

of India account for other purposes; rather, it should be used for such public sector companies as could be made viable. For example, if you invest Rs.800 crores in Hindustan Photo Films, it will become viable. Likewise, the Government Press in Perianaicken palayam, in Tamil Nadu. By investing only a small amount, it can be made viable. Similarly, the Salem Steel Plant; if you invest some amount in it, it will become economically viable. It is not viable only because of the huge interest it has to pay. Therefore, I think, instead of putting the amount, realised through disinvestment, into a general fund, it should be rationally invested in such companies so as to make them economically viable and technically feasible. This way, many public sector units can be saved. Finally, I would say that mere disinvestment, mere privatisation, is not a panacea for all the ills that are there in the public sector units. This is also one of the things. I hope, wherever necessary, it would be done only with the concurrence of the labour unions of the concerned public sector units. As far as possible, the Government should keep the public sector units with it. With these words, I conclude. Thank you.

### PRIVATE MEMBERS' BILLS

#### The High Court of Gujarat (Establishment of A Permanent Bench at Rajkot) Bill, 2000 - Contd.

THE VICE-CHAIRMAN (SHRI T.N. CHATURVEDI): Shri Lalitbhai Mehta to continue.

**श्री ललितभाई मेहता (गुजरात) :** उपसभाध्यक्ष महोदय, गुजरात उच्च न्यायालय की स्थायी न्यायपीठ राजकोट में स्थापित करने के बारे में मैंने सदन में पिछली बार अपने कुछ विचार प्रकट किए थे। महोदय, 1985 में जसवंत सिंह कमीशन बना था, मैं उसका उल्लेख कर रहा था। उन्होंने हाई-कोर्ट की बैंच स्थापित करने के लिए 21 मापदंड दिए थे। मैं उन सभी मापदंडों का जिक्र तो यहां नहीं करना चाहता लेकिन एक मापदंड का जिक्र मैं अवश्य करूंगा। वह मापदंड यह था कि जहां पर उच्च न्यायालय की बैंच स्थापित करने जा रहे हैं, क्या वह केन्द्रवर्ती जगह है?

उपसभाध्यक्ष महोदय, मैं यह निवेदन करना चाहता हूं कि राजकोट, सौराष्ट्र और कच्छ का केन्द्रीय स्थान है। राजकोट सभी दिशाओं से - उत्तर, दक्षिण, पूर्व, पश्चिम दिशा से केन्द्र में पड़ता है और 200-250 किलोमीटर के अंतर पर सभी लोग वहां पर पहुंच सकते हैं। लेकिन द्वारका, पोरबंदर और वेरावल से अगर आप गांधीनगर और अहमदाबाद जाना चाहेंगे तो 450-500 किलोमीटर का फासला होगा, डांग जिले से भी 450-500 किलोमीटर का फासला होगा।

महोदय, जब नया गुजरात राज्य बना था, उस समय राजकोट में यूनिवर्सिटी नहीं थी

लेकिन 1985 से राजकोट में यूनिवर्सिटी काम कर रही है। राजकोट में इनकम टैक्स ट्राईब्यूनाल है, राजकोट में रेवेन्यू ट्राईब्यूनाल है, राजकोट में डायरेक्टरेट ऑफ फॉरेन ट्रेड काम कर रहा है, राजकोट में शिक्षा की दृष्टि से सभी सुविधाएं उपलब्ध हैं, राजकोट में इंजीनियरिंग कालेज बना है, मैडिकल कालेज बना है, आर्टिटेक्चर कालेज बना है और राजकोट ने देश के आर्थिक विकास में काफी योगदान दिया है। महोदय, जहां तक इन्वेस्टमेंट के लिए प्राईमरी मार्केट का सवाल है, उसमें मुंबई का प्रथम स्थान है और उसके बाद दूसरा स्थान राजकोट का है। राजकोट में आज स्टॉक-एक्सचेंज भी काम कर रहा है और अभी सौराष्ट्र के विस्तार के तहत 30,000 करोड़ रुपए का इंडस्ट्रियल इन्वेस्टमेंट वहां पिछले 4-5 वर्षों में हुआ है। कच्छ की त्रासदी के बाद प्रधानमंत्री जी ने वहां के लिए जो टैक्स-हॉलीडे की घोषणा की है, उसके बाद करीब 25,000 करोड़ रुपए का नया इन्वेस्टमेंट कच्छ में हो रहा है, यानी सभी प्रकार का इंडस्ट्रियल डेवलपमेंट वहां पर हो रहा है।

