and Tripura. Here I would like to quote what the Manipur Bar had said in a resolution passed by them on 12-1-68:

"...the present arrangement under the provisions of the Judicial Commissioner's Court (Declaration as High Courts) Act, 1950 which gives power to the Judicial Commissioner to exercise the powers of the High Court for certain purposes has proved inadequate and cannot therefore be substituted for a High Court exercising jurisdiction in the States and concurrently over some of the Union territories.

"The administration of justice by one judge as High Court even for some purposes needs to be avoided even in the interest of justice. While some Union Territories are under the jurisdiction of some existing High Courts and certain Union Territory is having its own High Court, only a few Union Territories are having the Judicial Commissioner's Courts with only one judge to administer justice. This arrangement is found inadequate and has its own inherent defects.

While under Article 241 of the Constitution, Parliament has to constitute a High Court for a Union Terri-

[Shri M. Meghachandra]

tory or declare any court in any such Territory to be a High Court for all or any other purposes of the Constitution, it is time for the Union Territory of Manipur to have a High Court of her own. This will meet the aspirations of the people and the desire of the members of the Bar and ultimately the cause of justice."

So, my humble submission is that in passing this Bill, the Government should take up the question of upgrading the Court of Judicial Commissioner and at least Manipur and Tripura should have High Courts having at least two Judges. If that is done, I think, the cause of justice will be met and the separation of judiciary from executive which this Bill seeks to do will be met.

With these words, I support it.

SHRI HEM RAJ (Kangra): Mr. Chairman, Sir, I rise to support the Bill. It was a long-standing need that the Union Territories which were directly under the Central Government should have the benefit of the separation of the judiciary from the executive. It was due much earlier. Anyhow, belated though it may be, it is a happy thing that it has come about.

So far as the integrated areas of Punjab with Himachal Pradesh are concerned, there the separation of the judiciary from the executive was already complete. So far as the old Himachal Pradesh area was concerned, there it was not done. Now, after this Bill is passed, both the areas will have a uniform law and so also all the Union Territories.

Before I come to the main provisions of the Bill, I am rather surprised to see that the Home Ministry which is running the show in the Union Territory of Himachal Pradesh has not been able to, for the last 2½ years, put the seniority of officers in order. On the 1st of November, 1966, the integration of the Punjab hill area took place with old Himachal Pradesh. At that time, 13 judicial officers from Punjab were transferred to Himachal Pradesh. Out of those 13 officers, one has gone back to Haryana and three have gone back to Punjab. So, nine officers remain there. At the same time, there were only eight officers

in Himachal Pradesh judiciary and, out of them, one has gone back to his parent post and seven officers remain there. For these 16 officers, in the last 2½ years, the Home Ministry has not been able to put the seniority in order. With the consequent result, what is happening is that in respect of all these officers who have been transferred from Punjab, though they are senior, their seniority is being ignored. What I am submitting is that, at the present moment, in Himachal Pradesh, *ad hoc* appointments are being made simply to favour certain persons in order to mar the seniority of persons who have been transferred from Punjab. This is not only happening in one department. This is happening in all the departments in Himachal Pradesh. The officers of the old area of Himachal Pradesh are being given *ad hoc* promotions simply for the purpose of marring the chances of seniority of the people who have been transferred from Punjab.

Therefore, I would request the Home Ministry to take early steps, not only in respect of judicial department but in respect of all the other departments also, and see that the seniority of the officers who have been transferred from Punjab areas to Himachal Pradesh is fixed as early as possible. Already 2½ years have passed. I want to know from the hon. Home Minister how much longer time would they take to decide the seniority of those officers, 16 judicial officers and other officers who are serving there. This should be done as early as possible so that the dissatisfaction that is prevailing in the minds of those officers may be removed.

The Himachal Pradesh Government have issued a circular that no further *ad hoc* appointments will be made, but having issued that circular, they are ignoring it and are still making appointments. I would request the hon. Minister to take an early peep into this matter and remove the dissatisfaction that is prevailing in the minds of those officers.

The second point that the hon. Minister was kind enough to tell the House was that the executive functions have been entrusted to the executive magistrates. So far as clause 5 is concerned, I have not been able

to understand the expressions—sanctioning prosecution and withdrawing prosecution.

They have also been entrusted to the executive magistrates. I think, both these require a judicial mind—sanctioning prosecution and withdrawing the prosecution. Therefore, these two powers should not be given to the executive magistrates and should remain with the judicial magistrates.

So far as hill areas are concerned, I would make a request to the hon. Home Minister. Now that he has separated the judiciary from the executive in very subdivision, so far as the hill areas are concerned I would request him that all such judicial magistrates should also be given the powers of a sub-judge. In the hill areas, a very wide distance has to be covered. If a separate judicial magistrate is to be put, why should he not be invested with the civil powers? This may be done so that all those persons who have to travel miles together in the hill areas—it will take two or three days for those areas to be covered—may be able to get justice at a central place, both civil as well as criminal. I would request the hon. Home Minister to take this into consideration and recommend to the High Court that the judicial magistrates should also be given the civil powers.

A point has been raised by my colleague, Shri Misra, regarding cases under sections 107, 109 and 110. If that is not acceptable to the hon. Home Minister, he may kindly consider section 144, 145 and 147, because, they concern property and here a judicial mind has to be applied. So far as the cases under sections 144, 145 and 147 are concerned, they should be taken out from the purview of the executive magistrates and they should be entrusted to the judicial magistrates.

I think, the hon. Minister will consider all my suggestions and will take early steps for fixing the seniority of the judicial officers who have been transferred from Punjab and also for recommending to the High Court to invest all those judicial magistrates with civil powers also.

With these words, I support the Bill.

SHRI SRINIBAS MISRA (Cuttack):
 Mr. Chairman, although very late, still after

a period of about 22 years this Government is coming forward with a Bill to separate the judiciary from the executive in order to implement the Directive Principles under Art. 15, at least in a limited sphere of the Union Territory.

So far as the principle is concerned, I whole-heartedly welcome the Bill because it is a measure in the right direction. But I will take the Minister at his word that he will bring certain matters within the purview of the Judicial Magistrate if it is pointed out that they really come within the judicial sphere. Also there are compelling circumstances which will compel the Minister to bring certain matters within the judicial sphere although he has in the Bill put them under the executive sphere.

For the purpose of separation of judicial functions from the executive functions two things are to be borne in mind. What is a judicial function? What is an executive function? The judicial function is that which involves the exercise of judicial mind, involves examination of witnesses, sifting of evidence and coming to a conclusion. That is the judicial process. It is separate from the executive process of taking action on certain things whatever may be the reason. It does not mean examining witnesses, examining documents, coming to a decision and sifting of evidence. Here in clause 5 of the Bill this distinction has been clearly kept in mind:

“Where under any law the functions exercisable by a Magistrate relate to matters which involve the appreciation or sifting of evidence or the formulation of any decision which exposes any person to any punishment, or penalty, or detention in custody pending investigation, inquiry or trial or would have the effect of sending him for trial before any court, such functions shall, subject to the provisions of this Act and the Code of Criminal Procedure, 1898, as amended by this Act, be exercisable by a Judicial Magistrate....”

