

12.19½ hrs.

*DEMANDS FOR GRANTS—contd.
MINISTRY OF LAW—contd.

Mr. Speaker: The House will now take up further discussion and voting on the Demands for Grants under the control of the Ministry of Law.

Shri S. M. Banerjee may now continue his speech.

Shri S. M. Banerjee (Kanpur): Yesterday, I was speaking on the question of the separation of the judiciary from the executive, and I had given certain instances to show how the magistracy was handicapped because their confidential reports were written by the additional district magistrates. I would like to know from the hon. Minister what concrete steps have been taken to see that this particular scheme which has been hailed by all sections of this House and also outside is implemented in all the States in all seriousness and speed.

Then Dr. Ram Manohar Lohia said something about the condition in courts. I would like to invite the attention of the Law Minister to the corruption that is rampant in lower courts. I do not impute any motive to the judges or the judiciary. But the way in which the staff of the courts function, it is impossible for anyone to go and get justice. Even for adjournment to a particular date, he has to pay something to some clerk or to some peon or to somebody else. This has earned a bad name. It is called in UP बाजल की कोठरी. Naturally you can imagine the amount of frustration caused to a common man who has nothing to pay who is denied justice only for this reason.

An hon. Member: This relates to the Home Ministry.

Shri S. M. Banerjee: The Cabinet functions on the basis of collective

responsibility. This could very well be passed on to the Home Minister.

Mr. Speaker: We are dealing with the Demands of a particular Ministry. Replies can be given only to those points pertaining to that Ministry.

Shri S. M. Banerjee: All right.

I come to the question of simplification of election law. Shri Daji and other Members have stated how election in this country has become expensive. It is very difficult for representatives of the people to contest elections unless they have the resources. The return may be filed for Rs. 11,000, Rs. 12,000 or Rs. 13,000. But what is the actual position? In some elections, people have to spend, and have spent, Rs. 2, 3 lakhs. So naturally they have to take money from big business houses and big capitalists. with the result that when elected to the House of the People, they have to translate the policies of those tycoons into action. They are almost gagged. They cannot say the truth. There are subtle ways in which it is done. In that way, it will be a mockery of democracy in this country, if democracy can thrive in this country only on this basis that those elected have to act according to those who want a certain policy to be sabotaged or changed at their instance.

What is happening in the country during the elections? I would request that either the Chief Election Commissioner or, better still, the hon. Law Minister, should call a conference of political parties and progressive Independents and find out some ways to reduce election expenses. Otherwise, democracy will be so expensive in this country that those people who have no money but have a good heart which bleeds for the common people will not be able to contest elections. So I request the hon. Minister to do something in this regard.

* Moved with recommendation of the President.

[Shri S. M. Banerjee]

Another point was referred to here. We were discussing the implementation or application of the Defence of India Rules and they the way in which some members have been arrested. When the whole question was referred to the Supreme Court, I remember—though it was in a minority judgment—even some of the hon. Judges of the Court termed this to be a lawless law. I am told because there was a question of paying damages if they are released or if it was declared *ultra vires* or if some lacuna was found, the Law Ministry is trying to bring in an amendment to the Constitution. After all, the Constitution has a sanctity. We all swear by it. In our country, the Constitution is sovereign, not this House even. When this House itself is a creature of the Constitution, can we possibly amend it only to suit the convenience of the ruling party? What is the idea behind it? Simply some people have been, according to me, indiscriminately or illegally detained, to cover up their mistakes or the lawless law, they want to amend the Constitution. It will be most unfortunate if this is done.

Mr. Speaker: The law is made by this Parliament itself. No Member should call it a lawless law.

Shri S. M. Banerjee: I am not calling it, it was called by the High Court Judges.

Mr. Speaker: Lawless law?

Shri S. M. Banerjee: I speak subject to correction, but it was described so.

Mr. Speaker: The Judges of the High Court or the Supreme Court would not call a law a lawless law.

Shri S. M. Banerjee: They say it is *ultra vires*, illegal.

Mr. Speaker: *Ultra vires* it is their job to say. It is only here, inside this

House. that the Members have this privilege of calling a law lawless law.

Shri S. M. Banerjee: I am only saying what the common people say about it, because I represent the common people.

If the Constitution is amended cover it up, I will definitely feel that it is a mockery of democracy.

Yesterday, we mentioned something about the constitutional crisis in U.P. I am not going into the merits of the case. I am simply reading out certain things which have come out in the newspapers, which I am entitled to read where the Centre has been brought in. It says:

"Plea to seek President's Intervention. Move Fails in U.P. Assembly.

"An unsuccessful move was made today in the Vidhan Sabha to persuade the House to seek the President's intervention in the dispute between the legislature and the judiciary.

"The move was made by Mr. Sharda Bhakt Singh (JS) and had the support of Mr. Charan Singh, Agriculture Minister."

You can imagine how deep it has gone. Here is an Opposition Member, belonging to the Jana Sangh, moving a resolution that the President should be requested to intervene in the matter to end this constitutional crisis.

Shri Sinhasan Singh (Gorakhpur): On a point of order. Any proceeding of the Assembly cannot be discussed here in one form or another.

श्री राम सेवक यादव (बारांकी) :
यह घटनाओं का वर्णन हो रहा है। कोई
कमेंट नहीं किया जा रहा है।

Mr. Speaker: We are not discussing whether it is good or bad. It is only a fact he is mentioning.

