

[Shri Harish Chandra Mathur]

most of their grievances are at the State level or the district and municipal level. They are full of complaints, and I might submit that many of these complaints are genuine. There may be political parties which exploit them, there are political parties which go and do the wrong thing, but it is the duty of the ruling party certainly to educate them. It is not enough for the Prime Minister to undertake a hectic tour of one month throughout the country on the eve of the elections; it would be much better if he has an educative tour of this type once a year, and if he pays a little more attention to the problems of the country than to international problems. It is the responsibility of this Government definitely to educate the people. It is not good enough to say that this or that party has gone and done this or that propaganda. The Congress Government has been in power for the last 14 year. Why has not the Government been able to educate the people on correct lines, to give them the correct picture, to place the facts before them? We see some literature coming out from the Ministry of Information on the eve of elections. Throughout the five years this should happen. It is as much my duty to educate the people as it is that of the Government. I do not say it is not the duty of a Member of Parliament or a legislature; it is. We do our little bit, but certainly we cannot take over the responsibilities of the Government and what can be done at the Government level.

श्री कोरटकर (हैदराबाद) : उपाध्यक्ष महोदय, मैं सदन के सामने वह बात रखना चाहता हूँ, जिस का फिनांस मिनिस्टर साहब की स्पीच में कोई जिक्र नहीं आया है और जिसके बारे में आम तौर से यह समझा जाता है कि आने वाले साल में हमारी आर्थिक दशा पर उस का बहुत बड़ा असर होने वाला है। मेरा तात्पर्य यूरोपियन इकॉनॉमिक कम्यूनिटी—यूरोप के सांझा बाजार

—में शरीक होने के ब्रिटेन के इरादे से है। इस के कारण खाली भारत-वर्ष में ही नहीं, बल्कि राष्ट्र-मंडल के दूसरे देशों में भी बहुत प्रतिक्रिया हुई है। हाल ही में अकरा में एक कांफ्रेंस हुई थी, जिस में हमारे फिनांस मिनिस्टर साहब भी गये थे। वहाँ पर राष्ट्र-मंडल के करीब करीब सभी फिनांस मिनिस्टरों ने ब्रिटेन के इस तरह से एक-दम सांझा बाजार में शरीक होने का विरोध किया। उस की एक खास वजह यह थी—जो कि इस सदन के माननीय सदस्यों को मालूम होगी—कि राष्ट्र मंडलीय देशों की बहुत सी चीजें या तो बगैर किसी कर के ब्रिटेन को निर्यात की जाती हैं, या उन पर और देशों के मुकाबले में कम कर लगाया जाता है। अगर ब्रिटेन इस तरह से सांझा बाजार में शरीक हो जाता है तो उसका साफ साफ नतीजा यह निकलेगा कि हमारे देश का निर्यात और इसी तरह से दूसरे राष्ट्र मण्डलीय देशों का निर्यात जो ब्रिटेन में होता है, वह कम होता जायेगा।

उपाध्यक्ष महोदय : माननीय सदस्य अपने भाषण को कल जारी रखें। अब हमें नान-आफिशल बिजिनेस लेना है।

Mr. Deputy-Speaker: The House will now take up non-official business.

14:30½ hrs.

CONSTITUTION (AMENDMENT)
BILL—contd.

(Amendment of Article 226) by (i) Shri C. R. Pattabhi Raman (ii) Shri C. R. Narasimhan

Mr. Deputy-Speaker: The Constitution (Amendment) Bill (Amendment of Article 226) by Shri C. R. Pattabhi Raman was circulated for eliciting opinion thereon by the 31st October, 1961. The Paper containing the opinion was laid on the Table by the Member on the 15th March 1962 and has already been circulated to Members.

Out of two hours allotted to this Bill, forty minutes were taken up on the 28th August 1961 when the motion for circulation was adopted. One hour and twenty minutes are now available for this Bill.

Shri C. R. Pattabhi Raman may now move the motion for reference of the Bill to a Select Committee.

Shri N. R. Muniswamy (Vellore): These two Bills have the same connotation.

Mr. Deputy-Speaker: They will be discussed together. Let the first motion be made; then the second motion will come up.

Shri C. R. Pattabhi Raman (Kumbakonam): Sir, I beg to move:

"That the Bill further to amend the Constitution of India be referred to a Select Committee consisting of,—

I need not read the names.

Mr. Deputy-Speaker: The names will have to be read once at least.

Shri C. R. Pattabhi Raman:

"Shri K. R. Achar, Shri P. Subbiah Ambalam, Shri S. M. Banerjee, Shri R. Ramanathan Chettiar, Shri Dinesh Singh, Shri T. Ganapathy, Shri R. M. Hajar-navis, Dr. G. S. Melkote, Shri Radheshyam Ramkumar Morarka, Shri C. R. Narasimhan, Shri P. T. Thanu Pillai, Shri K. S. Ramaswamy, Shri Jaganatha Rao, Shri Asoke K. Sen, Shri Diwan Chand Sharma and Shri C. R. Pattabhi Raman with instructions to report by the 30th March 1962."

Mr. Deputy-Speaker: Has the hon. Member obtained the consent of the Members?

Shri C. R. Pattabhi Raman: Sir, this is a Constitution (Amendment) Bill. The Hon. Deputy Law Minis-

ter was pleased to give an assurance. We only wish to say something on this measure and then withdraw it.

Mr. Deputy-Speaker: That is a different matter altogether. Has the hon. Member obtained the consent of the Members to serve on the Select Committee?

Shri C. R. Pattabhi Raman: I have asked most of them; but I cannot say about all.

Mr. Deputy-Speaker: No Member has any objection?

Shri C. R. Pattabhi Raman: Nobody has any objection.

14.34 hrs.

[SHRI MULCHAND DUBE *in the chair.*]

Shri C. R. Pattabhi Raman: Sir, I am again on the floor of the House urging acceptance of this measure to amend the constitution of India. I am aware that the hon. Deputy Minister for Law was pleased to observe on the floor of the House on the last occasion as follows:

"I may inform the hon. Members that amendment to article 226 is under the very active consideration of Government and nothing will give me greater pleasure than to see that such an important measure as this finds a place in the Constitution before my tenure of office in the Government comes to an end."

I am grateful to the Leader of my Party for permitting me to move this measure. Hon. Members are now in possession of the opinions on my Bill [L.B. No. 34—Paper No. 1 (Opinion Nos. 1—18)]. It is almost a year since I introduced this Bill and seven months have elapsed since the motion for circulation for opinion was adopted.

[Shri C. R. Pattabhi Raman]

The Bill is a result of Judgments of the Supreme Court and High Courts. It arose on account of the interpretation that the seat of the Union Government which is within the Union Territory is not within the territories in relation to which a High Court exercises jurisdiction. I gave an example last time in which I myself in another capacity had to appear. Supposing an employee of the Union Government in Cape Comorin is unjustly dismissed, or something happens to him and he has to agitate by way of a writ, he has to go to Delhi to the Punjab High Court and take necessary steps. Actually I have no hesitation in saying that many people with just grievances have had to give up their rights, firstly because they could not afford to travel from various parts of India to Delhi and secondly because they could not afford to stay here for ten or fifteen days, even if they get acclimatized to the place.

In what is called the Khajoor Singh v. the Union of India delivered in December 1960 the Supreme Court observed that the jurisdiction for the writ was of the Punjab High Court. The Law Commission was pleased to state that "High Courts other than the High Court of the Punjab have found themselves unable to exercise jurisdiction under article 226 when the statutory authority or official concerned has headquarters in Delhi. This tends to defeat the very purpose of the jurisdiction conferred by article 226 which is to enable the person to seek remedy under that article in respect of acts done in violation of his rights out of the State by an application to the High Court of that State". That is what the Law Commission has stated in paragraph 17 of their Fourteenth Report.

Sir, I need not now repeat the various other decisions leading up to the Khajoor Singh's case. In regard to the opinions that are now before the House, I am glad to say that the

Government of Kerala have indicated through their Law Secretary that they are in favour of my amendment.