So this Bill fixes it as a principle as to what is a judicial function and rightly so. Now it has to be seen whether this principle has been observed in the body of the Bill.

[Shri Srinibas Misra]

This Bill consists of two parts—(1) the Bill proper and (2) the Schedule. After enunciating the principle and giving certain power to the Magistrates of the Union Territories which is another step in the right direction, a schedule has been appended to the Bill. Some amendments are sought to be made in the Criminal Procedure Code for giving effect to the provisions of this Bill. So the Schedule is subject to Sec. 5.

In this Bill the Criminal Procedure Code is sought to be amended so as to put such provisions of Sections 107, 108, 109 and 110 of the Cr.P.C. and also 113 and 145 under the Executive Magistrate. We all know how the British regime used Sections 107 to 110 against the freedom fighters and against the people of this country. Even now some Governments are also showing an expert hand in making use of Sections 107-110 for curbing popular agitation. These are handy weapons in the hands of Police and in the hands of Magistracy to suppress the people whenever the executive wants it. That is why there has been a regular agitation that these provisions should be taken out from the hands of the executive and should be entrusted to the judiciary.

Secondly in certain States where there has been a separation of the Executive from the Judiciary, these matters have been left undecided. We expected that when the Union Government is coming forward with such a Bill, they would take a clear stand regarding these matters. To illustrate I will refer to those sections of the Criminal Procedure Code and try to show to the Minister so that he will be true to his word and will transfer the matters from executive to the judiciary. These sections relate to shifting of evidence, appreciation of evidence and coming to a conclusion and subjecting some citizen to some disqualification, detention and imprisonment.

Section 107 says like this. I do not want to read out the whole section. I will read the heading only. I say: "Security for keeping the Peace in other cases and security for good behaviour." Except the cases mentioned, in other cases, security is necessary. Section 108 provides for "Security for good behaviour from persons disseminating seditious matter." I will now point out how it is being used.

Section 109 provides for security for good behaviour from vagrants and suspected persons.

Now, while moving about from Delhi to Haryana, I may be called a vagrant and may be sent to prison.

Now, section 110 provides for security for good behaviour from habitual offenders.

The procedure for the exercise of the powers under sections 107 to 110 are laid down in Sections 112 to 117.

Section 112 requires that the order should be communicated, notice should be given in writing to the person concerned. Section 113 requires that if the person in respect of whom such order is made is present, in court it shall be read over to him, or, if he so desires the substance thereof shall be explained to him.

I would like to mention Section 117. It says:

"117(1) When an order in section 112 had been read or explained under section 113 to a person present in Court, or when any person appears or is brought before a Magistrate in compliance with, or in execution of, a summons or warrant issued under section 114, the Magistrate shall proceed to inquire....."

I want to underline these words—*shall proceed to inquire.....*

".....into the truth of the information upon which action has been taken, and to take such further evidence as may appear necessary."

And, Sir, the power to inquire and to take evidence is exercised under Section 117, sub-clause (1). Now, shall I read sub-clause (2)? It says:

"Such inquiry shall be made, as nearly as may be practicable, in the manner hereinafter prescribed for conducting trials and recording evidence in summons cases."

Sir, it is a trial and then recording of evidence as in the summons cases. We all know this. It is common-knowledge that the summons cases are types of cases which are tried under this procedure. That is where criminal offence cases are tried under summons procedure. This is done under summons procedure. And, Sir, summons procedure is prescribed in Sections 107 to 110. Now, I will read sub-clause (3) of Section 117. It says:

"Pending the completion of the inquiry under sub-section (1), the Magistrate, if he considers that immediate measures are necessary for the prevention of a breach of the peace or disturbance of the public tranquillity or the commission of any offence or for the public safety, may, for reasons to be recorded in writing, direct the person in respect of whom the order under section 112 has been made to execute a bond, with or without sureties for keeping the peace or maintaining good behaviour until the conclusion of the inquiry and may detain him in custody until such bond is executed or, in default of execution, until the enquiry is concluded."

Under the principle laid down in clause 5, an order will be passed. It is a decision which imposes any punishment or penalty or detention in custody. The procedure prescribed for inquiring into matters pertaining to Sections 107 to 110 are all covered by the provisions under Clause 5 of the Bill which is clear. It is a clear case where judicial powers are being exercised and it ought to be triable by judicial magistrates. Then section 133 provides.....

MR. CHAIRMAN: At this stage, is it necessary to go all over because we are having a second reading?

SHRI SRINIBAS MISRA: After this I shall say "I move my amendments". I need not say anything further. I want to give the Minister time to consider whether he can accept this or not.

Section 133 provides for removal of public nuisance. Here the Magistrate may make a conditional order requiring the person causing such obstruction or nuisance

or carrying on such trade or occupation or keeping any such goods or merchandise, or owing, possessing or controlling such building, tent, structure, tank, well or excavation, or owing or possessing such animal or tree, within a time to be fixed in the order...So many Magistrates can do so many things under this section. Section 133 also provides that no order duly made by a Magistrate under this section shall be called in question in any Civil Court. That means the order passed by the Magistrate cannot be challenged in a civil court. Then, what is the prescribed procedure? Summary procedure. Section 134 says that a notice regarding 133 would be served on the person. Section 135 relates to the person to whom order is addressed and he has either to obey or show cause. Section 137 says:

If he appears and shows cause against the order, the Magistrate shall take evidence in the matter as in a summons-case.

So, under 137, the Magistrate shall take evidence; he has to sift the evidence. Therefore, the judicial mind comes into play.

If the Magistrate is satisfied that the order is not reasonable and proper, no further proceedings shall be taken in the case.

If the Magistrate is not so satisfied the order shall be made absolute.

Section 138 provides for inquiry into 133 matters with the help of a Jury. If all these judicial procedures are prescribed, why should such a case be tried by an executive Magistrate? It is in the fitness of things that it should be tried by a judicial Magistrate as laid down in Clause 5 itself. Then comes the most controversial and the most tantalising section—section 145. This section relates to possession of land and immoveable property.

SHRI R. D. BHANDARE (Bombay Central): Here the power of the civil court is not taken away.

SHRI SRINIBAS MISRA: And therefore people have the remedy to go to the civil court ultimately. But that does not take away the character of the inquiry.

[Shri Srinibas Misra]

It is a judicial inquiry. Whatever may be the ultimate result after going to the civil court or High Court or even the Supreme Court, the inquiry under section 145 is a judicial inquiry. I shall prove it from the Section itself. Sub-section (4) of section 145 says:

The Magistrate shall then without reference to the merits or the claims of any of such parties to a right to possess the subject of dispute, peruse the statements, documents and affidavits, if any; so put in, hear the parties and conclude the inquiry, as far as may be practicable, within a period of two months from the date of the appearance of the parties before him, and, if possible decide the question whether any and which of the parties was at the date of the order before mentioned in such possession of the said subject:

Provided that the Magistrate may, if he so thinks fit summon and examine any person whose affidavit has been put in as to the facts contained therein.