Shri S. M. Banerjee: I am only reading from the newspaper, I can show it to him. I am not commenting. It has mentioned the President. The President is not the monopoly of the U.P. Government. He is Rashtrapati for all. The question is whether Central intervention is necessary. Here is a State Minister who supported that resolution of a Jana Sangh leader. Generally, the Congress does not see eye to eye with the Jana Sangh, but there was something in the resolution which was supported by Shri Charan Singh, the Minister of Agriculture in U.P.

It has also come out in the newspapers that our Minister without Portfolio, Shri Lal Bahadur Shastri, conferred with the Attorney-General, Shri Viswanathan, the Secretary of the Home Minister, and the Law Minister. I would like to know what the decision is, whether the Centre is going to intervene or not to end this constitutional crisis in U.P.

I represent U.P. I come from a place called Kanpur. If this fight goes on between the judiciary and the legislature, between the house of justice and the house of the people, I do not know what is going to happen to the people. Let the people of U.P. not be crushed or sandwiched in this fight between the judiciary and the people's representatives. It will be wrong. Let us remember, let the U.P. Government and the U.P. Assembly Members also remember, that the Constitution is supreme. The country, the Constitution and the poll—these are the three bases on which we stand. The country comes first, then the Constitution was framed, and the framers of the Constitution envisaged that after all democracy should function in the country. And you, as the custodian of democracy, have very correctly said that there is a constitutional crisis. The crisis has to be solved. It does not

matter if the U.P. Assembly or Government do not like it, there should be Central intervention.

Dr. M. S. Aney (Nagpur): Sir, I have tabled three cut motions in my name: one for the need to appoint enquiry committee on Mohamedan Law, second, to point out the need for expeditious disposal of election disputes and third, to point out the need to accelerate the work of Law Commission by publication of translation of laws in Hindi and in regional languages.

The hon. Members of the House know that a Law Commission was appointed and one of its recommendations was that there were matters with regard to Hindu Law and Muslim Law which required to be enquired into. Consequent upon this recommendation there was the Hindu Religious Endowment Commission's report and certain laws have been brought forward. In the last year's Budget there was a provision of Rs. 1,59,600 to constitute an enquiry committee on Muslim Law but in the revised estimates or this year's budget estimates, there is absolutely no such provision. I want to know whether this enquiry is going to be abandoned altogether and if so, what are the reasons. Have they abandoned on account of this Emergency? I do not know the reasons. Having read about Mohamaden Law a little bit, I feel that it is a very complicated thing and every effort should be made to rationalise it and introduce certain progressive rules in its interpretation as they have done in the case of Hindu religious endowments. I want to know from the hon. Minister whether this matter is kept in suspense as a matter of economy on account of Emergency. What is the reason, I do not know. There is the general reluctance of introducing common social legislation applicable to Hindus and Muslims alike. Care is taken to see that the laws about Hindus will not apply to Muslims. One of the real things that needs to be done for closer integration is to try

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and extend the scope of common legislation as far as possible. From that point of view also, my point is important.

My second point is about expeditious disposal of election disputes. Many hon. Members who have preceded me have spoken about this. If for half the period of this Parliament, election petitions could not be disposed of, it does not speak very well. Some measure should be devised by the hon. Law Minister in consultation with the Law Commission to remedy this situation. If election disputes are kept hanging for the whole period of the life of a Parliament, they become simply a source of harassment, unnecessary waste of time and extravagant expenditure.

I now come to my last point. The Law Commission are doing very good work by taking up the work of translating the important laws in Hindi. Laws which are frequently used in courts should be taken up first and translated in Hindi and other regional languages also as the States are permitted to make use of their vernaculars in the courts and in schools also. If this work is simultaneously done, it can be done expeditiously and the solution of the question of the national language will also be thereby considerably facilitated; it will create friendliness and avoid bitterness among people. The main thing should be to see that these languages are properly developed. This is one of the essential things which the Law Commission have to do. The Constitution lays down that Hindi shall be the national language but it also casts a duty to make that language a fit vehicle for expression of further development of progressive thought. From that point of view also, if the translation of these big and important laws in Hindi and regional languages is taken up, I feel a very important step would have been taken so that by the time in 1965 we shall be able to show some real progress in Hindi

and other languages. People will not be so hopeless as Hindi language will find its proper place.

I have not moved these cut motions Law Commission are doing very good work by taking up the work of translating them to the notice of the hon. Minister. There is one more point. Many hon. Members referred to the importance of the rule of law in a democracy. There should be due regard for the rule of law. Nobody could take exception to that statement. This House makes the laws and rules. If the hon. Members of this House will show proper regard to the procedures, rules and laws which guide hon. Members in making laws of the nation, then I am sure we will set a better example to the whole of India. People fight outside among themselves. That is not the rule of law. Similarly, when legislation is being discussed in this House, there is no quorum; the bell is rung not once or twice but even thrice or more time in a day. Legislatures make laws so that people may obey them in the whole country. If they themselves, the legislators, show scant regard for the laws, it is not possible to get proper response from the people to the appeal to observe rule of law by which we want the democracy in this country to be firm and strong. From this point of view my request is not so much to the Law Minister but to the whole body of Members of Parliament whose responsibility it is to keep quorum. That is the constitutional responsibility to which everyone has taken a pledge. The Members on the Government benches should not always point out to the Members of the Opposition whenever there is a question of the quorum. They should see that there is quorum. It is the duty of the Government, and the Government is the Government of India, whether we like it or not. We have all to see that the work of the Government is properly done and Parliament work is properly carried

on. Therefore, my earnest request is that there should be some arrangement among themselves to see that there should not be any necessity for the Speaker to adjourn the House for want of quorum.