The Secretary to the Government of West Bengal has stated that his Government support the amendment moved by me. The Administrator of Dadra and Nagar Haveli—it may be out of date now after the Goa merger—says:

"In the opinion of this Administration, the Bill is necessary in order to mitigate the inconvenience to litigants who reside away from the Union capital and who wish to proceed against the Union Government."

From the Assistant Secretary to the Chief Commissioner, Andaman and Nicobar Administration, you can imagine the case of a person from there coming to Delhi for this purpose—we have the opinion of the Member of the Home Minister's Advisory Committee, who states that the limitations of article 226 as they stand at present and the interpretations put to it have caused great inconvenience and difficulties and have to be removed and redressed at any cost.

The Secretary to the Government of Uttar Pradesh refers to my colleague Shri Narasimhan's bill and mine and says that his Government wishes to widen the scope of the Bill which must not be related to the writs issued to the Government of India alone. They would like not only the Government of India but also other authorities, besides the Union Government, to be brought within the scope of the Bill. I am also happy to state that six Judges of the Uttar Pradesh High Court have stated that they approve of the objects of my Bill. I am just giving these so that the House may know the volume of opinion that is behind this measure.

The Government Advocate at Lucknow says he is in agreement with this measure. The Assistant Government Advocate, High Court, Allahabad, Lucknow, says that the Bill should not have retrospective effect. The District Judges of Lucknow, Varanasi, Kanpur and the District Magistrates, Lucknow and Kanpur, the Dean of the Faculty of Law, University of Gorakhpur, and the Indian Law Institute, Kanpur, have all approved of the amendment which I am seeking to make to the Constitution.

Dr. M. S. Aney (Nagpur): Who is against it?

Shri C. R. Pattabhi Raman: Nobody. I am grateful to the doyen of Parliament, Shri Aney for his interruption. In fact, there is practically nobody who is against it.

The Chief Secretary of the Government of Punjab says that the Punjab Government support the provisions of the Bill sponsored by me. There was also a note from the Hon'ble Mr. Justice Mahajan, who, while approving the Bill, says that this will, in a way, help in reducing the congestion of work in the Circuit work, Delhi, and, in his view, this provision is unexceptionable and should be supported.

The Deputy Secretary to the Government of Gujarat also states that his Government agree to the amendment proposed; he further states that the judges of the High Court are in full agreement with the object of the Bill and suggested that the scope of the amendment should be widened to extend in respect of any action or order of any Government or authority. He wants the scope to be widened more. I confined myself only to the cause of action only because I wanted to have the least common measure of agreement, if I may say so.

The Government of Madhya Pradesh have also approved the amendment and stated that they would prefer the

Union Government themselves undertaking legislation to widen the scope of the Bill.

Then, the District and Sessions Judges, Jabalpur, Seoni, Gwalior, Bhopal, Bilaspur, Sagar and Raipur from Madhya Pradesh have similarly expressed their opinion supporting the amendment.

Then, I come to Delhi. The Secretary (Law and Judicial), Delhi Administration merely states that they would prefer my Bill to the one sponsored by Shri Narasimhan, my colleague. The wordings are slightly different from those of mine. The Public Prosecutor, Delhi Administration, is also in favour of the amendment.

Coming to Rajasthan, the Secretary to the Rajasthan Government has stated that the Bill was circulated to the judges and that Justice Mr. Modi strongly supports the principle of the Bill. The General Secretary of the Jaipur Bar Association also supports the Bill.

Then, I would go to distant Assam. From Assam, we have the opinion of the State Government through their Joint Secretary which states that his Government supports the Bill, in principle, but would prefer, however, a Bill widening the scope, being sponsored by the Government of India. Similar opinion has also been expressed by the Cachar District Bar Association, Silchar and Sibsagar Bar Association, and the Manipur Administration.

From Orissa, we have the opinion of the Under Secretary to the Government of Orissa, Law Department, which communicates the view that the State Government is fully in favour of the amendments proposed by myself and by Shri Narasimhan. Their High Court Bar Association at Cuttack have passed a resolution welcoming my amendment. Bar Associations from many places have passed such resolutions.

[Shri C. R. Pattabhi Raman]

From Bihar, we have the opinion of the Under Secretary to the Government of Bihar which states that the State Government have considered the proposed amendments and they are agreeable. From Himachal Pradesh, we have got opinion. Though it is in the north, it is equally difficult for them.

From the Himachal Pradesh Administration, we have the communication from the Under Secretary (Judicial), enclosing the opinions of the Bar Association, Mandi and the Government Advocate, Bilaspur District. The former says that the proposed amendment was very essential in order to make article 26 really of any use. The latter—and this is the only opinion which is against—is not in favour of the amendments. The District Bar Association, Nahan and the Government Advocate, Chamba district are in agreement.

The Government of Andhra Pradesh, while supporting the Bill, would prefer the Union Government taking up the amendment and widening its scope. My esteemed friend, Shri D. Narasimhan, Advocate-General of Andhra Pradesh, has given a similar opinion. While saying that he is entirely in favour of the amendment proposed, he would like a careful examination of the language of the amendment.

I shall not, at this stage, refer to the opinions on the Constitution (Amendment) Bill moved by my friend, Shri C. R. Narasimhan. They are almost the same as the opinions on my Bill.

The Secretary to the Government of Mysore, Law Department, while enclosing the opinions from Advocates and the Secretary of the Gokhale Institute of Public Affairs, stated that the High Court of Mysore has opined that they are in favour of the amendments proposed by myself and Shri Narasimhan.

It will, therefore, be seen that there is almost unanimity in so far as the proposed amendment of the Constitution is concerned. I need not repeat what I have stated on a former occasion. The conferment of certain valuable rights on the citizens of India under article 226 of the Constitution became almost nugatory on account of their having to come to Delhi to file writs against the Union Government. You may imagine what it will mean even for a middle-class person living at Cape Comorin or Tirunelveli, Madurai or Ramnad, or anywhere in the south, having to make a trip to Delhi and engaging counsel here for the purpose of getting his grievances redressed. Apart from his having to get himself acclimatised to Delhi, he has to stay for some days in Delhi and pay hotel charges etc. It is not easy for those persons to get acclimatised to Delhi with its extremes of cold and heat. He has to engage counsel and prepare his documents. I may say without any hesitation that many a deserving cause has been given up on account of the difficulties involved in going over to Delhi.

The Government, through the hon. Deputy Minister in charge, as stated by me already, have stated that 'the Government are contemplating the introduction of a major amendment of the Constitution on the lines' suggested by me. The Deputy Minister stated:

"Nothing will give me greater pleasure than to get the amendment moved quickly and effectively."

It does not matter at all so long as the objects of the Bill are secured by the Government amendment. I hope it will be taken up as soon as the new Parliament meets, if there is any difficulty in getting this through by the 30th of March. After all, the Select Committee would be the Select Committee of this Parliament and its report has to come before the 30th. So, I can see the difficulties involved.

will be only too glad to withdraw the Bill, as I have already said. I sincerely hope that I have drawn the attention of the House to the various difficulties and hardships involved in the situation as it is at present. I suggest without hesitation that there is complete unanimity throughout India with regard to this demand and the amendment which I am seeking to move. And, I hope that it would be acceptable to the Government and to the House.

Mr. Chairman: Motion moved:

"That the Bill further to amend the Constitution of India be referred to a Select Committee consisting of—

Shri K. R. Achar, Shri P. Subbiah Ambalam, Shri S. M. Banerjee, Shri R. Ramanathan Chettiar, Shri Dinesh Singh, Shri T. Ganapathy, Shri R. M. Hajarnavis, Dr. G. S. Melkote, Shri Radeshyam Ramkumar Morarka, Shri C. R. Narasimhan, Shri P. T. Thanu Pillai, Shri K. S. Ramaswamy, Shri Jaganatha Rao, Shri Asoke K. Sen, Shri Diwan Chand Sharma and the mover with instructions to report by the 30th March, 1962."

Shri Narasimhan (Krishnagiri): Sir, I had asked the Speaker's permission for the consideration of both the Bills together.

Mr. Chairman: Yes; he may make the motion so that they may be considered together.