The Magistrate also may summon persons and hear them: That means there will be examination, cross-examination, sifting of evidence and coming to conclusion regarding possession. It is a judicial decision as to which person or which party is in possession of the property. How can it be said that it is an executive function. If it has to be decided between claims and counter-claims it must be a judicial decision. Executive cannot decide it showing favours and saying: "This property is in your possession."

That cannot be done. Under section 144, the executive has got that right, and if there is some possibility of breach of peace, the executive can exercise that right. But here, one has to decide a claim and a counter-claim between two contestants. Therefore, it is a judicial process. So, it must legitimately go to the judicial magistrate.

I hope that the hon. Minister will be as good as his word, and after being convinced that these are really judicial processes, he will at least agree to include sections 107, 110, 133 and 145 in the Schedule under the

heading 'tribable' and as being within the jurisdiction of the judicial magistrate.

SHRI R. D. BHANDARE (Bombay Central): After hearing the arguments of my hon. friend Shri Srinibas Misra, I have to support him *in toto*. Perhaps, there may be some doubt regarding 145.

While supporting my hon. friend I would like to draw your attention to the Statement of Objects and Reasons. I think the constitutional position is quite clear. The constitutional obligation under article 50 clearly says that the executive power should be separated from the power of judiciary. Not only have we accepted the theory of separation of powers but we have also accepted the Directive Principle in the Constitution itself that the judiciary must be separate from the executive.

Now, what is the difference between the judiciary and the executive? The executive magistrate is responsible to the executive, while judicial magistrate is responsible to the High Court. Under the Union Territories Act, it has been clearly mentioned that there would be two types of magistrates, namely the executive magistrates and the judicial magistrates. In the Bill it has been provided that the appointment of judicial magistrates will be done with the approval of the High Court. So, the judicial magistrate is responsible to the High Court, in the matter of appointment as well as for all other practical and theoretical purposes. In other words, what I want to suggest is that the judicial magistrate will be impartial and will not be amenable to any suggestion or pressure from the executive.

In clause 5, the functions of the judicial magistrates are very well defined. It has also been laid down who can be called a judicial magistrate, what his functions are and so on. Even an ordinary trial or inquiry is considered to be a function of the judicial magistrate. So, apart from the question of trial, even in an enquiry, the judicial magistrate shall have to apply his judicial mind. In other words, when the judicial magistrate functions in his judicial capacity, he has to apply his judicial mind and a judicial approach is made, and there is exercise of the judicial mind. When this

executive powers are exercised by the executive magistrate, then such judicial approach need not be there. Of course, it is incumbent on the part of the executive magistrate also that he should act in a judicial manner. But it is not compulsion. But in the case of the judicial magistrate, there is such a compulsion. So, in every trial that is conducted by a judicial magistrate, he has to exercise his judicial mind and make a judicial approach to the question before him.

In the light of these general propositions, let us apply our mind to the Cr. P.C. sections 107-110 and 133 along with 137, 138 and 145. The heading of that chapter is Prevention of Offences. Who is to determine whether certain acts are considered to be offences or not? It is the police which has to do it. And who is to decide whether that act should be prevented or not? Again it is the police which has to determine whether that particular act is considered to be an act which is an offence and which ought to be prevented at all costs.

Coming back to sec. 107, it speaks of security for keeping the peace. Now here the police exercises its discretion, takes the person before a magistrate. If he is taken before the executive magistrate, then two minds are likely to coincide, likely to come to the same conclusion, and then the innocent person may be asked to give a bond of good behaviour for the purpose of keeping the peace. The mind of the police is already determined. Along with that, if the executive magistrate were to deal with the offence, then the magistrate's mind also may be determined. Therefore, we say that such types of prevention of offences or such type of actions or the procedure for dealing with them should be entrusted to a judicial magistrate.

Then coming to sec. 108, it relates to security for good behaviour from persons disseminating seditious matter. Whether a matter is seditious or not and whether the act is of a disseminating nature or not ought to be decided by a judicial mind and not by the executive mind. Hence Shri Misra's plea that inquiry under this section should also be entrusted to a judicial magistrate.

I need not deal with sections 110, 117 and 118. I will come to sec. 133. Take an illustration. There is a house which is abutting on a public road and the police officer takes it into his head that it is a public nuisance. Therefore, he gives notice and that person is taken to an executive magistrate. What remedy can the poor fellow have? His house is just near about the road. The matter is already decided by the police that it is a public nuisance. If again the executive magistrate is to decide, then there is the end of the matter.

Then sec. 137 is quite clear. Civil proceedings are completely barred under it.

If there is any slightest possible doubt, whether this matter should be enquired into by the executive magistrate or by the judicial magistrate, we have to read section 138. Section 138 deals with the seriousness of the matter. This clause clearly lays down that if the public nuisance is to be determined, it should be determined and decided with the help of the jury. Our law-makers have gone to the extent of saying that the determination of public nuisance is such a serious matter, and it should be decided with the help of the jury. Even clause 133 should therefore be taken out of the jurisdiction of the executive magistrate.

16 hrs.

With these words, I support the plea made by my friend and I also request the hon. Home Minister just to apply his mind...

SHRI SRINIBAS MISRA: Not executive mind, but judicial mind.

SHRI R. D. BHANDARE: Yes; judicial mind, to the plea and to the points which we have raised before this House.

श्री महाराज सिंह भारती (मेरठ) : सभापति महोदय, पूरी दुनियां तानाशाही और जनतंत्र में से जनतंत्र को पसन्द करती है। जो लोग अपने यहां जनतंत्र नहीं रखते, वे भी उसे जनतंत्र ही बताया करते हैं। क्या फर्क है दोनों में? तीन काम होते हैं; एक, नीति निर्धारित करना; दूसरे उस नीति को प्रमत्ती जामा पहनाना और तीसरे, उस नीति का

[श्री महाराज सिंह भारती]

मतलब बताना। तानाशाही में ये तीनों काम एक ही जगह होते हैं। जो तानाशाह ने कह दिया, वही नीति है। वही उस पर अमल करेगा और वही अपने हिसाब से उसका मतलब बतायेगा। जनतंत्र में ये तीनों काम अलग-अलग एजेन्सीज द्वारा होते हैं। जो राजनीतिज्ञ हैं, वे नीति निर्धारित करेंगे। जो कार्यपालिका है, वह उस पर अमल करेगी और जो न्यायपालिका है वह उसका अर्थ बताएगी : अगर ये तीनों काम अलग-अलग नहीं होते हैं, तो फिर जनतंत्र का कोई मतलब नहीं रह जाता है।

इस देश में 20, 22 साल तक यह पाप होता रहा—न्यायपालिका और कार्यपालिका एक जगह मिल कर चलते रहें, जिससे इस देश में कई किस्म की भ्रांतियाँ और भ्रमड़े पैदा हुए। सरकार को इतने दिनों के बाद बुद्धि आई, यह बड़ी अच्छी बात है। कहते हैं कि देर आयद, दुरुस्त आयद। लेकिन कुछ मर्ज ऐसे होते हैं, जिनमें अगर जरूरत से ज्यादा देर हो जाये, तो बहुत ज्यादा नुकसान हो जाता है।