The Minister of Law (Shri A. K. Sen): Mr. Speaker, Sir, I am deeply obliged to all hon. Members who have taken part in the debate, from different sections of the House and have taken pains to throw valuable and helpful light on the urgent problems relating to the entire legal system of the country. I do not mind, if in doing so, they have forgotten on occasion the strict limits set down for the Ministry of Law. Many of the matters to which reference has been made do not really appertain to our Ministry at all, for instance, labour courts, the separation of the executive from the judiciary which is a matter for the Home Ministry, and various other matters which I shall mention while I deal with the points one by one.

But certain fundamental questions that have been raised, whether they appertain strictly to the Ministry of Law or not, have to be answered on behalf of the Government. The most important thing on which stress has been laid, and if I may say so, rightly laid, by various Members including Dr. Aney and Shri Nath Pai and others, is the question of the rule of law.

Shri Hari Vishnu Kamath (Hoshangabad): Shri Nath Pai did not participate in this debate.

Shri A. K. Sen: I am sorry. It was Shri Daji, I am obliged to Shri Kamath for correcting me, which he frequently does.

Shri Hari Vishnu Kamath: In your own interest.

Shri A. K. Sen: For mutual interests, if I may say so. On the question of rule of law, I think I am at one, and the whole House is at one in our eagerness to maintain what we call

the rule of law, though our ideas about what is the rule of law are not always constant and are not always the same. For instance Shri Daji said that in maintaining the rule of law the courts have to observe the social concept. Speaking as a lawyer, it is difficult for me to subscribe to that very dangerous doctrine. If courts have to interpret law according to what is called the social concept, then there will be an end to the rule of law. That is my own concept of the rule of law. The courts have no concept of law except what is written in the law. They have only to unfold the written words of the law for the good of the public. That is their function. It is not the function of the courts, as we have learnt, to interpret the law outside the words used and to introduce any concept, whether it appeals to them or to others.

Shri P. K. Deo (Kalahandi): I do not want to interrupt the hon. Law Minister, but I would like to draw the attention of the hon. Law Minister to a statement of the Chief Justice of the Supreme Court to the effect that individual liberty has to be curtailed and fundamental rights have to be curtailed for the sake of social justice which is quite undefined in the Constitution.

Shri A. K. Sen: I have read that speech myself in the papers, I do not think the learned Chief Justice ever laid down the rule that in interpreting the law they have to deviate from the written words of the law. What he said is that in formulating our laws we have to take account of the requirements of social justice. There, we are at one. In fact, he was only speaking from what the Constitution has prescribed for us, namely, the directive principles of the Constitution: that our law-making must be underlined always with the necessity of bringing about social justice, but that is a different matter. The courts, in interpreting law and applying the law, only know of one thing: and that

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is, to apply and to explain and to interpret the law as expressed by the words employed by the legislature. That is their only function.

Shri Daji, in saying that they must apply the social concept, was, in my submission, really doing something completely violative of the requirements of the rule of law. If he did so, what is social concept for him may not be the same for some other party and may not be the same for others, and social concept varies from Judge to judge, so that we shall be thrown back to the olden days when the law of equity was determined by the length of the Chancellor's foot. Therefore, through centuries of experience which has served us well and served other countries well, we have accepted this principle, the principle which runs as a golden thread throughout the web of our Constitutional and legal fabric, and that is, that the judge only applies the law as it is expressed by the law-making authority in a democracy, by the Parliament and the legislatures. And when the judges forget to do that, they land themselves in difficulties.

I had occasion to comment upon it on a previous occasion, when we were amending the Constitution, making it clear that the President has the power to determine, in case of dispute, the age of retirement of a judge of a high court, instead of leaving it to the vagaries of the courts of law to be decided by an individual application or suit. When some judgments were read on the floor of the House in which it appeared that the Bill, as it was then discussed in the Select Committee itself, was discussed by the learned judges,—I did not want to say whether they were right or wrong,—but I did say that it was not proper for courts to discuss the merits of a law, of a Bill, which is under consideration of the Select Committee; because as it is well known, it is one of the privileges of Parliament that when a matter is before the Select

Committee, the discussion on the merits outside must never be allowed. This principle is based on sound common sense; as we do not discuss the merits of a matter which is *sub judice* in a court of law so as to enable the judge to bear a dispassionate mind on the issues involved, so also, in order to allow and enable the Members of the Select Committee to bring to bear a dispassionate and objective judgment on the issues involved in the pending Bill, discussion on the merits are not allowed, and that discussion which is not allowed to the common men cannot also be allowed to the courts or to others.

There were criticisms in some quarters, and I think one or two Bar Associations passed resolutions saying that my remarks were unfortunate when I said that some judges took a long view of their role, meaning a stretched view of their role. Fortunately, when the matter went up to the Supreme Court, the Supreme Court themselves said that it was not proper for the judges to have discussed the merits of a Bill then pending before the Select Committee. I think Shri Banerjee, or one of his colleagues possibly, read out extracts from that judgment on that occasion. I am very glad to say that the Supreme Court laid down a very sound principle. If that principle is followed in a Constitution which divides authority between different organs of Government as ours, where the supreme authority is vested not in one body but in different organs like the legislature, the executive and the judiciary, we call it a system of limited Government; that means, a Government limited by the constitutional framework, so that no organ can over-step the limits set for it by the Constitution itself. If one tries to do so and to encroach upon the domain of the other, conflict is bound to result. It is, therefore, of the utmost importance that these organs keep to their own

spheres and do not seek to encroach upon others' domains, which are reserved for others. If they do, then the highest court entrusted with the task of maintaining the limits of constitutional government will prescribe again the limits which may never be transgressed. This is the principle of law, of constitutional propriety and constitutional prescription.