महोदय, एक बात जसवंत सिंह कमीशन ने यह कही थी कि इसकी स्थापना से लिटिगेंट पब्लिक को और न्यायपीठ को क्या लाभ होगा? महोदय, मैं आपको बताना चाहता हूँ कि सौराष्ट्र और कच्छ के इलाके में करीब 40 प्रतिशत लोग आज भी गरीबी की रेखा के नीचे जी रहे हैं। ये राजकोट आएंगे तो इन्हें भाड़ा कम देना पड़ेगा और आने-जाने में भी सुविधा रहेगी और खर्च भी कम होगा और इन लोगों को न्याय भी जल्दी मिल सकेगा। हाई-कोर्ट में जो काम बढ़ रहा है, उसको देखते हुए अगर इस न्यायपीठ की स्थापना यहां हो जाए तो लोगों को जल्दी न्याय सुलभ हो सकेगा। महोदय, गुजरात की सरकार ने वहां जमीन देने के लिए और हाई-कोर्ट की बिल्डिंग बनाने के लिए अपनी कैबिनेट में प्रस्ताव पास कर दिया है।

महोदय, जसवंत सिंह कमीशन ने एक बात यह कही थी कि न्याय प्रक्रिया पर इसका असर होगा। मैं यह निवेदन करना चाहता हूँ कि इस न्यायपीठ की स्थापना से न्याय प्रक्रिया पर कोई ऐडवर्स असर नहीं होगा क्योंकि जिस वक्त यह कमीशन बना था, उस समय ई-मेल नहीं था, कंप्यूटर नहीं था, इंटरनेट नहीं था, फैक्स की सुविधा नहीं थी लेकिन आज ये सब सुविधाएं प्राप्त होने के बाद न्याय प्रक्रिया में कोई बाधा आ सकती है, उलझन आ सकती है, ऐसी बात नहीं है। महोदय, इन 21 मुद्दों को मैं और आगे तो नहीं ले जाना चाहता हूँ लेकिन अगर ये 21 रिक्वायरमेंट्स पूरी नहीं होती हैं तो भी जसवंत सिंह कमीशन ने जो ऑब्जरवेशन दी थी, वह मैं उद्धृत करना चाहता हूँ -

"In conclusion, we would like to emphasise that in weighing the claim of a region for a Bench of a High court it is not necessary that it should satisfy all the norms detailed above. It would be enough if the totality of the conditions and circumstances existing in a particular region largely satisfy the aforesaid factors. These observations would, in our opinion, apply with equal force to the selection of the situs of the Bench."

उपसभाध्यक्ष महोदय, राजकोट में उच्च न्यायालय की न्यायपीठ स्थापित करने में जो सबसे बड़ी बाधा है मेरी दृष्टि से वह हमारा जो राज्य पुनर्रचना अधिनियम की धारा-51-3 है वह इसमें सबसे बड़ी बाधा है। यह धारा इस तरह की है।

"Notwithstanding anything contained in sub-section (1) or sub-section (2), the Judges and Division Courts of the High Court for a new State may also sit at such other place or places in that State as the Chief Justice may, with the approval of the Governor, appoint."