आज लोग हमारी जुडिशरी के ऊपर वाले हिस्से पर उंगली नहीं उठाते हैं—बहुत कम उठाते हैं, लेकिन जुडिशरी के नीचे वाले हिस्से पर बड़े पैमाने पर उंगली उठने लगी है, उसका एक बड़ा कारण यही है कि कार्यपालिका के लोगों ने अपने और जुडिशरी के, इन दोनों अधिकारों के मिलने के बाद न्यायपालिका को बदनाम किया है। जब एक दफा भ्रष्टाचार चालू हो जाता है, तो उसके बाद फिर वह भ्रष्टाचार जरा दूर तक चल जाया करता है। इतनी देर के बाद यह कानून लाया गया है, यह एक अच्छी बात है और मैं उसकी तारीफ करता हूँ। लेकिन जनतंत्र में ऐसा हुआ करता है कि अगर कोई छोटी सी गलती हो जाए, तो कभी-कभी उसके बड़े खराब नतीजे निकल करतें हैं।

जैसे, अंग्रेजी जमाने के छोड़े हुए आई० सी० एस० और मौजूदा जमाने के आई० ए०

एस० प्रशासन के विशेषज्ञ हैं। उन लोगों को जब किसी विशेषज्ञ विभाग का विशेषज्ञ बना दिया जाता है, जैसे इंजीनियरों या डाक्टरों के ऊपर बिठा दिया जाता है, या कृषि, रेलवे बिजली के ऊपर बिठा दिया जाता है, तो चूंकि वे प्रशासन के पंडित उस विभाग के विशेषज्ञ नहीं होते हैं, इसलिये आज के तकनीकी विकास के युग में कई तरह के भ्रमण्ड खड़े हो जाते हैं और वे महकमे चौपट हो जाते हैं। पिछले बाईस सालों से हम यह देखते चले आ रहे हैं। जिन बूढ़ों को तजुबेकार कहा जाता है, अगर उन बूढ़े तजुबेकार प्रशासन के विशेषज्ञों के बजाय कम उम्र के सम्बद्ध विषयों के विशेषज्ञों को ऊपर बिठा दिया जाता तो कहीं ज्यादा अच्छी सरकार चलती और वे लोग कहीं ज्यादा अच्छा मशवरा सरकार को देते।

यह नहीं समझ लेना चाहिये कि कार्यपालिका और न्यायपालिका के एक जगह चलने से तकलीफ सिर्फ जनता को हुई है। बहुत से ऐसे कार्यपालिका में काम करने वाले अफसर भी हैं, जिनके सामने कई बार ऐसे घमं-संकट खड़े हो जाते थे कि वे बेचारे परेशान हो जाते थे। मैं इस सम्बन्ध में एक घटना बताना चाहता हूँ।

कई साल पहले "अंग्रेजी हटाओ" आंदोलन में मैं लखनऊ में गिरफ्तार हुआ। एक ए० डी० एम० के यहां मेरा केंस था। अमीनाबाद पार्क के डाकखाने के सिर्फ अंग्रेजी वाले हिस्से को मैंने तारकोल से पोता था। एक दिन अचानक वह ए० डी० एम० जेल देखने के लिए चले आये। किसी आदमी ने उन्हें मेरा नाम बताया था। वह सीधे मेरे पास चले आये। मैं एक पेड़ के नीचे बैठा किताब पढ़ रहा था। उन्होंने कहा, "आपका नाम भारती है?" मैंने कहा, है तो। उन्होंने कहा, "मैं आपसे मशवरा करना चाहता हूँ।" मैंने पूछा, "जनाब का परिचय?" उन्होंने जवाब दिया, "मैं ए० डी० एम हूँ। आपका केंस मेरे यहाँ है।" मैंने कहा कि वह मेरे और लीडरों से बात करें। "नहीं, आपसे बात करनी है,"

उन्होंने कहा। “क्या बात करनी है ?” उन्होंने कहा, “देखिए आपने अंग्रेजी का थोड़ा सा हिस्सा तारकोल से मिटा दिया। दो रुपये का नुकसान हो गया होगा। उसके लिए मैं आपको क्या सजा दूँ ? जुडिशस माइन्ड तो कहता है कि आपको अदालत के उठने तक की सजा दे दूँ। लेकिन मैं ए० डी० एम० हूँ। मैं प्रशासन का हिस्सा हूँ। मैं कार्यपालिका का हिस्सा हूँ। अगर मैं कम सजा दूँगा तो मेरी जिदगी खतरे में पड़ जायेगी, मेरे बाल-बच्चे खतरे में पड़ जायेंगे। मेरी हैसियत नहीं है कि मैं आपको कम सजा दूँ और खास तौर से उस हालत में जबकि माइनारिटी कम्युनिटी, अल्प-संख्यक वर्ग का आदमी हूँ।” वह बेचारा परेशान था।

मैंने उसको कहा कि वह मुझे ज्यादा सजा दे दे। उसने जवाब दिया, “अगर ज्यादा सजा दूँ, तो अपील होगी और आप छूट जायेंगे। मेरे खिलाफ स्ट्रिक्चर पास होंगे। मेरे करेक्टर रोल में एन्ट्री होगी। आपकी राजनीति की लड़ाई में मैं मर जाऊँगा।”

मेरा धर्म-संकट आप समझ सकते हैं। मैंने कहा, “महाभारत के युद्ध में दिन भर दोनों पक्ष लड़ते थे और रात को जाकर एक पक्ष के लोग पूछते थे कि बाबा, तू तो मरता नहीं है, कोई तरकीब बताओ कि तुम्हें मार दें। बाबा ने कहा कि किसी हिम्मे को सामने खड़ा कर दो और मुझ पर तीर चलाते जाओ, मैं हथियार फेंक दूँगा और तुम्हारा काम हो जायेगा।” मैंने ए० डी० एम० साहब से कहा, “उसी तरह से आप मुझसे पूछने आये हो कि हम किस तरह से मर सकते हैं। हमारे लीडर, डा० राम मनोहर लोहिया, का कहना है कि सत्याग्रह करो तो दो चार दिन नौटंकी के लिए न जाना, चार छः महीने के लिए जाना। अगर जुर्माना घर वालों को होगा और हमें अपील करनी पड़ेगी और अगर छः महीने की सजा होगी, तो हम अपील नहीं करेंगे। हम नैतिकता से, अपने लीडर के कथन से, बंधे हुए हैं।” उसने कहा, “छः महीने ! छः महीने से तो सरकार परम् प्रसन्न हो

जायेगी।” बस अगले दिन से उसने छः महीने की सजा ठोकनी शुरू कर दी, जुर्माना नहीं किया। मेरे सब साथी चपल उठाकर मेरे पीछे आये। उन्होंने कहा कि उसकी हिम्मत जुर्माना, या ज्यादा से ज्यादा एक हफ्ते की सजा, से ज्यादा करने की नहीं थी, तुमने छः महीने की सजा करा दी। मैं क्या करता ?