I say this because, while referring to the problem of rule of law, the unfortunate incidents, which we all regret, in a neighbouring State, had been referred to by more than one speaker, I think including the last, Dr. Aney. As I said yesterday, we need not go into the merits of that question. That would not be proper, because we do not know how and when and in what manner that unfortunate conflict is going to be resolved. But that conflict highlights one important constitutional problem, which I had been referring to and that is that all organs of the Government, including the judiciary, must never try to work or function in such a manner that they encroach, even though they may not do it deliberately, upon the field reserved for somebody else. It is only by this exercise of this caution and restraint by Parliament, by our courts and by the Government that we shall all succeed in preserving the delicate balance, which must necessarily be preserved in working a limited Government, which maintains that authority is not to be centred in one hand only, but has to be divided into several hands. The moment the authority is divided, balance has to be struck and maintained. That balance is always disturbed when those who hold the balance fail to exercise the necessary caution or restraint. This I address not merely to ourselves, because we are jealous of our paramount right within our own sphere—the supremacy of Parliament in its own sphere—but I also address it humbly, if I may say so, through you to our Judges, to our courts, who have to discharge this most important

and sacred task of maintaining our Constitution, and seeing that justice is done between man and man, and that no man is deprived of his right without proper authority and that no authority is interfered in the exercise of its lawful functions. Therefore, I hope that though this incident in our neighbouring State has been rather unfortunate, it will possibly make us all more cautious and more restrained in the use of our undoubted rights and powers.

Shri S. M. Banerjee: What is the advice of the Attorney General, to whom the matter was referred?

Shri A. K. Sen: The advice no doubt, when it comes and when Government acts on such advice, whatever may be the decision, will be communicated to the House at the earliest possible opportunity and the hon. Member need not at all be worried about the fact that the Government will not communicate its decision to the House.

Shri S. M. Banerjee: The whole State is on fire.

Shri A. K. Sen: If there is fire, one does not put it down just by words, but by proper methods. This is all I have to say about the rule of law. While I say so, I am extremely proud again to say that our judicial system, our system of law, our courts, our judges and those who maintain the courts, have set a tradition of which all of us are proud, and in comparison with other judicial systems of the world, we have nothing to be ashamed of. More than once, people learned in law, well-versed in the affairs of courts in other courts, have come here and admired the way in which our courts function fearlessly and independently, have admired the way in which our laws are framed within the limits of law—when I say law, I mean the limits of constitutional law—and the marvellous way in which they dispense justice, and how even the highest in the Government obey

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the dictates of law, without trying to subvert the system.

The difficulties that have occurred, particularly the difficulties relating to expedition and the cost involved in litigation, are no doubt difficulties which we have to take note of and to surmount. But nevertheless, they do not make the system which is essentially a sound one any the worse. With regard to those difficulties, I shall certainly try to say what I have to say, though the matter does not rest with the Central Government entirely, because as hon. Members will see, administration of Justice is an exclusively State subject under the Constitution—it is Item 3 in List II. Therefore, all that we can do is to render such assistance as we are capable of and to put into action a common programme for all the States relating to administration of justice by consultation and coordination of activities, as we try to do from time to time by periodical meetings of Law Ministers.

Let me first deal with these two matters, namely, the cost involved in our litigation and secondly the delay involved. Compared to other countries, the cost possibly would not be too great, but compared to the purchasing power of the income of our common man, the costs, I have no hesitation in saying, are undoubtedly heavy for the common man. The system is such, the charging of fees by lawyers is such—and the absence of a system of free legal aid to the poor makes it much worse—that the common man frequently goes back, as has been rightly said by one of the hon. Members, from the portals of justice empty-handed. There can be no more severe condemnation of a system of justice than that a poor man has to go back without getting the fruits of justice simply because he has no money to pay for justice. In other countries where litigation is very expensive, like England, where you have the dual system of attorneys and barristers and it is much more expensive

than in this country, this great evil has been remedied by the formulation and by the functioning of an admirable system of legal aid to the poor, so that today the litigant public and the bar have both prospered and benefited by this system. There is hardly any unemployed lawyer in England today, thanks to the system of legal aid to the poor, and there is no poor litigant in England today who cannot get justice simply because he has not got the means to pay for it.

13 hrs.

Hon. Members will, therefore, recall—it is quite true and I acknowledge it with a deep sense of shame—that I had referred to it year after year ever since 1957 when I took charge of this Ministry and initiated the first enterprise for bringing about a proper and scientific system of legal aid for the poor. We did work out a scheme and set up a committee. That scheme was circulated to the different States and in 1960 when the Law Ministers met we placed it before them. But, unfortunately, it appeared that the States were not prepared to bear the cost of the scheme. In fact, the actual volume of expenses were not even worked out. They can never be worked out unless they are put into action. This scheme was formulated by studying other schemes in advanced countries like England where this scheme has worked very well. The scheme was applied partially and fairly successfully in the State of Kerala, and in so far as it has been applied it has worked very well. The whole scheme, I must say with a sense of shame, has foundered and has made no progress simply because we have not the money. I have not been able to persuade the Central Government to find the entire money nor have I been able to influence the States to agree upon footing the entire bill. Therefore, what we are doing is only that the Scheduled Castes and Scheduled Tribes are getting the

benefit of legal aid, and the poor people belonging to other categories are not yet enjoying that benefit. I have no doubt in saying that today in our scale of priorities.....

Shri Sinhasan Singh: In Uttar Pradesh even the Scheduled Castes are not getting this aid.