तो चीफ जस्टिस जो बात कहेंगे, सिफारिश देंगे गवर्नर की एप्रूवल मिलेगी, उसके बाद ही हाई कोर्ट की बेंच की स्थापना हो सकती है। ऐसी बात इसमें है। इसके साथ मुम्बई हाई कोर्ट उस वक्त थी महाराष्ट्र हाई कोर्ट नहीं थी। इसमें एक सवाल यह आया था कि मुम्बई हाई कोर्ट की जो नागपुर बेंच काम कर रही है उसमें इन्कम टैक्स के मामले दर्ज किए जा सकते हैं। लेकिन वहां पर सुनवाई हो सकती है या नहीं हो सकती है, उसमें एक रूल-245 बना था। तो यह रूल-245 के कारण एक मुकदमा वहां पर आया था और इस मुकदमे में उस वक्त के मुम्बई हाई कोर्ट के मुख्य न्यायाधीश मोहम्मद करीम छागला जी ने जो ऑब्जर्वेशन किए हैं वह मैं यहां उद्धृत करना चाहूंगा :

"As to the scope and effect of sub-section (3) of Section 51 of the Act, the question came up for consideration before Chagla, Chief Justice and Bedkas, Justice in Seth Manji Dans Vs. Commissioner of Income-tax, Bombay, Civil Appeal No.995 of 1957 (bompay), decided on July 22, 1958. This was an application by which the validity of Rule 254 of the Appellate Side Rule was challenged in so far as it provided that all income-tax references presented at Nagpur should be heard at the principal seat of the High Court at Bombay, and the contention was that the result of this rule was that it excluded income-tax references from the jurisdiction of the High Court functioning at Nagpur. In repelling the contention, Chagla, Chief Justice, observed:

"Legally, the position is quite clear. Under Section 51(3) of the States Reorganisation Act, the Judges sitting at Nagpur constitute a part of the High Court of Bombay. They are as much a part of the High Court of Bombay, and if we might say so distinguished part of the High Court of Bombay, as if they were sitting under the same roof under which Judges function in Bombay."

यह जो रूल-245 है इसकी लीगलटी के बारे में जो बात उन्होंने कही है अभी लीगल आस्पेक्ट के सिवा जो दूसरी बात कहनी थी, और जस्टिस छागला जी ने जो ऑब्जर्वेशन दिया है वह भी मैं यहां पर कोट करना चाहूंगा :

"After all, Courts exist for the convenience of the litigants and not in order to maintain any particular system of law or any particular system of administration. Whenever a Court finds that a particular

rule does not serve the convenience of litigants, the Court should be always prepared to change the rule."

अगर लिटिगेंट पब्लिक की बात हमें देखनी है, जल्दी से न्याय मिले वो हमको देखना है, इनको न्याय का एक्सेस जल्दी से हो यह देखना है, तो जो यह सैक्शन-51-(3) रि-ऑर्गनाइजेशन ऐक्ट है यह अगर इसमें आड़े आता है तो इसको भी बदलने के लिए सरकार को विचार करना चाहिए।

उपसभाध्यक्ष जी, जब जसवंत सिंह कमीशन बना था और इस कमीशन ने समाज के कई गणमान्य लोगों से उनके अभिप्राय: जानने चाहे थे कि क्या उत्तर प्रदेश, मध्य प्रदेश में और तमिलनाडु में हाई कोर्ट की बेंच बने, उसमें सभी लोगों की बात मैं नहीं करना चाहूंगा, लेकिन जो विख्यात कानूनविद् हैं, जो भूतपूर्व न्यायमूर्ति रह चुके हैं इन तीन-चार लोगों ने जो अभिप्राय: दिए हैं उसका भी मैं जिक्र करना चाहूंगा।

Justice Nagendra Singh of the International Court of Justice at the Hague:

"The momentous changes that have taken place since then cannot be ignored. In view of the changed conditions it could be advantageous for all concerned if the Judge strength at the principal seats of High Courts is increased (and the holidays and long summer vacations are cut down to the minimum) to cope with ever-mounting arrears and to expedite disposal of cases. If, however, it is not possible for some compelling reasons to increase the Judge strength at the main seat of justice beyond a certain number, resort may be had to the establishment of Benches in important towns and centres as is well known that "Justice delayed is justice denied". No type of case/appeal in the High Court should remain in arrears for more than three months whether in the High Court or in any subordinate Court."