कार्यपालिका के उस आदमी को न्यायपालिका का काम दिया हुआ था। वह दोनों काम कर रहा था। फिर भी उसका दिमाग बहुत परेशान था। वह पाप नहीं करना चाहता था। वह आदमी अब रिटायर हो गया है, वर्ना कोई ताज्जुब नहीं कि सरकार अब भी उसको कुछ कहती।

सरकार ने कार्यपालिका को न्यायपालिका से अलग किया, लेकिन वह कार्यपालिका के मैजिस्ट्रेट बना रही है। बड़ा पाप उसने खत्म कर दिया, लेकिन छोटा पाप वह अब भी कर रही है। दफा 108 और 110 अब भी हैं। जानते हैं कि उसका क्या नतीजा निकलेगा ? जो गरीब आदमी चाहे बिना अपराध के ही जेल में चला गया, वह पुलिस की नजर में क्रिमिनल हो जाता है, उसका रजिस्टर कायम हो जाता है। जब भी पुलिस को कोई गवाही दिलवाने की जरूरत होती है, तो उस गरीब आदमी को बुलवाया जाता है। अगर वह झूठी गवाही नहीं देता है, तो वह मारा जाता है। ला एन्ड आर्डर रखने वाले मैजिस्ट्रेट के हाक में दफा 108 और 110 रखकर उसको न्यायपालिका के अधिकार दिये गये हैं। न्यायपालिका के उन अधिकारों की वजह से अमीर का कुछ बिगड़ने वाला नहीं है।

किसी अमीर का तो बैसे भी नहीं बिगड़ता है। लेकिन जो गरीब हैं, जो उसका शिकार है, वह तो बराबर उसका शिकार रहेगा और उसी तरह से उसकी स्थिति रहेगी। वह जिन्दगी भर के लिए क्रिमिनल बन जायेगा और फिर जो आपके राजनैतिक प्रतिद्वंद्वी हैं उनको किसको कहाँ तक माफ करेंगे ? शुक्लाजी से व्यक्तिगत रूप से मैं प्रभावित हो

[श्री महाराज सिंह भारती]

सकता हूँ। यह इत्मीनान कर कहता हूँ कि शायद यह अपने प्रतिद्वंद्वियों के साथ बुरा बर्ताव न करें। लेकिन जिन्दगी भर न शुक्ला जी की गारन्टी है, न चव्हाण साहब की गारन्टी है। यह तो राजनीति है, कबूतरखाना है, रोज यहाँ लोग आते हैं, राज जाते हैं। सरकारें बनती हैं, टूटती हैं। मिनिस्ट्रों के मुहकमे बदल जाते हैं। जरा सी बैंकिंग कम हो जाय तो उसी के अनुसार महकमे मिला करते हैं। तो इसकी कोई गारन्टी नहीं है। कानून इस तरह का होना चाहिए कि जिसका दुरुपयोग न हो सके। लेकिन इसको आप देखेंगे तो कार्यपालिका को जो थोड़ा सा न्यायपालिका का अधिकार दे रहे हैं उसका निश्चित रूप से दुरुपयोग होगा। यही मुझे आशंका प्रतीत होती है। वरना तो जुडिशियरी और एग्जीक्यूटिव के अलग करने का सब लोग स्वागत करेंगे और मैं भी स्वागत करता हूँ इसका। सिर्फ वहीं हमारी शंका है। इन शब्दों के साथ मैं इसका समर्थन करता हूँ।

श्री प्रेम चन्व बर्मा (हमीरपुर) : सभापति जी, मैं आपका धन्यवाद करता हूँ कि आपने मुझे थोड़ा सा समय दिया है। इस विधेयक का सम्बन्ध यूनियन टैरीटरीज से है और मैं भी हिमाचल प्रदेश जो कि यूनियन टैरीटरी है उससे आता हूँ। मैं इस विधेयक का स्वागत करता हूँ। जुडिशियरी और एग्जीक्यूटिव को अलग अलग करने का यह अच्छा प्रयत्न है। मैं समझता हूँ कि इसे पहले हो जाना चाहिए था। इसमें देरी हुई। लेकिन खैर, ठीक है, अब यह हो गया है।

इसका जहाँ मैं स्वागत करता हूँ वहाँ एक चिन्ता भी व्यक्त करता हूँ और वह यह है कि जब एग्जीक्यूटिव और जुडिशियरी इकट्ठी थी तो कई बार बेइंसाफियों का अजाला जो है वह सियासतदानों के जरिये हो जाता था। मैं इसको मूनासिब नहीं समझता हूँ, ठीक नहीं समझता हूँ। लेकिन हो जाता था। लेकिन अब पोजीशन यह होगी और मैंने देखा

है पंजाब में, मैं पंजाब में रहा हूँ जब पंजाब में यह अलग-अलग हुए थे, जुडिशियल मैजिस्ट्रेट जो बन जाते हैं, उनमें मैं यह नहीं कहता कि सब बुरे होते हैं, या सब बहुत अच्छे होते हैं, लेकिन कुछ लोग ऐसे भी होते हैं जिनको हम करप्शन से दूर नहीं कह सकते। वह उसमें रहते हैं। मैं आपके जरिए होम मिनिस्टर साहब से अर्ज करना चाहता हूँ कि अगर जुडिशियरी वाले करप्शन की तरफ बढ़ें और उनके फँसले उस रूप में होने लगे तो उमका कोई इलाज मुल्क के अन्दर नहीं है। ऐसे उदाहरण मेरे पास हैं कि अगर उनके खिलाफ शिकायत करते हैं तो कनट्रैट आफ कोर्ट बनता है, अगर उनके खिलाफ कोई आन्दोलन करते हैं तो बात बनती नहीं है, उनके खिलाफ मुकदमे दर्ज होते हैं, तो उस सिलसिले में जब ऐसी बात हो जायगी तो फिर हिन्दुस्तान ऐसा मुल्क है जिसमें कोई भी आदमी यह नहीं कह सकता है कि जिस आदमी को जुडिशियरी में लाएंगे, जुडिशियल जज बनाएंगे, या कोई और महकमा देंगे या इंसाफ के लिए बिठाएंगे वह ऐसा दूध से घोया हुआ होगा कि बिलकुल वह इंसाफ पर चलेगा, बिलकुल पैसे के लिए या किसी चीज के लिए भी वह इंसाफ से नहीं डिगेगा, यह हम नहीं कह सकते हैं। मैं आपके द्वारा होम मिनिस्टर से फिर कहना चाहूँगा कि जहाँ वह जुडिशियरी को अलग कर रहे हैं वहाँ इस बात का पूरा प्रयत्न करें और पूरी इस बात की शंका रखें अपने मन में कि वहाँ भी करप्शन हो सकता है और गरीब लोगों के साथ इंसाफ का खून वहाँ भी हो सकता है। इसलिए उसके लिए मैं उनसे अर्ज करूँगा कि कोई न कोई ऐसा तरीका ढूँढियार करें कि उनके खिलाफ जो शिकायतें हों वह सुनी जा सकें, उनके खिलाफ एन्व्वायरी हो सके, उन बातों की जांच हो सके। यह बहुत जरूरी चीज है जो कि जुडिशियरी को अलग करने में सोचनी होगी।