Shri A. K. Sen: Then the State is not bearing 50 per cent of the cost. The Centre will always pay 50 per cent of the cost if the State bears 50 per cent.

Shri Sinhasan Singh: That means they are not paying 50 per cent?

श्री प्र० कु० सेन : यह आप देखिये और आप पता लगा लीजिये कि वहाँ की सरकार पचास परसेंट भी देने को तैयार नहीं है ।

That is the position. I have no doubt, let us all frankly admit, that in our scale of priorities today a factory, an irrigation canal and such other things enjoy much greater importance than the system of justice which, in my submission, is of paramount importance and a system which must see that the poor man gets justice. I have not been able to follow myself why we have been miserly in allocating the necessary funds. The funds, I am sure, will not be very great. As between the States and the Centre the funds for working the scheme will not be very great, I can assure the House, and yet the funds have not come. I always hope that before I lay down the reins of responsibility of this Ministry, when I retire from this Ministry, I will be able to see a fine, scientific system of legal aid for the poor being well established. I do not know if that dream of mine, that great hope of mine will mature before I leave this Ministry.

An Hon. Member: Abolish court-fees and stamp duty.

Shri A. K. Sen: About court fees, stamps and so on I cannot say anything, because it is entirely for the

States to see whether they will go on charging for stamps and court fees. But if you have, again, a good system of legal aid for the poor, the court fees and stamps would not come in the way, as in England, because a poor litigant will be exempt from paying court fees and for stamps.

Therefore, the evils of a costly system of justice are completely mitigated by an admirable system of legal aid for the poor. In his celebrated book *The Road to Justice*, Lord Jennings has detailed how in olden days—he is quoting from Dickens' *Pickwick Papers* and others—a man who entered the portals of justice never went back except in rags, except in tattered clothes. Every litigant who went to the courts then went back completely impoverished and pauperised. But, he says that those days are gone today because today the admirable system of legal aid for the poor has brought justice to the door of the common man. As I said, all these criticisms are inherent in a system of free justice like ours where you have to engage professional men to do the job and the State requires some funds to run the system. But those evils can be completely met, as I said, by this system of legal aid for the poor.

Then, Sir, with regard to expedition, however much you may cry unless, again, we appoint enough judges and enough courts we shall never be able to tackle the problem. Litigation in every form has grown. Look at the large number of complaints. Even Sarpanches and Nyaya Panchayats have to adjudge cases every day. Every day new rights are created, and when you create new rights you at once create new litigation. Shri Chatterjee rightly referred to the expeditious way in which the People's Courts work in the Soviet Union. In fact, they work in other countries too. The reason is, if I may tell him—I have found it out myself—in the Russian part of Russia only there are 36,000 courts—People's

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Courts—and each court sometimes has more than two benches. As a result of that, their work from day to day never accumulates. But here we have got only District Courts or Sub-Divisional Courts at the most, and every one has to run to the city or sub-divisional headquarters for filing his plaint. With the limited number of magistrates and judges that we have, it is not physically possible to cope up with the work. I have intimate knowledge of the courts of law having lived there all my life.

Shri K. N. Tiwary (Bagaha): Now we have Nyaya Panchayats.

Shri A. K. Sen: I am coming to that. Unless you increase their number and you also make the procedure simpler—that we have been trying to do—matters will not improve. So far as Nyaya Panchayats are concerned, we must give them a fairly good jurisdiction. Just now, in fact, one of our most competent officers, Shri Rajagopalan, who headed the committee we set up for reporting on the Nyaya Panchayats, has come out with an admirable report. I think we placed it on the Table here. Now I have been given a copy of the Manual that he has prepared for our Nyaya Panchayats. It is an admirable thing. I think I shall publish it as soon as I can for the knowledge of our people as also for the benefit of our hon. Members here. In that a simple procedure has been laid, how a plaint is to be filed, how the thing is to be carried out expeditiously in a court of law etc. If that system can be applied at least in our inferior courts, I think the problem of expedition, with the appointment of a large number of magistrates and judges, will be successfully met. But the States and the Government must be prepared to pay the bill for a large number of magistrates and judges. You cannot do the work of 100 people with only 5 people. Nobody can do it.

An Hon. Member: Appoint honorary magistrates.

Shri A. K. Sen: Now, Sir, the next question is about elections—I am only taking up the fundamental questions. Having regard to our experience in the last three general elections, I have asked the Chief Election Commissioner to submit a report as quickly as he can giving his recommendations for such changes in the law as he may deem necessary. I propose to put that report before the House and have a discussion on it, so that we may discuss the report of the Chief Election Commissioner and arrive at our own decisions either to accept his report in toto or with such variations as we may think fit and proper.

13:10 hrs.

[MR. DEPUTY-SPEAKER in the Chair]

But what I want to emphasise is that with regard to this question of elections let us not be divided party-wise. Election is one thing which must be kept above party level, and I am very proud to say that we have so far succeeded in doing so. And that is the secret of the great success we have achieved in initiating a system of adult franchise, including 200 million of adult voters within its fold, and in holding elections spread over this vast country, from Ladakh to Cape Comorin, traversing wide, high mountains, rivers and so on, with such speed and efficiency simply because on the question of elections, procedure and machinery, we have not in this House ever been divided on party lines. We have always treated the Chief Election Commissioner almost on the same level as the Supreme Court Judge so that we have not allowed him to be criticised for anything excepting on matters of principle. If we continue our convention in that line, I have no doubt that our election system, our election machinery and the guarantee it brings for ensuring a fair and impartial election will always be a matter of pride for us, because unless the machinery works impartially and fairly there can

be no parliamentary democracy in the true sense of the term. Otherwise, elections will always be forged elections and only chosen men would be elected and the machinery will only register those votes which may be considered as convenient. Therefore, it is not necessary to go into all the details of the matters that have been raised regarding the elections.