Shri Narasimhan: Sir, I be to move:

"That the Bill further to amend the Constitution of India be referred to a Select Committee consisting of—

Shri K. R. Achar, Shri P. Subbiah Ambalam, Shri S. M. Banerjee, Shri R. Ramanathan Chettiar, Shri Dinesh Singh, Shri T. Gana-

pathy, Shri R. M. Hajarnavis, Dr. G. S. Melkote, Shri Radheshyam Ramkumar Morarka, Shri C. R. Pattabhi Raman, Shri P. T. Thanu Pillai, Shri K. S. Ramaswamy, Shri Jaganatha Rao, Shri Asoke K. Sen, Shri Diwan Chand Sharma, and Shri C. R. Narasimhan with instructions to report by the 30th March, 1962."

I have slightly changed the order of the names.

I would not say much. What is needed to be said has already been ably put forward by my distinguished colleague, Shri Pattabhi Raman. The subject matter of the two Bills is more or less the same. One is wider in scope and the other not so.

An Hon. Member: Whose Bill is wider in scope?

Shri Narasimhan: The Bill has been examined by all the High Courts. I am happy to say that owing to the spirit of accommodation which the Law Minister and his Deputy have shown, it has been possible to circulate the Bill and get public opinion. As a result of that, now, we are having very valuable opinion from the various High Courts and Governments and lawyers and other institutions such as the Gokhale Institute and another Institute from Kanpur.

It is always desirable—and it is a serious matter for the future Parliaments also—that before laws are passed, it should be possible for public bodies to give their opinions and advice on the Bill to the law-making body. In fact, if I am right, even the Law Commission has suggested the constitution of some kind of committee consisting of lawyers and others to examine pieces of legislation before they are finally sent to the Legislature.

The kind spirit of accommodation shown by the Law Minister has enabled the Bill to reach the various

[Shri Narasimhan.]

people. I drafted the Bill to the best of my ability and placed in before this House and during the previous discussion the Deputy Law Minister found that our drafts were not quite adequate for the purpose and he himself was not in a position to suggest an alternative then and there. He was quite willing to know the opinions of the rest of the legal world and its reactions. As a result of that, they have now expressed their opinions and Shri Pattabhi Raman quoted extensively. I only request the Law Minister to see that necessary constitutional amendment is brought about as soon as possible. In the nature of things this Lok Sabha's term is ending but it is a matter of satisfaction that the same party has been returned to power and a good number of sitting Members will be in the new Lok Sabha also. Though legally this Ministry may go and a new Ministry may come, there is what is known as the continuity of the Government and therefore the opinions received by the Government have to be duly considered. I am full of hopes that the present Ministry as well as the incoming Ministry and the officers of the Government of India will pay due attention to the debates here and also to the opinions expressed by the various bodies and a satisfactory draft will be brought out and ultimately passed by the new Parliament. In the nature of things it is not possible for a non-official to effect a constitutional amendment. Our Constitution make the amendment of the Constitution the most complicated affair. Not only do we require certain special majorities here but on certain matters we require the opinion of the affected legislatures also. The initiative and final execution depends on the Government to a great extent. Still in order to indicate the public opinion and also focus public attention on the matter, in the same spirit as that of Shri Pattabhi Raman I brought this Bill before the House. I am glad to know that most of the High Courts and the State Governments have approved the objects of the Bill and some of the High Courts have suggested alterna-

tive drafts. For instance, one of the opinions is that a mere proviso would not do as a proviso is intended only to restrict something. In view of the fact that our Bills hope to enlarge the scope, it will be better, they feel, to have an explanation rather than a proviso. I do hope that a new draft will come after full consideration of the whole matter and that all the High Courts will be placed on the same footing and that it will enable any citizen in any part of India to avail the chance of enforcing his fundamental rights in the High Court within whose jurisdiction he is residing and that a citizen would not be forced to go to far distant places for getting remedies. I therefore command my motion and keenly await the reaction of the hon. Law Minister.

Mr. Chairman: Motion moved:

"That the Bill further to amend the Constitution of India be referred to a Select Committee consisting of:

Shri K. R. Achar, Shri P. Subbiah Ambalam, Shri S. M. Banerjee, Shri R. Ramanathan Chettiar, Shri Dinesh Singh, Shri T. Ganapathy, Shri R. M. Hajarnavis, Dr. G. S. Melkote, Shri Radheshyam Ramkumar Morarka, Shri C. R. Pattabhi Raman, Shri P. T. Thanu Pillai, Shri K. S. Ramaswamy, Shri Jaganatha Rao, Shri Asoke K. Sen, Shri Diwan Chand Sharma and the mover with instructions to report by the 30th March, 1962".

Now, both the motions are before the House.

Shri V. P. Nayar (Quilon): Sir, I am very glad that my hon. friend Shri Pattabhi Raman has brought forward this Bill and I am sure that in dealing with it he would have done complete justice in his usual manner and probably would have exhausted all the points. Unfortunately, I was not in the House when he made his speech. I do not really understand why the

Government did not take the initiative in bringing forward this legislation. Shri Hajarnavis knows fortunately he is here as much as any one of us does that because in certain matters in which orders passed by the Central Government or authorities subordinate to the Central Government have to be challenged in courts of law for the enforcement of one's rights, one has necessarily to come to Delhi to get his remedy. In the past some of us lawyers have had the experience—and I am sure Shri Hajarnavis himself knows as he was practising at Nagpur—in how many cases they had to come all the way to Delhi. It is a very difficult problem. When for instance a person wants to enforce his right, he has to come all the way from either Madras or Kerala and it is not within easy reach for other matters also. A person who wants to get his right enforced through the interference of the court has to travel 2000 miles and in matters which are very substantial to him he is not capable of taking any risk. He has to come all the way to engage a lawyer here and in several cases he has to take his own lawyer to advise the lawyer here. Although the lawyer from that place can come and argue cases, we know there are many practical difficulties. I am sure that many persons who have a feeling that they are aggrieved, who have a feeling that justice has not been done to them have thus been prevented from seeking justice because of these distances, because of the difficulties which the distance creates and also because of the money which normally a client who comes all the way should spend in conducting a case in Delhi. Precisely for that matter I think in the Punjab High Court today—I am sorry I do not have the figures—it has not been able to provide justice in applications for writs. Personally I have experience that applications for writs which have been filed in the years 1958 and 1959 are still pending. That is my personal experience. Nor will I be justified in going to the court every day and asking for postings; we know the difficulties of the court also. If you consider the cases which are likely to

come up, there are service matters. Hundreds and thousands of people are employed in the Posts and Telegraphs department, in the Railways and in other Central Departments such as the Income-tax department and so on. If for one reason or the other an employee of the Central Government who is working in Cape Comorin finds that an order passed against him is an order without jurisdiction or is unjust or is manifestly absurd, the only remedy open to him is to take the next flight to Delhi and then make an application for writ in the Punjab High Court. Nothing can detract that particular person more than considering the possibility of getting a remedy from this court.

15 hrs.

There are various other matters in which necessarily the client has to seek a remedy. For example, there are matters dealt with in the offices of the import trade control. There are many cases—I am speaking again from personal experience—where justice has not been done and those people will not dare to come to Delhi to file an application for a writ just because of these difficulties. Therefore, in all these matters, it will certainly be advantageous to the man who feels that he is aggrieved to get an opportunity to fight his case in the High Court within whose jurisdiction he resides I cannot think of any argument being put forward by the Minister of Law to say that the High Court of Kerala or Madras should not have that power to adjudicate on matters, over which the High Court of Punjab alone has the power at present.

From all angles, therefore, this is a very welcome measure. If the Minister is keen, even before the next Parliament, we can make this into law. I am sure the Minister knows all these difficulties. If he has any doubt, he can very well consult the mover and there should be absolutely no difficulty in passing this Bill. To the public

[Shri V. P. Nayar]

at large, especially to the Central Government employees and persons who have to come into contact with the authorities of Central Government, this will be a real boon in so far as it will save so much of harassment, unnecessary expenditure and trouble. In these days, you can imagine the difficulty for a person, say, in Cape Comorin, to bring his own advocate to Delhi—he will be losing his practice for five or six days—and spending at least a thousand rupees to and fro, over and above the normal expenditure of the lawyers' fee here and the court expenses. After all that, he has to take shelter in the same room where perhaps an old acquaintance, who has become an MP stays in Delhi. Otherwise, it is absolutely impossible. A person who comes to Delhi with the object of filing a case will take at least three days to locate the Punjab High Court.