दूसरी बात मुझे यह अर्ज करनी है कि आज हिमाचल प्रदेश का हाई कोर्ट और दिल्ली का हाई कोर्ट एक है। मेरी माँग है कि

हिमाचल प्रदेश 22 हजार मुरब्बा मील का बहुत बड़ा प्रदेश है और उस 22 हजार मुरब्बा मील के प्रदेश में सर्किट बेंच वहां पर बैठती है, तो मेरी अर्ज इतनी ही है कि वहां पर पूरा हाई कोर्ट हिमाचल प्रदेश के लिए होना चाहिए। हिमाचल प्रदेश हाई कोर्ट बनना चाहिए। अब कभी दिल्ली में रहते हैं, कभी हिमाचल में रहते हैं, तो हमारे लिए यह बड़ा मुश्किल है। इसके साथ-साथ मैं अर्ज करना चाहता हूँ कि हिमाचल प्रदेश के दो इलाके हैं—एक कांगड़ा का इलाका 12 हजार मुरब्बा मील जिसका रकबा है और एक ओल्ड हिमाचल है। हम यह चाहते हैं और लोगों की बड़ी मांग इसके लिए है कि वहाँ पर एक सर्किट बेंच होनी चाहिए। साल में दो बार, तीन बार, चार बार जो भी हो लेकिन वहाँ के इलाके के लोगों को जोकि गरीब लोग हैं, फौजी लोग हैं उनको सस्ता न्याय मिले, इसपर भी वह विचार करेंगे।

इसके साथ मैं इस बात का भी स्वागत करता हूँ कि अगर हिमाचल प्रदेश का हाई कोर्ट और दिल्ली का हाई कोर्ट अलग-अलग हो जाता है तो दोनों प्रदेशों के लोगों को—जो वहाँ पर वकील हैं या छोटे जज हैं, उनको तरक्की करने का मौका मिलेगा। यह बहुत अच्छा साइन है कि जो पिछड़े हुए प्रदेश के लोग हैं उनको भी आगे आने का मौका मिलेगा। इसके अलावा मैं एक और बात अर्ज करना चाहूँगा और वह यह है कि जुबिशियरी में भर्ती के सिलसिले में और तरक्की के सिलसिले में जो बहुत से रूल्स और रेगुलेशन्स हैं, जो हाई कोर्ट के नीचे हैं सारे के सारे उन पर आपको दोबारा गौर करना होगा। यह मैं इसलिए इस सिलसिले में अर्ज करना चाहूँगा कि बहुत सी तरक्कियाँ, बहुत से एप्वाइंटमेंट्स सही तौर पर काम करने वालों को नहीं मिलते हैं। जो लोग इंसाफ करते हैं वास्तव में, उनसे नाराजगी पैदा होती है और वे किसी को खुश नहीं कर सकते हैं। इसलिए मेरी होम मिनिस्टर से अर्ज है कि एप्वाइंटमेंट्स जो हों,

जो प्रमोशंस हों, उनके बारे में इस तरीके से, इस ढंग से कोई इलाज किया जाये जिससे कि सही तौर पर जो काम करने वाले हैं, कौन्फिडेंशल रिपोर्ट जिनकी अच्छी है, मासेज के अंदर जिनकी रेप्यूटेशन हो—इन्साफ का मतलब यह नहीं है कि वह जो किताबों में देखें बल्कि असल क्या है और इंसाफ क्या है उसको देखें, इंसाफ के ऊपर जो आदमी चलता है, जो सही इंसाफ करता है उसके बारे में होम मिनिस्ट्री को अपने तौर पर या हाई कोर्ट को अपने तौर पर जिस तरह से भी हो सके, यह मैं नहीं कह सकता किस तरह से हो सकता है, लेकिन जैसे भी हो यह बात जरूर होनी चाहिये कि वह लोग जो किसी बात में घबराएँ नहीं, किसी बात से डरें नहीं, करप्शन नहीं करें, पैसे के लालच में या किसी तरीके से भी वह अपने इंसाफ को न छोड़ें, इंसाफ करें, उन की तरक्की के अंदर किसी तरह की रुकावट नहीं होनी चाहिए। मुझे इतना ही कहना था। यह कहते हुए मैं फिर इस विषयक का स्वागत करता हूँ और समझता हूँ कि यूनियन टेरिटोरिज के लिए होम मिनिस्टर बहुत अच्छा विषयक लाये हैं जिससे हम लोगों को सही तौर पर इंसाफ मिलेगा। इन शब्दों के साथ मैं आपका फिर धन्यवाद करता हूँ।

SHRI K. NARAYANA RAO (Bobbili):
So far as the principle underlying this Bill is concerned, there is no dispute in this House. But, as regards the extent of the powers that are to be given to the executive magistrates, that has remained a bone of contention. The hon. Minister has stated the reasons why the powers have to be given to the executive magistrates. Equally strongly, Shri Srinibas Misra and Shri Bhandare suggested why it should not be done. To my mind, the truth lies somewhere in between.

The nature of the powers that have been given to the executive under this provision imply the appreciation of evidence, assessment of evidence, arriving at broad conclusions as well as an element of, what I could call, punitive measures. So far as the judicial functions are concerned, they are largely preventive in character—preventing a

nuisance, prevention of dissemination of seditious matter and so on. The authority has to take a decision then and there to prevent further deterioration of the situation. So, there is an element of urgency and also an element of judicial test. Such being the case, I do not know whether we have to trust the judiciary alone or we can give this power to the executive also. To my mind, we cannot give this power to the executive, as it is at present constituted. We have to carve out a new functional executive, slowly giving them the responsibility of assessing evidence and arriving at broad decisions, preventing people from doing certain things. Sir, we know pretty well the nature of the present executive. They discharge their functions, as part and parcel of the other executive functions, whereas the nature of the qualification and training required of an executive magistrate are totally different. Therefore, much can be said on both sides.

As the hon. Minister has said, this practice is not going to be confined only to particular areas. For instance, in Andhra Pradesh executive magistrates have been given functions like that. So, we have to consider the larger issue. I understand that there is going to be revision of the entire Code of Criminal Procedure. In that context, we may perhaps discuss it on a larger plane, when the States may be associated with it and we can also elicit public opinion on it and then arrive at broad conclusions.

SHRI P. RAMAMURTI (Madurai): Mr. Chairman, Sir, we have all been victims of preventive provisions of the Criminal Procedure Code. Those people, perhaps, some of them, may not be aware of them because in the Congress Party we find many new entrants who never have had the taste of proceedings under these Sections 107 to 110 of the Criminal Procedure Code.