But one matter I want to mention specifically, and that is the question of election expenses, which was referred to by the last Speaker, Dr. Aney. All of us have been worried at the enormous expenditure which elections involve nowadays both for Assembly seats and also for Parliamentary seats. I was very jealous of Shri Sinhasan Singh when he told us that he spent only Rs. 300. Well, I wish him to come to Calcutta or near about and try to run an election.

Shri Sinhasan Singh: It is a rich and wealthy city, rolling in money.

Shri A. K. Sen: It is not such a wealthy city. Even in the villages the amount of petrol consumed is quite heavy. I have tried to figure it out and there are several reasons. I entirely agree with hon. Members that unless there is some change none but the rich or none but the candidates proposed by rich parties or parties having large funds at their command, including the party of Dr. Sen opposite, can stand for election.

Shri Ram Sevak Yadav: Unless you remove the economic disparities it is not possible.

Shri A. K. Sen: The Congress Party is a big party. But other parties also have large funds at their disposal.

As I said, let us be quite clear on this that it will not be possible for a man with ordinary means to stand for elections, and having regard to our taxation structure and our objective of ensuring equality of income very few people a generation from now on would honestly be able to accu-

mulate such savings as would enable him to spend so much money for elections. As a result, only a few types of people would come into the political arena to fight election battles and possibly the best elements might not be willing to risk the chances of not only losing the elections but also losing such large sums of money. It is, therefore, of the utmost importance, and I agree with the hon. Members who have raised this point—and this point has been raised from all sections of the House including this side—that we must make all genuine efforts to see that elections are not made into a question of horse trading where whoever pays more wins the elections.

There are several things we have to attend to in order to ensure that. Firstly, the size of the electorate and the media of mass communication necessary to reach such a vast electorate. In England and America we have seen the expenses becoming comparatively cheap by reason of the television. A man reaches millions of voters in a second through the television. So that all this paraphernalia of holding meetings at every village and at every corner with microphones, with posters, with leaflets and everything else is dispensed with in those countries. Imagine the expenses that we have to incur for a parliamentary seat in an urban area, the amount to be spent for publicity material alone for meetings, the petrol consumed and other things. Let us all figure it out honestly among ourselves without giving our language a public shade. Then we shall find out that having regard to the size of the electorate and having regard to the necessity of reaching the voters, each one of which has the right to vote and the absence of modern equipments to reach each votes, the expenses become very high.

श्री क० ना० तिवारी : उम में जो
एकमेंसिब रिटिन का नियम है, उम को तो
रिनुव कर दिता जाये। लोगों में उम क्यों
बुलवाया जाता है ?

Shri A. K. Sen: That was a suggestion made to the Chief Election Commissioner. Hon. Members may recall that many people felt, irrespective of party affiliations, that at least that is a check.

An hon. Member: There is no check.

Shri A. K. Sen: Anyway, we shall discuss it later. I agree that it has not been a very effective check and I am completely convinced that by merely putting a limit in law for election expenses you will not solve this problem; but, by changing this law you will not solve this problem either. This problem can only be solved by the State supplying for the electorate at the time of elections those facilities, supplying some facilities to the candidate who contest the elections, which alone will make the expenses of each individual candidate to come within reasonable limits.

Shri Himmatsingka (Godda): What about Pakistan's basic democracy?

Shri J. P. Jyotishi (Sagar): What are those facilities?

Shri A. K. Sen: I have not thought about it myself. It will possibly vary from place to place; it will vary according to the nature of the terrain, the nature of the people, the nature of the communications involved etc. But I am convinced that by changing the law only you will not solve the problem. We have to afford those facilities to the candidates so that they can reach the voters and try to convince them either on their side or against the opposite side, according to known methods.

Shri Sinhasan Singh: By removing the limitation on expenses you will make the man honest.

श्री रामसेवक यादव : बिड़ला के रहते ईमानदारी और निष्पक्ष चुनाव असम्भव है ।

Shri A. K. Sen: That is a different matter. As I said, we need not go into those questions because we all know that by merely changing the law putting a legal limit you do not solve the problem.

Then, Dr. Lohia raised the other important question about the protection of all minorities in this country. He says the Government has failed to give protection to every one in this country and to uphold article 21 and, therefore, he says the Law Ministry should not be voted a single rupee. Whether it is the responsibility of the Law Ministry or not to protect the minorities is a different matter. I could have answered this objection merely by saying that it is not my responsibility, but I do not intend to do so, because that would be really avoiding the issue which is basic. I strongly deny, and it will be unfair to our great democracy, if any suggestion is ever made that we have failed to afford the completest of protection to our minorities, and I think this House will completely disapprove of any allegation of this nature.

Shri Ram Sevak Yadav: What about Rourkela and Jamshedpur?

Shri A. K. Sen: The minorities in this country have enjoyed the greatest of rights. We are proud that the Chairman of the Rajya Sabha or the Vice-President is a representative of the minority community. We are proud that two of our esteemed colleagues in the Cabinet are members of the minority community. The Constitution which guides our destinies knows no difference between a member of the majority community or the minority community. The Constitution guarantees equal rights for all; and our courts have never hesitated in seeing that those who are in charge of administering our laws observe that great principle of equality.

Shri Ram Sewak Yadav: What is the practice? A man is released from jail even before his term expires, while a poor man suffers? What is

the reply to this? What about Nana-vati?