The Deputy Minister of Law (Shri Hajarnavis): Now I understand why you support this Bill; it is in order to discourage your guests.

Shri V. P. Nayar: I do not propose to be in Delhi any longer. You can give the same jurisdiction to the Kerala High Court, so that I can have all of them as guests there. That is not the point. We know there is a fixed fee for top-most advocates—Rs. 1,000 or Rs. 1,200—for appearance. They could manage this if the case is filed in Madras, Kerala or Mysore, because there is no extra expenditure involved. But suppose on a service matter, an employee drawing Rs. 75 or Rs. 100 has a legitimate grievance in regard to an order manifestly absurd passed against him and he has to come all the way to Delhi spending the railway fare and loiter here. Even after that, if there is no remedy in the Punjab High Court's Circuit Bench in Delhi, he has to take a letters patent and go to Chandigarh. It means, he will never get the remedy.

Also, this has put avoidable strain on the Punjab High Court. This strain can be avoided if all the other High Courts, which are of the same status as the Punjab High Court in all other matters, are given the jurisdiction to adjudicate upon these matters also. Therefore, from all angles, I feel this is a measure which is long over-due and which ought to have been brought forward by Government. One should be thank to Shri C. R. Pattabhi Raman, who has brought forward such a Bill, in his usual enthusiasm and I hope he will get support from all sides of the House. One should be thankful to Shri C. R. Narasimhan also for bringing forward this Bill.

Shri N. R. Muniswamy: Sir, I am in a fix as to whether I should support this Bill. Personally speaking, I do not like any such amendment of the Constitution so frequently as we have been doing. But this is an amendment which has to be introduced, because there has been an observation by the High Court Judges and Supreme Court Judges that this is very essential. From that angle of vision, I want to make my observation here.

I do not mean to suggest that of these two Bills, one is superior to the other or one is complementary to the other. These two Bills are quite essential in the sense that one seeks to give jurisdiction to the High Court in respect of cause of action and the other in respect of any order passed by any authority. There is a slight difference between the two and one happens to be broader in scope than the other.

My hon. friends who have been pleased to speak on these two Bills have been insisting on the harassment, inconvenience, expenditure from the point of view of distance, etc. They have been urging only the question of distance, etc. They have been urging only the question of distance. Nobody has stated that there will be any miscarriage of justice. In this connection I wish to make a small point which, I hope, will be taken into consideration by the Minister of Law when he comes

out with a comprehensive Bill. When I was practising in the Madras High Court, I had been agitating why the power to issue writs of *habeas corpus*, *mandamus*, *quo warranto* and *certiorari* should not be exercised by the District Court. The same difficulty might be felt by a man in going to the headquarters from the district. But only in the original side of the High Court or the appellate side, relief by way of these writs is granted. Evidently on the same basis, the framers of the Constitution might have thought that whether it is in the original side, appellate side or revision side, this power should be given to the High Court having jurisdiction over the place where the seat of the Government or the seat of the authority lies. They might have thought like that and so the power was given only to the East Punjab High Court. But the majority of opinion in this House as well as in the other House is that the power should be given to all the High Courts.

I will give an illustration. Suppose a man in Andaman and Nicobar or Laccadive Island feels injured by a particular order. He has to leave the shore and reach the mainland of India. So also, a person in Rajahmundry has to go to Hyderabad and a person may have to cover 600 to 700 miles. So, the question of distance will depend on the person. A person may find that East Punjab High Court is nearer to him than the High Court having jurisdiction over his place. So, distance is not the important thing. The question is whether justice is given any twist. As long as there is no such grievance, excepting the grievance of distance and avoidable expenditure, there is no substance in this. All the same, I insist that it is always better to have jurisdiction in the respective High Courts, because from the High Court, you can again go to the Supreme Court. It is not as if the High Court's decision is final. We again have to go to the Supreme Court, just as we go from the Punjab High Court to the Supreme Court.

Therefore, I suggest that there must be a consolidated amendment by which there must be concurrent jurisdiction so that anybody who is aggrieved by any order can seek his remedy either in the High Court within whose jurisdiction he resides or in the Punjab High Court, whichever he may choose. The selection must be left to the aggrieved party, instead of saying that he should go to the High Court under whose jurisdiction he ordinarily resides. This is only to avoid further difficulties, because it is possible that one person may find that the East Punjab High Court is nearer to him than the other High Court. Therefore there must be concurrent jurisdiction. I am only saying this as a suggestion so that the Law Minister, while framing the consolidated Bill, might possibly think of giving concurrent jurisdiction to the High Courts so that the aggrieved person can choose either the East Punjab High Court, which is the seat of power now, or any other High Court. I say this on the analogy that if a person is aggrieved by the discharge of the accused in a criminal case in a lower court, there is concurrent revisional jurisdiction to the district court as well as the High Court to try the case, as desired by the aggrieved person; it is left to him to elect for the district court or the High Court. Similarly, the option must be given to any person aggrieved by any order passed by the Central Government to file his petition either in the East Punjab High Court or any other High Court rather than telling him that he should only go to the East Punjab High Court to which that power is now given. So, I would submit that while a consolidated Bill is brought here by the Government, they must look at it from the angle of vision which I have suggested.

Then, though there are two amendments, I cannot say which is good or bad or better one speaks of the cause of action; the other speaks of the order passed by an authority, either in the

[Shri N. R. Muniswamy]

revision or its appeal. These two things go hand in hand. They must be clubbed together and not only the cause of action must be taken into consideration but also the order passed, either in the original or in the revision or appellate jurisdiction. Therefore, these two aspects have also to be taken into consideration while bringing a consolidated Bill.

So, on the whole, I support the Bills, in spite of my initial observation that I am personally not in favour of any amendment, because this is an amendment which is pending and long overdue. Not only the litigant public and the advocates but also the judges have opined that it must be amended in a proper way. Since the movers of both Bills have assured us that they will withdraw their Bills provided a comprehensive Bill is brought forward by Government, the present discussion is only to throw some light to the Law Minister the aspects that he must take into consideration while bringing in that consolidated Bill, and that is why I am referring to these points. Therefore, if these two Bills are not pressed now and are withdrawn, I hope the points raised by me of having concurrent jurisdiction for all the High Courts will bear fruit and will be incorporated in the Bill which Government might be bringing forward.

Shri V. P. Nayar: Are you free from the fix with which you began?

Shri D. C. Sharma (Gurdaspur): It is a pity that these two Bills have come on the last day when the Private Members' Bills are going to be discussed in the second Lok Sabha. The second Lok Sabha comes to an end in a few days and the Private Members' Bills also have their last day today. I find that these two Bills have come at the fag end of the Lok Sabha, but I must submit very respectfully that these two Bills have saved the Private Members' day, whether of Resolutions or of Bills, from

that air of futility to which we have been accustomed all these years. What has been the fate of Private Members' Bills or Resolutions?

Shri Harish Chandra Mathur (Pali): Much worse.

Shri D. C. Sharma: Most of them have been turned down.

Shri Harish Chandra Mathur: Today the Deputy Law Minister has been very nice towards us.

Shri D. C. Sharma: Some of them have been given a blessing which has no meaning. A few of them have been buried decently in the hope that they will never be disinterred again. This is what has happened.

Shri Harish Chandra Mathur: Be charitable to the Government.

Shri D. C. Sharma: I think that these two Bills are going to have that fate which we desire all the Private Members' Bills and Resolutions to have. After all, a private Member studies his subjects, puts in a lot of work and brings out a resolution or a Bill. That resolution or Bill deserves the utmost support at the hands of the Government. But this does not happen always.

Shri Hajarnavis: May I interrupt the hon. Member for a few seconds? I will accuse the hon. Member, not of ingratitude but of forgetfulness, for we actually sponsored and supported a Private Member's Bill which was brought forward by him and a colleague of his in the Rajya Sabha, and that Bill is now the law. It happened during the Second Lok Sabha.