I know it, as a matter of fact, that in many States, including Andhra to which he was referring, there are a number of cases and I know there are a number of cases in Telengana—I had a discussion with Mr. Brahmananda Reddy about four months ago; I do not want to divulge that—and I know there are cases in a number of States. The Chief Ministers find it very convenient to use these preventive Sections of the Criminal Procedure Code. They get executive officers to start proceedings against

political opponents and political workers. I know in Andhra alone nearly about 200 cases under these Sections of the Criminal Procedure Code have been started against members of our party during the last few years and the cases are never disposed of. I know similar things happening in some Union Territories also and I know similar things happening in a number of other States wherever the Congress Party is in power...

AN HON. MEMBER: What about States where Opposition is in power?

SHRI P. RAMAMURTI: We have not started that; we have said, we are not going to use that.

SHRI SRINIBAS MISRA: It is being used in Orissa.

SHRI P. RAMAMURTI: Orissa is a different matter. We have never used in Kerala and in West Bengal.

SHRI M. A. KHAN (Kasganj): Uttar Pradesh also.

SHRI P. RAMAMURTI: We are not there; I am not responsible for that. By whoever it might be, the fact is that it is being utilised against political workers or parties which are opposed to the party in power. That is the major question. It is very convenient for the Chief Ministers when this matter is entrusted to executive magistrates because they are, after all, under the disciplinary control of the executive itself. It is very easy for the Chief Ministers, for the Ministry, to start such proceedings and harass political workers and parties which are opposed to them. If the matter is entrusted to really judicial magistrates who will exercise judicial discretion and who, normally, will not be subject to the pressures from the executive, there is some likelihood of these people realising that it will be futile to start such proceedings and, if in spite of that they go on starting proceedings, there will be some other remedy. Therefore, I say, if you really want to separate judiciary from the executive, don't have this Bill. Don't try to deceive the people. All that I am pleading is, if you want to continue the present practice, you continue that but don't try to deceive

the people saying, "We have separated judiciary from the executive" and all that. Why have this farce? If you are really serious, you agree to put all these Sections 107 to 110 and Section 145 of the Criminal Procedure Code, all these things also, in the Schedule which fall under the judicial magistrate.

THE MINISTER OF STATE IN THE MINISTRY OF HOME AFFAIRS (SHRI VIDYA CHARAN SHUKLA): Mr. Chairman, Sir, many hon. Members, while speaking on the Bill, have referred to their local difficulties. Mr. Meghachandra from Manipur and Mr. Hem Raj and Mr. Prem Chand Varma from Himachal Pradesh have mentioned their local problems. These local problems could be considered in a different way and they would be, I am sure, considered in consultation with the hon. Members and could be solved. Here, I wish to limit myself with the main points that have been raised by the hon. Members.

I am very happy that this Bill has found unanimous support amongst the Members except that there was some difference of opinion about which powers are really judicial in nature and which are executive in nature. Regarding this particular question, I would say that Sections 107 to 110 and other Sections that have been quoted by the hon. Members, Mr. Srinibas Misra, Mr. Bhandare and Mr. Ramamurti are really the preventive sections of the Criminal Procedure Code.

I would not say that any executive power cannot be misused. Any executive power, whether it is under this section or some other sections, can be misused. But the prevention of misuse cannot be done at the courts. If the executive powers are misused, there are forums like Parliament, Vidhan Sabha and other places where any abuse of the executive powers can be brought forward and can be prevented by bringing public pressure, the pressure of public opinion and other things. But if the executive powers, which are really preventive powers, are handed over to judicial magistrates or judicial body, then it would be difficult to even conceive of running the administration in a proper manner. I would request Mr. Ramamurti to consult his own party members who are running two State Governments.

SHRI P. RAMAMURTI: I am sure.

SHRI VIDYA CHARAN SHUKLA: I am not absolutely sure of the present position.

SHRI P. RAMAMURTI: I am sure.

SHAI VIDYA CHARAN SHUKLA: But I would say that if judiciary has been separated from executive in West Bengal and Kerala, I am quite sure that these sections of the Criminal Procedure Code have been entrusted to the executive magistrates and they have not changed the situation so far. And they would be using it from time to time for their executive purposes. What I am saying is that these powers are mainly relatable to maintenance of law and order and for prevention of crime and other unhealthy activities. These are preventive. Even in the Criminal Procedure Code, the heading is 'Prevention of Offences. It is not as if these are clauses which enable the officers to determine who is the offender or to determine who has committed the offence...

SHRI P. RAMAMURTI: That is a much worse. Instead of deciding that so and so is a criminal, it will be much worse if I were to say that I am convinced that so and so is likely to be the criminal.

SHRI VIDYA CHARAN SHUKLA: This is a decision which has to be taken continuously by the executive officer—who is likely to cause a breach of peace. Suppose there is some dispute about property or trespass and immediately some action has to be taken. If it is entrusted to the judicial magistrate or if the judicial process has to be followed, then it will take so much of time that in the meanwhile there will have been breach of peace because of that dispute. I have carefully considered these. It is not that I am just out of hand rejecting all these things. As I have mentioned earlier, in the Joint Committee a so there was discussion about these clauses because these amendments which were moved by Shri Misra were moved even before the motion referring it to the Joint Committee was moved. And the Joint Committee, which consisted of the representatives of almost all parties, did go carefully into this matter and ultimately came to the conclusion that it would be safe, it would be better, to leave

[Shri Vidya Charan Shukla]

these powers in the hands of executive magistrates rather than in the hands of judicial magistrates. I would not say that Mr. Misra has no case. Definitely he has a case in this matter. But if you balance the factors, it appears that it would be more beneficial from the point of view of public interest to have these powers in the hands of public servants who are doing the executive functions rather than in the hands of those who are doing judicial functions. If these powers are given in the hands of judicial magistrates, there might be some disturbances and delays in handling law and order matters which might affect public interest in an adverse manner. Looking to the exigencies of administration and the situation prevailing, I think, it will be in public interest to keep these powers in the hands of executive magistrates rather than in the hands of judicial magistrates.

Therefore, I would request the hon. Member to withdraw his objections and let the Bill, which has received his support of all sections of the House, to be passed unanimously.

SHRI SRINIBAS MISRA: Is he giving an assurance that he is thinking of dividing this section, and so far as preventive action, which is required to be taken at once, will be taken by the executive, but the decision part will go to the judiciary? (*Interruption*) After the trial, the judgment of the judiciary should prevail. Is he giving any such assurance?

SHRI VIDYA CHARAN SHUKLA: We will consider it.

MR. CHAIRMAN: Mr. Shiva Chandra Jha, are you withdrawing your amendment?

श्री शिव चन्द्र झा : मैं यह कहना चाहता हूँ कि मुझे या तो आप इसी समय बोलने दें या फिर थर्ड रीडिंग के समय बोलने दें ।

MR. CHAIRMAN: The question is:

"That the Bill be circulated for the purpose of eliciting opinion thereon by the 16th August, 1969." (15)

The motion was negatived.

MR. CHAIRMAN: Now, the question is:

"That the Bill to provide for the separation of judicial and executive functions in Union territories, as reported by the Joint Committee, be taken into consideration."

The motion was adopted.

We will now proceed with clause by clause consideration.

Clauses 2 to 9

MR. CHAIRMAN: There are no amendments to these clauses. So the question is:

"That clauses 2 to 9 stand part of the Bill."