Shri A. K. Sen: As I say, this country is proud of the fact that those who have been administering our laws, our Parliament and our courts, have given the completest of protection to everyone, whether of the majority or of the minority, and there is no minority or majority in our legal system. Everyone is a citizen of India.

Shri Hari Vishnu Kamath: Even in the Constitution the word 'minority' is not mentioned at all.

Shri Rem Sewak Yadav: I will bring to the notice of the hon. Minister . . .

Mr. Deputy-Speaker: Order, order.

Shri Ram Sewak Yadav: * *

Mr. Deputy-Speaker: That will not form part of the record.

Shri Ram Sewak Yadav: * *

Shri A. K. Sen: If there is one thing that we have achieved during the last 17 years of our free government it is this that we have demonstrated openly and publicly to the whole world that any member of the country, whether he belongs to one religion or another, to one linguistic group or another, can aspire to and has, in fact, reached the highest limits of governmental authority. On the contrary, the allegation has been that this Government and this Parliament has been more partial to the minorities.

I read the other day one paper in which it is said, "Why should the poor Hindus be given protection? They should all become Muslims; then Pandit Nehru's Government will afford them protection." I was amazed to read that. But while I was amazed, I felt also very proud that it is an acknowledgement of the

anxiety and the faith of this Government in its determination to uphold the two rights to every citizen of the country and I strongly refute any suggestion that anywhere in this country during the last 15 years the minorities have been denied the fullest protection of law.

Shri Hari Vishnu Kamath: Pakistan still falsely maligns us.

Shri A. K. Sen: We are not in the habit of accepting Pakistan as a precedent.

Shri Hari Vishnu Kamath: Counter the propaganda.

Shri A. K. Sen: We accept Pakistan as a precedent for other things but not for good behaviour.

Shri Hari Vishnu Kamath: Counter the false propaganda against us.

Shri A. K. Sen: Yes, of course, in that certainly it has set down a very good precedent; but in matters of good behaviour, I hope, we shall not, in this House at least . . .

Shri Hari Vishnu Kamath: I said, "What are you doing to counter that false propaganda?"

Shri A. K. Sen: That is for the hon. Prime Minister to answer; I cannot. But I shall certainly join in any endeavour that the hon. Member makes in countering the false propaganda.

About the separation of the executive from the judiciary, it is true again that it is not our responsibility; but I personally feel that there can be no freedom and independence of our judges unless the judiciary is completely free from the executive. From the progress report—I think, it is submitted by the Home Ministry from time to time—I find that in eight States a complete separation has been

[Shri A. K. Sen]

brought about and in some other States it is in the process; but in those States where they have not yet been able to achieve a complete separation, I hope, they will try to accelerate the pace as much as they can. In fact, while I was addressing the Assam State Lawyers' Convention—Shri Barua was there—last time I particularly emphasized this aspect of the problem because in Assam I find, as was pointed out by the President in his own address, they had not brought about yet a separation of the judiciary from the executive. I have no doubt that the Home Ministry here is keeping its attention closely fixed to this paramount need of separation of the judiciary from the executive. I have no doubt that when the Home Ministry's demands come if hon. Members raise this point, the hon. Home Minister will be able to answer the point much better as to the steps they have taken.

I do not think there are any other fundamental matters which I have left out and I am afraid, I have not the time to deal with other details which have been raised excepting one point which Shri Trivedi mentioned about the CPWD and the Railways not consulting the Law Ministry in appointing persons as arbitrators. I find that in the CPWD contracts themselves the arbitrator is mentioned. The Railways, of course, function separately. In most of the CPWD contracts it is mentioned that in case of dispute the Superintending Engineer or some other officer would be the officer chosen for adjudicating upon the disputes as an arbitrator. In regard to other matters, it never comes to us individually like this; but for cases over Rs. 1 lakh we have a panel of High Court Judges, eminent judges, like Shri V. R. Sen, retired Judge of the Nagpur High Court—this is the Delhi list that I am giving; we have the Calcutta list and the Bombay list—Shri Bind Basni Prasad, Shri Randhir Singh, Shri Brij Mohan Lal. There are about 20 ex-High Court

judges who are on the panel and the departments take anyone of them from this panel. When disputes arise between arbitrators, it is referred to the umpire.

Similarly, we have a panel of District Judges for matters involving an amount of less than Rs. 1 lakh and from that panel they take. For each individual case it is not necessary that the Law Ministry should be consulted. It is not proper either. When you have fixed a panel of High Court and District Judges, you leave it to them in case a dispute arises. In most of the other contracts of Defence, CPWD, Railways and so on, the arbitrator is mentioned by the parties themselves; so, the question of anybody else being appointed does not arise.

Shri R. Barua (Jorhat): What about the proposed legislation for the terms and conditions of service of the employees of the Secretariats of the two Houses? Is any legislation proposed to be brought for defining the service conditions.

Shri A. K. Sen: Service conditions is the Home Ministry's function.

Dr. M. S. Aney: A reference to the Mohammedan Law Enquiry Committee has been omitted this year and no provision is made.

Shri A. K. Sen: We have not decided to appoint it yet. As the hon. Member is aware, after the emergency and in view of various other factors which I do not want to mention in the House, the Government did not think it proper to proceed with the enquiry commission. It was not of such an urgent nature just at this time.

Shri Sinhasan Singh: What are you doing with the Religious Endowments Bill?

Shri A. K. Sen: About the Religious Endowments Bill, the Commission's report was placed. It has been

considered by all the States. A sub-committee of the Cabinet is now enquiring into the various suggestions made by the different States and other authorities. Because all the States are not uniform in their views about the necessity of a central legislation, we are now studying the matter and a high power sub-committee of the Cabinet has been formed. I hope, we shall come to a decision before long.