Shri D. C. Sharma: One solitary instance does not disprove my claim that the Private Members' Bills or Resolutions have had a very sad history in this House. I think Shri Pattabhi Raman and Shri Narasimhan have been very lucky. Shri Pattabhi

Raman has been lucky twice, doubly lucky; he has won the election and he has won, so far as this Bill is concerned, but my hon. friend, Shri Narasimhan has been lucky only in one way. I am very sorry that we will miss his wise counsel, able guidance and fine advocacy of good causes in the next Lok Sabha. I hope he will come in some bye-election. I am sure we will all miss him. But he has been lucky in the Private Members' Bill, though he has not been lucky on the polling day. It is a sad thing and I would not refer to it again and again.

I am very happy that this matter is going to be taken up seriously by the Law Minister. I congratulate the Law Minister for having blessed these Bills before they took the right kind of shape. These Bills have been blessed not only by the Law Minister, not only by the Members of this House, but also by the various administrators and various judicial authorities all over India. These Bills were born under a very lucky star and, I am sure, they are going to have this luck all along the line. But I cannot understand the argument put forward by my hon. friend, Shri Muniswamy.

Shri S. M. Banerjee (Kanpur): That is why he has gone away.

Shri D. C. Sharma: I could not understand it at all. The simple object of this Bill is to do away with an anomaly which exists, the simple object of Shri Narasimhan's Bill is to do away with that uncertainty which exists, and my hon. friend over there, the hon. Member who just now preceded me, wants that kind of dubiousness should still persist and that kind of uncertainty should still continue, for he says that the courts should have concurrent jurisdiction. It is precisely to get rid of these legal anomalies that these two hon. Members have brought forward these Bills, but he wants to put forward another anomaly so that the process of law becomes as difficult and as cumbersome as ever. It has been stated that distance

is no argument and expense is no argument. If the case of distance is not to be taken into account and if the case of expenditure is not to be taken into account and if the matter of delay is to be ignored, I think all the work done by the Law Commission has been futile and useless. After all, all these days we have been trying to make justice as speedy as possible, as cheap as possible, and so I do not see any reason why my hon. friend over there should have said that there should be concurrent jurisdiction and that these questions of distance and expense should not be taken into account. I feel that these are the two very vital considerations which have to be taken into account. I am glad that both these Bills are there to reduce that uncertainty and that anomaly which exist in our law.

Now a case has been put forward that we should not amend the Constitution very often. I agree with the hon. Member that the Constitution is a sacred document and we should not try to modify it or change it as often as we like, but it does not mean that if we have in view something which is an improvement on what is given in the Constitution, we should shut our eyes to it. I think we should not treat our Constitution as some persons treat their sacred books saying that no comma or full stop is to be changed. I do not think our Constitution, which is a document produced by very very wise persons, should be taken in that light. After all, it is a human document and, like all human documents, it can sometimes be full of some kind of mistakes which can be rectified, full of some kind of anomalies which can be set right.

15.20 hrs.

[MR. DEPUTY-SPEAKER in the Chair]

I would like that these two Bills should be passed by this Lok Sabha. But can they be passed by this Lok Sabha? The Select Committee will give its report by the 30th of March. On that day the Lok Sabha will cease

[Shri D. C. Sharma]

to function. Therefore, I do not know what is going to happen to these Bills. Will they be carried over to the next Lok Sabha or will they have a decent burial on the 30th of March? I do not know what the constitutional position is and what the parliamentary practice is.

The Deputy Minister of Community Development and Co-operation (Shri B. S. Murthy): The body perishes, but the spirit exists.

Shri D. C. Sharma: I am not worried so much about the spirit as about what is going to happen practically. What is going to be the fate of this Bill, I do not know. What will happen to the Select Committee report? Will that Select Committee report be carried over to the Third Lok Sabha or will that report also come to an end automatically? That is my only fear, and I want the hon. the Deputy Law Minister to tell us that the Select Committee report will be taken up in the new Lok Sabha and that, even though Shri Narasimhan will not be there, Shri C. R. Pattabhi Raman will be allowed to pilot both these Bills.

Shri Hajarnavis: You have always been a good Samaritan so far as such things are concerned.

Mr. Deputy-Speaker: That information will be supplied when the reply is made. The hon. Member may continue. Why should he wait for the reply?

Shri D. C. Sharma: I am not waiting for the reply, Sir, but he is willing to answer me.

Mr. Deputy-Speaker: He is addressing him only, not the Chair.

Shri D. C. Sharma: But I am addressing you, Sir, and I was submitting very respectfully that these two measures should not come to an untimely end, because they have come at a time when the Lok Sabha is going to be dissolved. That is my only fear.

I am very happy to find that there is an opinion given by Shri D. C.

Sharma—it is not me, Sir—Secretary to the Government of Rajasthan, Law Department, Jaipur. I am very happy to find my namesake functioning in Rajasthan, and I am very happy that he is as progressive as myself who am addressing you, Sir, and through you the Lok Sabha.

Mr. Deputy-Speaker: He is sure that it is the reality and not the spirit!

Shri D. C. Sharma: He says:

"I am directed to state that the Judges of the Rajasthan High Court were requested to express their opinion on the Bill. Copies of the opinions so far received in this connection are enclosed. The Rajasthan Government agrees to the proposed amendment of Article 226 of the Constitution."

I am very happy that one D. C. Sharma sitting in Rajasthan has played his part in blessing this Bill. So many other persons have also done it. Therefore I think these two Bills should, after a few amendments have been made by the Select Committee, be passed. I bless these Bills and hope that with the passing of these Bills the Law Minister will also feel happy because he was the first person to bless them.

Shri Warrior (Trichur): I wish to say a few words in support of these two measures, because all this time we have heard mostly from the lawyers and so from the layman's point of view also the support must come.

We have many cases as instances where actually some officials, even first-class officers of the Government of India, have felt that certain actions taken against them have really been as a measure of intentional harassment, and they find that it is very difficult for them to go all the way to Delhi from distant parts in the south, especially, and get redress from the High Court here. If they can appeal

to the High Courts there in the different States, then justice can be had much easier.

My hon. friend was saying here that distance does not count much in this matter and that especially in the case of bigger States they have to travel five or six hundred miles any way and therefore why not a thousand or two thousand miles more. That was the argument that he put forward. But the argument does not stand, because justice must be within the reach of each and every citizen in this country. If justice is not within the reach of every person, then it is as good as justice denied.

And not only must justice be within the reach of every person, but it must have immediate effect also. It is an urgent matter; it is not a matter to be delayed long. So that, justice delayed becomes justice denied. When we are in a way evolving a pattern of life in this country and where the Central Government is having officers throughout the length and breadth of this vast land and the Central Government employees are spread throughout the country, it is quite necessary that those employees should have at least this much of easy reach to get their grievances redressed.

For instance, the Central Government has got its various Boards here, like the Railway Board or the Central Board of Revenue dealing with Income-tax. Suppose an order is issued against an officer in the extreme south. He has all the time to come over here. And by that time the officer will also be asked to present himself and take charge of his duties at some other place. Suppose an officer coming from Trivandrum is transferred to Rajahmundry. He has to be present there at Rajahmundry simultaneously while being present in Delhi to get redress from the Punjab High Court. How can he operate simultaneously? The result is that either he will not get redress from the High Court—or will not try for it—or he will not be present at the other place at which

he is asked to be present. Then also the punishment comes to him.

Hence it is very difficult in the present context especially when the appointing and controlling authorities are here at the Centre. If the controlling authority is not in the Centre and if it is decentralised and the State authorities have full control over these matters, then naturally the redress can be had then and there. Suppose in the Income-tax Department the Commissioner in Trivandrum has jurisdiction over all the subordinates there in the Kerala Circle, naturally in respect of anything done by the Commissioner any grievance requiring redressal can be taken by the employee to the High Court there and he need not come over here.

So either the Government must decentralise this authority, or, if the authority is centralised and if all the powers are vested in the controlling officers here, then in that case naturally this devolution must come. That is the only point.

We are not arguing for the sake of taking away the prerogatives which the Punjab High Court is enjoying. There has not even been a remote suggestion that the Punjab Government is not giving full justice to the cases, nor even that the Punjab Government is intentionally delaying these cases. No such thing. The thing is that if a High Court is to adjudicate on all these issues it will find it quite difficult and justice will be delayed. That is the point.