The motion was adopted.

Clauses 2 to 9 were added to the Bill.

The Schedule

MR. CHAIRMAN: Now there are two Government amendments, Amendments 3 and 4.

SHRI VIDYA CHARAN SHUKLA: I beg to move:

Page 5, line 16,—

for "1968" substitute—
"1969". (3)

Page 7, line 10,—

for "1968" substitute—
"1969". (4)

SHRI SRINIBAS MISRA: In view of the assurance given by the Minister that he will consider the question of separation of executive and judicial part of Sections 107 to 110 and 133 and 145 in future, I am not pressing those amendments.

MR. CHAIRMAN: Mr. O. P. Tyagi has not moved his amendments.

MR. CHAIRMAN: I shall now put Government's amendments 3 and 4 to the vote of the House. The question is:

Page 5, line 16,—

for "1968" substitute—
 "1969". (3)

Page 7, line 10,—

for "1968" substitute—
 "1969". (4)

The motion was adopted.

MR. CHAIRMAN: Now the question is:

"That the Schedule, as amended, stand part of the Bill."

The motion was adopted.

The Schedule, as amended, was added to the Bill.

Clause 1—(Short title, extent and Commencement.)

Amendment made:

Page 1, line 4,—

for "1968" substitute "1969" (2)

(Shri Vidya Charan Shukla)

MR. CHAIRMAN: The question is:

"That clause 1, as amended, stand part of the Bill."

The motion was adopted.

Clause 1, as amended, was added to the Bill.

Enacting Formula

MR. CHAIRMAN: There is a Government amendment.

Amendment made:

Page 1, line 1,—

for "Nineteenth" substitute—
 "Twentieth" (1)

(Shri Vidya Charan Shukla)

MR. CHAIRMAN: The question is:

"That the enacting formula, as amended, stand part of the Bill."

The motion was adopted.

The Enacting Formula, as amended, was added to the Bill.

The title was added to the Bill.

SHRI VIDYA CHARAN SHUKLA: I move that the Bill, as amended, be passed.

MR. CHAIRMAN: Motion moved:

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

श्री शिव चन्द्र झा (मधुवनी) : महोदय, मैं इस विधेयक का मोटे तौर पर समर्थन करता हूँ। यह बात सही है कि जो इन्साफ करने वाला है वही जब ऐगजीक्यूटिव का भी अधिकारी हो जाता है तो सही रूप में इन्साफ नहीं हो पाता है। इसमें ज्यादा मतभेद नहीं हो सकता। लेकिन जो बात मैं आपके सामने रखना चाहता हूँ वह यह है कि जब आप यूनिवर्सिटी टैरिटरिज में यह कदम उठाने जा रहे हैं तो क्या आप ऐसा भी सोच सकते हैं कि संविधान में परिवर्तन लायें जिसके अनुसार जो हमारे लोग जजेज हों, डिस्ट्रिक्ट जजेज हों, वे इलेक्टेड हों? जज का चुना जाना यह एक आश्चर्य की बात है। लेकिन मैं समाजवादी और साम्यवादी देशों की बात नहीं करता जहाँ कि कोशिशें हुई हैं डेमोक्रेटाइज करने की। मैं पूंजीवादी देशों की बात कर रहा हूँ। दुनिया में ऐसे भी राज्य हैं जहाँ पर चुने हुए जजेज होते हैं। आपको पता है कि कैलीफोर्निया में सर्किट कोर्ट के जजेज इलेक्टेड होते हैं। दिलीप सिंह, जो सीनेट के मेम्बर थे, वह सर्किट कोर्ट के जज चुने गये जनता द्वारा। तो यह तरीका जनतन्त्र के आदर्श के लिए एक अच्छी बात है। मैं चाहता हूँ जहाँ तक हो सके हमारे रिप्रजेन्टेटिव, जजेज चुने जायें। इसलिए संविधान में संशोधन करके क्या आप

[श्री शिव चंद्र भा]

ऐसा सोच रहे हैं कि जजेज चुने जायें, जुडिशियरी इलेक्टेड हो अपने देश की परिस्थितियों के मुताबिक ?

मैं मानता हूँ कि अमरीका के पुराने इतिहास में जायें तो हो सकता है कि वहाँ कुछ ऐसी परिस्थितियाँ रही हों। लेकिन वैसे भी जज का चुना जाना जनतन्त्र के आदर्श के मुताबिक मालूम होता है। इसलिए यूनियन टैरीटरीज में जब जुडिशियरी और एग्जीक्यूटिव को अलग करने जा रहे हैं तो यह अच्छी बात होती कि सरकार इस बात पर गौर करती कि जुडिशियरी के जो आदमी हैं वह चुने जायें। इस तरह का रास्ता यदि सरकार अपनाती तो सोने में सुगन्ध की बात हो जाती।

MR. CHAIRMAN: Now, the question is:

"That the Bill be passed."

The motion was adopted.

MR. CHAIRMAN: We pass on to the next item—Companies (Amendment) Bill. The hon. Minister.

16.39 hrs.

COMPANIES (AMENDMENT) BILL

THE MINISTER OF INDUSTRIAL DEVELOPMENT, INTERNAL TRADE AND COMPANY AFFAIRS (SHRI F.A. AHMED): Sir, I beg to move:

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

I would like to remind the House that some time in 1967 when a Private Member's Bill was introduced by the hon. Member (Shri Madhu Limaye) I had given an assurance to the House in December, 1967, that I would introduce a Bill to serve the same purpose which the hon. Member had in view, that is, to bar donations by companies to political parties and individuals for

political and elections purpose. The Bill, which is now before this House, fulfills the assurance given by me.

In this Bill, as the hon. Member might have noticed, there are provisions which will make it impossible for a company to make any contribution to political parties. Under existing provisions, a company can give a donation to the extent of Rs. 25,000 or 5% of the average profit of 3 years preceding the year when the donation is made.

This Bill seeks to do away with this right of the company and even of the Board of Directors to give any donations to political parties particularly for election purposes.

It also provides that any one found guilty, for violating this provision, can be punished upto a term of 3 years.

These are the two main provisions which have been made and which will serve the purpose of prohibiting companies from giving donations to political parties either for political purposes or for election purposes.

I need not refer to the reasons regarding this prohibition because this matter has been discussed both outside and also in this House on several occasions. In fact, even before Shri Madhu Limaye introduced this Bill in the present Lok Sabha, many members in the earlier Lok Sabha had also tried to introduce a Bill seeking the authority of this House to ban contributions to political parties. But for one reason or other, these could not be pursued by this House and it became necessary for Shri Madhu Limaye to introduce the Private Member's Bill. When that Bill was discussed I gave the assurance to introduce a bill on behalf of the Government and I am fulfilling that assurance now.

Not much argument is required to support these provisions and I hope that the House will unanimously support the move of the Government. This, I think, will be in the interest of the country and will help in clean public behaviour. All kinds of suspicions and doubts are now raised. I think the ban to give donations to political parties will remove such doubts and it will be better both for the Government benches