श्री रामसेवक यादव : क्या मंत्री महोदय को यह जानकारी है कि राजनीतिक दलों को मान्यता देने के मिलसिले में ऐसे उम्मीदवार जिन की जमानते ज्वन हो जाती हैं, उन के मतों को शुमार नहीं किया जाता है। क्या इस मिलसिले में किसी राजनीतिक दल ने आप को लिखा है और यह भी लिखा है कि यह धान संविधान के विपरीत जाती है? यदि हां, तो क्या कार्यवाही होने जा रही है ताकि जो ऐसे मत हैं, उन का भी शुमार हो सके: क्योंकि मतों की जवनी संविधान के विपरीत है?

Shri A. K. Sen: If there has been any such case, it is most unfortunate. If the hon. Member sends such a case, we shall, no doubt, make an inquiry in this matter.

Shri Hari Vishnu Kamath: His point is different.

श्री रामसेवक यादव : केस का सवाल नहीं है। जिन उम्मीदवारों की जमानतें ज्वन हो जाती हैं, ऐसे उम्मीदवारों के वोट राजनीतिक दलों को मान्यता देने के मिलसिले में शुमार नहीं किये जाते हैं।

Shri A. K. Sen: That is a case. A case need not be in a court. A case means an instance. I do not know of any such instance.

Shri Hari Vishnu Kamath: My hon. colleague, Shri R. Barua, asked a question but, I am afraid, the hon. Minister could not quite appreciate it. His question was this. Under

article 98 of the Constitution there is a provision in clause (2) that, "Parliament may by law etc.". There are several other articles like that which state that Parliament may by law provide for certain things. Here this article says:

"Parliament may by law regulate the recruitment, and the conditions of service of persons appointed, to the secretarial staff of either House of Parliament."

Pending such legislation, the President may do this or that, under clause (3) of Article 98. We want to know the position regarding this. Who will introduce the Bill?

Shri A. K. Sen: I am not quite sure, but I think that this particular matter would be one pertaining either to the Department of Parliamentary Affairs or the Ministry of Home Affairs; certainly it does not pertain to my Ministry. So, I am not in a position to answer.

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

All the cut motions were put and negatived

Mr. Deputy-Speaker: The question is:

"That the respective sums not exceeding the amounts shown in the fourth column of the Order Paper be granted to the President to complete the sums necessary to defray the charges that will come in course of payment during the year ending the 31st day of March, 1965, in respect of the heads of demands entered in the second column thereof against demands Nos. 74 to 76 relating to the Ministry of Law."

The motion was adopted.

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

[Mr. Deputy-Speaker]

DEMAND No. 74—MINISTRY OF LAW

"That a sum not exceeding Rs. 42,22,000 be granted to the President to complete the sum necessary to defray the charges which will come in course of payment during the year ending the 31st day of March, 1965, in the respect of 'Ministry of Law'."

DEMAND No. 75—ELECTIONS

"That a sum not exceeding Rs. 78,74,000 be granted to the President to complete the sum necessary to defray the charges which will come in course of payment during the year ending the 31st day of March, 1965, in respect of 'Elections'."

DEMAND No. 76—OTHER REVENUE EXPENDITURE OF THE MINISTRY OF LAW

"That a sum not exceeding Rs. 2,02,000 be granted to the President to complete the sum necessary to defray the charges which will come in course of payment during the year ending the 31st day of March, 1965, in respect of 'Other Revenue Expenditure of the Ministry of Law'."

DEPARTMENT OF POSTS AND TELEGRAPHS

DEMAND No. 98—DEPARTMENT OF POSTS AND TELEGRAPHS

Mr. Deputy-Speaker: Motion moved:

"That a sum not exceeding Rs. 8,97,000 be granted to the President to complete the sum necessary to defray the charges which will come in course of payment during the year ending the 31st day of March, 1965, in respect of 'Department of Posts and Telegraphs'."

DEMAND No. 99—OVERSEAS COMMUNICATIONS SERVICE

Mr. Deputy-Speaker: Motion moved:

"That a sum not exceeding Rs. 1,45,48,000 be granted to the

President to complete the sum necessary to defray the charges which will come in course of payment during the year ending the 31st day of March, 1965, in respect of 'Overseas Communications Service'."

DEMAND No. 100—POSTS AND TELEGRAPHS (WORKING EXPENSES)

Mr. Deputy-Speaker: Motion moved:

"That a sum not exceeding Rs. 1,13,45,76,000 be granted to the President to complete the sum necessary to defray the charges which will come in course of payment during the year ending the 31st day of March, 1965, in respect of 'Posts and Telegraphs (Working Expenses)'."

DEMAND No. 101—POSTS AND TELEGRAPHS DIVIDEND TO GENERAL REVENUES AND APPROPRIATIONS TO RESERVE FUNDS

Mr. Deputy-Speaker: Motion moved:

"That a sum not exceeding Rs. 11,09,87,000 be granted to the President to complete the sum necessary to defray the charges which will come in course of payment during the year ending the 31st day of March, 1965, in respect of 'Posts and Telegraphs Dividend to General Revenues and Appropriations to Reserve Funds'."

DEMAND No. 102—OTHER REVENUES EXPENDITURE OF THE DEPARTMENT OF POSTS AND TELEGRAPHS

Mr. Deputy-Speaker: Motion moved:

"That a sum not exceeding Rs. 24,29,000 be granted to the President to complete the sum necessary to defray the charges which will come in course of