Hence either the Central Government must see to it that the cause of action is not arising in Delhi in every case, simply because the order emanates from Delhi, but at the most from the State capitals, so that the redress can be had from the High Courts there which will have jurisdiction; or else the High Courts must be given jurisdiction to adjudicate over these grievances and redress them. That is all that I wish to say on this and I support the amendment that is proposed by this Bill.

Mr. Deputy-Speaker: I would request the hon. Member to be very brief as we have already exceeded the time allowed.

Shri S. M. Banerjee: Sir, I support both these Bills moved by Shri C. R. Pattabhi Raman and Shri Narasimhan. Because of this want of jurisdiction I have suffered myself. In 1956, I was dismissed from government service by the hon. Minister of Defence Organisation. I was actually dismissed from Kirkee—the cause of action was in Kirkee—by the Superintendent of the Munition Factory, Kirkee.

Shri Hajarnavis: Did he really suffer by coming to Parliament, after having been dismissed?

Shri S. M. Banerjee: I fought the election petition on that point. I was not dismissed for corruption of his loyalty.

Shri Braj Raj Singh (Firozabad): Do you mean to say that another election petition is to be filed against him in this election?

An Hon. Member: That would go to the Supreme Court.

Shri Hajarnavis: I said by his coming to Parliament. *(Interruption)*.

Shri Jagdish Awasthi (Bilhaur): That is an old story now.

Shri S. M. Banerjee: I was told that I could not move the matter in the Bombay High Court because the appointing authority was in Calcutta, that is the Director General of Ordnance Factories. So, I had to rush back to Calcutta, not to my home town Kanpur, but to Calcutta to find a good lawyer in Calcutta. It was very difficult for me. I had to do it. Thank God, I was elected to Parliament and my lawyer said, My lord, my client has become a Member of Parliament and it was withdrawn. That is a different matter. This actually happened with Justice Sinha. My sug-

gestion is only this. If we take a census of all the pending cases in the Punjab High Court, the number of cases will be much more. There is the difficulty with regard to article 226. There is also article 311 in the case of Government servants. There are certain provisions in article 311 also where if the President is satisfied or the Governor is satisfied or where the Government does not want that any opportunity should be given, and if the people want to move for a writ or they want to go to a High Court, it becomes really difficult for them to fight out the case in Delhi. You have to come to Delhi if you want to move the High Court or the Supreme Court. I am not talking of the Supreme Court at present. He has to engage a lawyer in Delhi which is a very costly affair. I know that because had to fight the Election petition up to the Supreme Court. It was very good on the part of the Attorney General and the Solicitor General and men like Shri N. C. Chatterjee who fought my case without any money. That is a different matter. Suppose a lower division clerk is discharged in Madras or Travancore or any other place which is far from Delhi. Poor man, who has got only a paltry sum of Rs. 60—now it is Rs. 110—, if he is dismissed from service or reverted and he wants to get justice here, he has to come all the way to Delhi. You can imagine the condition of a lower division clerk. How will he engage a lawyer and how will he meet the expenses? I fully support the Bills. I would request the hon. Deputy Law Minister who is an eminent lawyer and who must have fought many government employees cases, to consider this in all seriousness. Because, this Second Parliament is coming to an end. It will be difficult to pass this Bill. It is not going to be passed. That is a different matter. If the spirit of this Bill is carried to the next Parliament, I am sure, the substance of it can be achieved. That is my suggestion. I welcome this Bill and I congratulate the Mover for taking up this sorest

point of the government employees which they felt very badly. Because, the Supreme Court has now given judgment on rule 4A that a government employee can demonstrate. Naturally, after that, there will be so many cases. Many of our government employees were removed or dismissed or discharged or reverted to a lower rank under rules 4A and 4B of Government servants Conduct Rules. Rule 4B has been declared to be *ultra vires* by the Bombay High Court. The hon. Deputy Law Minister will be able to tell the House whether the Government has filed any appeal. I am sure the Government has gone in appeal in the Supreme Court. Rule 4A has not been declared *ultra vires*. But, there is a judgement which is in favour of the employee. After all this, when we have assured justice under our Constitution to all, whether government employee or non-government employee, there is no point in bringing all these cases here. If the appointing authority is in Nagpur, let the case be filed in Nagpur. If the dismissing authority is in Kanpur, let the case be fought in Kanpur. My submission is that the hon. Deputy Law Minister may kindly accept the substance or essence of this particular Bill so that in the next Parliament, the Government may be able to bring some sort of an amendment.

My hon. friend Shri N. R. Muniswamy said that we should not amend the Constitution like this. Had we not amended the Constitution eleven times, I would have appreciated it. We have been amending the Constitution. When the Constitution is worked in a country, the defects are brought to the notice of the House and this hon. House is sovereign and it can amend the Constitution.

With these words, I support the Bill. I request the Deputy Law Minister to kindly accept it.

Dr. M. S. Aney: Sir, I really feel grateful and the House also feels

grateful to the two hon. Members who have moved this Bill and brought it up to the present stage. The Bill has been circulated for public opinion and in moving the Motion for Select Committee today, Shri C. R. Pattabhi Raman, the hon. Mover of the Motion, has read out a number of extracts from public opinion which clearly show that both the Bills practically have the approval of all those who are in a position to judge matters of this kind High Court Judges, Bar Associations, Law Members, every kind of people who are more or less connected with litigation and who know something about it. The Bill has received almost unanimous support of all the people of India.

In my opinion, this Bill removes a great lacuna which, unfortunately, has been there in the Constitution itself. Article 226 has been found to be creating a disability in the case of all other High Courts except Punjab for exercising this jurisdiction vested therein. I know, High Courts were created with a view to enable people to get justice in important matters at the hands of the highest court immediately, quickly and without any difficulty. But, on account of the peculiar wording there in article 226 of the Constitution, it has been held that no other High Court except Punjab, which has its headquarters in Delhi, can exercise the jurisdiction and therefore, people have been suffering under various difficulties for applying for any kind of a writ. People who do not reside within the jurisdiction of this High Court have to come to Delhi at great cost and great inconvenience. It has been stated about administration of justice that it must have three qualities: that justice **must be right**, in accordance with principles of equity, law and justice, secondly, it must be had as quickly as possible and thirdly, it must be least costly. If we allow the present state of things to remain there, we practically perpetrate this difficulty. Those who do not reside within the

[Dr. M. S. Aney]

jurisdiction of the High Court in Delhi have to come a long distance. That also adds to the time and money and to the inconvenience of the people. All the three ingredients on which administration of justice can be appreciated by the people and can be felt as an effective force, are wanting here on account of the peculiar wording in the Constitution. Therefore, my hon. friends who have moved these Bills have helped wake the administration of justice more easy and more effective also.

There is another point. In creating autonomous units, a condition was practically introduced that each autonomous unit has a High Court of itself. So, all the High Courts were intended to be placed on the same footing and on an equal footing. Formerly, there used to be some kind of an imaginary distinction between High Courts established under Letters Patent, Chartered High Courts and other High Courts. That kind of a distinction has now been obviated altogether by the new Constitution under which we are working and under which the High Courts have been created. They were intended to be the highest tribunals of justice for those parts for which they were constituted. Therefore, they should have equal jurisdiction, as regards both power and the sphere and the scope of authority within their respective parts. But, unfortunately, on account of this unhappy wording of article 226, on which the Law Commission itself had made very effective and important comments and observations in its report, it has been found that it is only one particular High Court which has got the monopoly, so to say, in this matter, of exercising jurisdiction under article 226, and all other High Courts have been denied this right. This is an obvious injustice to the other High Courts, in my opinion.

Therefore, in order to carry out the real objective with which the Constitution-framers have created these High Courts, and also the principles underlying the Constitution that all these High Courts must be brought on an equal footing, an amendment of this kind has become very necessary. As regards matters of detail my hon. friends have spoken about them, but taking these general principles on which administration of justice should stand, the purpose will be best served by the present amendments, and also the other important objective of the highest tribunals of justice established in the different autonomous States having the same jurisdiction and having the same scope and authority will also be vindicated by accepting the amending Bills of these two hon. Members.

I know the difficulties which are there before Government to carry these Bills forward to their logical end, on account of these Bills having been brought forward towards the fag end of the life of this Second Parliament. But Government know the opinions of the entire country. They also know the views which this House has expressed on this matter. Therefore, though these two Bills may not reach the logical end of being enacted in the present Session, they have behind them all this material, and also the good-will and expectation of the people that Government will do what the people want in this matter. It is with that expectation that we are leaving the fate of these two Bills in the hands of the Minister of Law. Whoever may be the next Law Minister, he will have to see the previous record and the previous papers in regard to these two Bills, and I am sure that the purpose which all of us have in view will be appreciated by him, and we hope that the next Government also will be quick and will be willing to carry out the object with which the two hon. Movers have la-

houred and brought their Bills to the present stage.

I congratulate the two hon. Movers for the pains they have taken in bringing forward these two Bills for removing an important lacuna in our Constitution. And I hope that Government will do the right thing.

श्री जगदीश अश्वस्थी : उपाध्यक्ष महोदय, संविधान में संशोधन करने के लिये जो विधेयक प्रस्तुत किया गया है, अन्य माननीय सदस्यों की तरह मैं भी उस का समर्थन करता हूँ। जो माननीय सदस्य मुझ से पहले बोले हैं, उन्होंने बहुत ही विचारपूर्वक और तर्कपूर्वक यह सिद्ध किया है कि संविधान के अनुच्छेद २२६ में यह संशोधन आवश्यक है।

हम देखते हैं कि केन्द्रीय सरकार का प्रशासन अधिकतर दिल्ली में केन्द्रित है और यहाँ से नियंत्रित होता है। यदि केन्द्रीय सरकार के बहुत से विभाग देश के विभिन्न स्थानों में स्थापित कर दिये जायें और उन की नियुक्तियाँ, निलम्बन और अन्य प्रशासनिक कार्यवाहियाँ वहाँ से ही सम्पादित हों, तब तो कोई दिक्कत न हो। लेकिन इस समय स्थिति यह है कि केन्द्र की सरकार दिल्ली में बैठी हुई अपने कर्मचारियों के सम्बन्ध में विभिन्न प्रकार के आदेश जारी करती है और जब किसी कर्मचारी को कोई शिकायत होती है, तो संविधान के अनुसार उस को दौड़ कर यहाँ पर आना पड़ता है।

हमारे देश में जो कानून बने हुए हैं, वे जनता के लिये बहुत ही महंगे साबित होते हैं। आखिर हमारा मंशा यह है कि लोगों को न्याय तुरन्त और सस्ता मिले और उस में किसी प्रकार की देर न हो। लेकिन जब किसी केन्द्रीय कर्मचारी को कोई दिक्कत होती है और उस को कोई कानूनी सहायता लेनी पड़ती है, तो फिर निश्चित रूप से उस को पंजाब हाई कोर्ट में आना पड़ता है, जिस में उस को कितनी कठिनाइयों का सामना करना

पड़ता है और कितना रुपया खर्च करना पड़ता है, इस से हम अच्छी तरह अवगत हैं। इस गरीब देश में सरकारी कर्मचारी—और खास तौर पर छोटे कर्मचारी—बहुत गरीब हैं। अगर उन को कलकत्ता, मैसूर, आन्ध्र प्रदेश, मद्रास या अहमदाबाद से यहाँ पर आना पड़े और पंजाब हाई कोर्ट की शरण लेनी पड़ी, तो इस से बड़ी कठिनाई होती है।

जैसा कि माननीय सदस्य, श्री नरसिंहन्, ने इस विधेयक के उद्देश्यों में कहा है, इस सम्बन्ध में अच्छे वकीलों की कांफरेंसों ने प्रस्ताव पारित किये हैं और सरकार से मांग की है कि संविधान में इस आशय का संशोधन किया जाये; दुख की बात है कि अभी तक विधि मंत्री महोदय ने पता नहीं किन कारणों से वह संशोधन करने की ओर पग नहीं उठाया है। अच्छा हो कि द्वितीय लोक सभा की समाप्ति पर, जब कि इस संशोधन के बारे में लगभग सभी सदस्य एकमत हैं, सरकार संविधान में यह संशोधन कर के एक नया आदर्श स्थापित करे जिस से केन्द्रीय सरकार के कर्मचारियों को, जिन के बारे में अभी माननीय सदस्य, श्री बनर्जी ने कहा कि उन की संख्या के साथ उन की शिकायतें और कानूनी तक्लीफें भी बहुत बढ़ जायेंगी, दिल्ली आने जाने में इतना खर्च न करना पड़े और विभिन्न हाई कोर्टों से उन को न्याय मिल सके।

इन शब्दों के साथ मैं इस संशोधक विधेयक का समर्थन करता हूँ।

Shri Hajarnavis: At an earlier stage, when this Bill was before the House, it was my privilege to state the position of Government on this Bill, and I thought that I had stated it unequivocally. But from some of the speeches which I have heard from hon. Members, it appears that they are not quite familiar with what was said earlier. I apologise to you for reading it out, but it is rather perti-

[Shri Hajarnavis]

ment, because that is the position of Government even today. I said on that occasion that:

"I may inform the hon. Members that amendment of article 226 is under the very active consideration of the Government and personally nothing will give me greater pleasure than the fact that such an amendment finds a place in the Constitution before my tenure in this Ministry comes to an end".

The poet said:

"Many a scheme of mice and men
Has oft gang agley."

This has been, I am sorry to say, forlorn hope. I mentioned at that time the difficulties confronting us.

The first difficulty is that article 226 is an entrenched article. Before that article is amended, ratification by the requisite number of States will be necessary. The time at our disposal was also short. So, it is not because Government did not agree with the principle of the Bill or they were not anxious that this amendment should find a place in the Constitution, that the amendment was not taken up earlier.

Then, there were certain other difficulties also. Those difficulties were, to recall briefly, what should be the basis on which the High Court should be invested with jurisdiction, should it be cause of action or should it be the location of the authority against which a writ is claimed. These are the two obvious alternatives. We find considerable difficulties in either of the solutions. A very intimate friend of mine, a lawyer full of wisdom and erudition, the Advocate-General of Madhya Pradesh, has again pointed out that the problem is complex and not easy of solution. Assuming that we said that the High Court within

whose jurisdiction the cause of action arises is to be invested with jurisdiction under article 226, then, as every lawyer knows, a cause of action of a transaction may be said to arise at more than one place. As a very wise and illustrious Member of this House pointed out, what we should aim at in law, in a law of this type, is certainty. We should like in Constitution to place an amendment which will indicate with certainty which tribunal, which High Court, is the one to which the controversy is to be referred. That is the first technical problem.

If in a given case, the elements of the cause of action arise within the jurisdiction of one High Court, the problem is very simple. But that does not often happen, and if more than one High Court is invested with jurisdiction under the terms of the amendment, I submit the amendment will have defeated its purpose.

The second aspect, and the more important aspect, is covered by the amendment of Shri C. R. Narasimhan. That, if I may say so, is much more important than the aspect covered by the first amendment. It often happens that the original authority is within the jurisdiction of one High Court whereas the appellate authority is within the jurisdiction of another High Court. The appeal may have been filed, may not have been filed. Should the jurisdiction change in accordance with the steps taken by the litigant? Should the litigant go on to displace the original judgment by the judgment in appeal?

Then there would be another difficulty, as pointed out by the Advocate-General of Madhya Pradesh. If we go into the nature of the writs which are based upon historical practice obtaining the UK, we find that the writs there go in the name of the Sovereign. There is no division of authority, judicial, legislative or territorial. It is one High Court having jurisdiction all

over the Kingdom, all over the realm. The order goes in the name of the Sovereign. It is obeyed by every authority within the realm. Now here, as the Advocate-General of Madhya Pradesh points out, a writ of *certiorari* may, of course, be issued because the record is brought before the Court and the Court makes the necessary changes in the record. That is easy. But how can a writ of *mandamus*, which is a writ of command, issue to an authority outside the jurisdiction of the High Court concerned? Suppose there is disobedience of that writ. What is the sanction with which the High Court issuing the *mandamus* writ is going to enforce, to ensure the obedience of the command issued in the name of the President of our country?

These are all technical problems which arise. Therefore, all that I was saying was that while Government are completely in sympathy with the proposal that the change suggested must be effected, yet—I am free to confess this—we have not found a solution which we could regard as satisfactory. Cases have been mentioned of the expense to which the citizen may be put in coming to New Delhi. I entirely agree. In my earlier speech I pointed out that it would be equally convenient for Government to have the case adjudicated upon at the place where the cause of action arises. This is what I said:

“Just as a citizen should come all the way from distant Kerala or Assam or Madras to make a grievance against an act of the Government of India to the East Punjab High Court, similarly the Government of India, in order to defend their action have also to bring the records and officers and other things necessary all the way from Kerala or Assam”.

Therefore, disposal of the case by the local High Court is not only economical to the citizen, to the person who has a grievance, but it would be much more convenient to the defending Government of India. So that if we have not taken a decision, it is not

because it is convenient to us to defend the case in New Delhi before the East Punjab High Court. The ground of convenience equally applies to us.

So far as article 226 is concerned, we regard it as the most precious jewel, as the most scintillating ornament in our Constitution. This Government takes its stand firmly upon the Rule of law. It is sustained and nourished by the moral force which flows from the Rule of law. The moment it loses the confidence of the people as not being based on the Rule of law, it loses all its authority. And the Rule of law is very ably sustained—by our Judges who are people of very great learning and erudition and are completely independent. It has never occurred to this Government at any time that the citizen should be impeded in any manner in appealing to the High Court under article 226. For one case which goes to a High Court, there are a large number of cases which are not at all challenged in the courts. But in each case, we are mindful of the fact that if the citizen has a grievance, he can certainly go to the High Court under article 226. We function here with the greatest amount of confidence because we know that our courts function independently. If we at any time swerve from the path of justice, from the path of fairness, then the courts will certainly be appealed to by the citizen and that mistake shall certainly be corrected by the courts. This should always be so.

Therefore, we are anxious that these remedies under article 226 should not only be maintained but should be extended and should be placed in the hands of every citizen. I am one with hon. Members when they say that these remedies should be cheap and speedy. I entirely agree with the description of the process of justice which fell from the venerable Member of this House as Dr. M. S. Aney. And those of us who, if I may say so, do not always indulge, indulge in well-informed criticism of amendment of the Constitution, should remember that every time the Constitution has been amended it has been amended with a view

[Shri Hajarnavis]

to enable Government to discharge its duties as a welfare state. Very seldom has Government taken powers to amend the Constitution so as to abridge any of the rights granted to the citizen. Our Constitution contains many parts which in other Constitutions are not regarded as Constitution at all. A Constitution, strictly speaking, should contain only these provisions which deal with the structure of the State, the legislature, the judiciary and the executive. Having done that, the procedural part is left to the organs created by the Constitution to be devised, but in our Constitution we have thought it fit to include many provisions which I might say fall outside what is called the Constitution proper. Amendment of those parts, though they are constitutional amendments in the sense that they amend our Constitution, are not constitutional amendments, properly speaking. Secondly, where we have amended the structural part of the Constitution, that is only for broadening the basis of individual rights and individual freedoms, or for enabling us effectively to discharge our duties as a Welfare State.

16 hrs.

It is true that in the United States there have been lesser number of amendments—not lesser numerically, but less frequent. So far as the number is concerned, they have, I think, sixteen or eighteen amendments, but they are spaced over about 150 years or so, but the United States had had about a century and a half to go. There, in that society, a logical, a social a technological and judicial equilibrium has been achieved, so that they can wait to see how a particular law works, whereas we have to make a rapid transformation of a feudal, agricultural society into a society which enjoys the technological advantages of a modern society. In doing so, under the direction of this House it has to take steps which must be rapidly effective. We cannot wait for six or eight years for the law to manifest its purpose.

Even Government desires that any law that it makes should immediately be scrutinised by the courts and we should be told whether it is a good law or a bad law. Speaking for myself, I would always welcome the courts telling us immediately and finally as to whether a particular provision which we have enacted and which we are trying to enforce is a good law or a bad law, so that we would know whether the direction in which we are proceeding is a right direction or a wrong direction. There is no sort of animosity, hostility, antagonism or, even difference in purpose between the courts and the executive. We all share the same objective, but we submit whatever we do to the judgment of an authority which the Constitution itself has created, which is exercised by our own people. They are in sympathy with our objectives, and they will tell us whether, functioning in their own independent position, what we are doing is a right thing or a wrong thing. That being so, as I said, article 226 is the basis of jurisdiction on which Government's actions are scrutinised in the High Court in open court at the instance of a private citizen, who has only to apply in order to invoke the jurisdiction of the High Court and get a verdict as to what the Government is doing is right or not. To that judgment we always cheerfully submit. So, that is our position.

As the Members have said, this is the last session, and I am quite sure that the Bill which has received almost unanimous approval from all sections of the House and from various sections of the public on circulation, and with which Government finds itself entirely in sympathy, will very soon be a part of the Constitution. That is the hope which I express in this House.

With this, I appeal to the hon. Members who have rendered a signal service to the Constitution and to the legal world by moving these amendments to withdraw their motions.

Shri C. R. Pattabhai Raman: May I say a few words?

I am very grateful to the hon. Deputy Minister of Law for the kind words he has chosen to say on this occasion. I am aware that on the last occasion also he assured us, and I have no doubt that sooner than later this measure will be on the tapis of the House. I am glad the Ministry have agreed to the principle involved in the measure which I sought to bring before the House.

The Constitution framers intended that a citizen aggrieved by a wrong decision or order of any authority should have speedy and effective remedy and hence it is that the prerogative jurisdiction of article 226 is created and vested in the High Court. Today, especially on account of the decision of the Supreme Court, the position has become such that a great majority of the people of India have been denied recourse to the beneficial provisions of article 226, and it is unreasonable and unjust to insist upon a citizen going to Delhi for filing a writ petition in the Punjab High Court. He must be able to get redress within the State in which he resides and where the wrong is done to him. Therefore, I am very happy that this principle has been accepted.

A reference was made to the opinion of the Advocate-General of Madhya Pradesh. It is true that there is divided opinion with regard to the "seat of the Government". The ultimate authority is that of the Government of India. The manner of its exercise is either created, regulated or controlled by the statute. Where it is not so created, regulated or controlled, the authority is co-terminus and co-extensive with the executive power of the Government of India. The Government of India necessarily functions in every place in which its order takes effect. That is a well-accepted principle.

I have no doubt that a measure more comprehensive than the one proposed by me will be before the House. I do not want personal kudos. It is enough if I have done a service to the people of India in seeing to it that this lacuna in the Constitution is remedied.

I think the hon. Deputy Minister for his assurance, and I request the permission of the House to withdraw my Bill.

Shri Narasimhan: It was very refreshing to listen to the hon. Deputy Minister's speech. He specially reiterated the Government's faith in the citizen having all his remedies under article 226 of the Constitution. In his general summary he indicated that the measure had the approval of the whole House and the country, and his hope that the future Parliament would also take care of the situation is equally encouraging. Sharing his hope and believing in the wisdom of the new Parliament, believing in the fact that the strong public opinion now received will have its due effect on the next Parliament, and trusting in the fact that those who guide the destinies of the present Parliament will also continue to guide the next Parliament in their wisdom, I also beg leave of the House to withdraw my motion.

Mr. Deputy-Speaker: Has Shri C. R. Pattabhi Raman the leave of the House to withdraw his Bill?

Hon. Members: Yes.

The Bill was, by leave, withdrawn.

Mr. Deputy-Speaker: Has Shri Narasimhan the leave of the House to withdraw his Bill?

Hon. Members: Yes.

(The Bill was, by leave, withdrawn)

Mr. Deputy-Speaker: Next item. Shri Ambalam. Is he present? No. Shri Ram Krishan Gupta. Shri Tanganani. There is no other Member in whose name the motions stand for moving. Therefore, there is no business, and the House is adjourned.

16.08 hrs.

The Lok Sabha then adjourned till Eleven of the Clock on Saturday, the March 24, 1962/Chaitra 3, 1884 (Saka).