गुजरात में सात साल तक मामला सुनवाई के लिए नहीं आता है। मैंने पिछली बार भी कहा था कि 22 साल पहले मेरे साथ जो मामला दर्ज हुआ है उसकी फाइनल सुनवाई आज तक नहीं हुई है।

THE VICE-CHAIRMAN (SHRI T.N. CHATURVEDI): Now, you have to wind up. You are giving all the details. There are other Members also who want to speak.

SHRI LALITBHAJI MEHTA: I want to make one more point only.

श्री अहमद पटेल (गुजरात) : सर, कानून मंत्री जी गुजरात का प्रतिनिधित्व करते हैं। उनको इसके बारे में एश्योरेंस दे देना चाहिए।

श्री ललितभाई मेहता : सर, मैंने मंतव्य शुरू करते समय कहा था कि महात्मा गांधी जी ने कहा था कि देश में न्याय सिर्फ़ धनी लोगों के लिए है और जो ग़ेम्बलिंग करना चाहते हैं उनके लिए है। पिछले 52 साल में परिस्थिति बदल चुकी है। देश में उच्चतम न्यायालय की बेंच पश्चिम में, दक्षिण में और पूर्वोत्तर भारत में बने इसकी मांग भी की जा चुकी है। लॉ कमीशन ऑफ़ इंडिया की जो 125 वीं रिपोर्ट है "ए सुप्रीम कोर्ट फ़्रेश लुक इज़ सिगनिफ़िकेंट", उसमें भी पूरी बात लिखी हुई है। मैं आपको बताना चाहता हूँ, वह थोड़ा बड़ा है इसलिए मैं उसको पूरा नहीं उद्धृत नहीं करना चाहता हूँ। लेकिन लॉ कमीशन की 125 वीं रिपोर्ट में यह बात कही गई है कि सुप्रीम कोर्ट को फिर से विचार करना चाहिए कि सुप्रीम कोर्ट की बैचिज़ पूर्वोत्तर, दक्षिण और पश्चिम भारत में बनें। उच्चतम न्यायालय के वर्तमान मुख्य न्यायाधीश डा. ए.एस. आनन्द हैं, उन्होंने यह कहा :

"Failure of judiciary to deliver justice within a timeframe has brought about a sense of frustration among the litigants. Human hub had its limits; and waiting too long in the current lifestyle is not possible."

ये भी इनके पक्ष में हैं। मैं एक आखिरी बात कहकर अपनी बात समाप्त करता हूँ। जब सुप्रीम कोर्ट बना तो उस वक्त सुप्रीम कोर्ट के प्रथम मुख्य न्यायमूर्ति जस्टिस हरी लाल कनिया थे, उन्होंने कहा:

"The people of India have established by their choice the Supreme Court as the final Court of appeal for its people. It is the final stage of the complete independence of the judicial system of the country." He closed his speech with a message from the Lord Chancellor of England, which read as follows:

"It is satisfactory to think that notwithstanding all the difficulties of the day, we are all determined to maintain and strengthen the rule of law, and I feel quite confident that the Supreme Court of India will prove an effective instrument for this end." One hopes that the apex court will devise ways and means of overcoming whatever difficulties that might crop in setting up the Regional Benches so as to extend its benevolent arm of law to the poorest of poor litigants across the country."

सर, इसमें जो बातें बताई गई हैं उनके आधार पर मेरा निवेदन है कि राजकोट में हाई कोर्ट की स्थाई न्यायपीठ बने। इसके लिए मैंने जो बातें रखी हैं, उनको ध्यान में रखते हुए सरकार के सामने जो भी बाधाएँ हैं, उनको वह दूर करें और वहाँ की जन-भावनाओं, जन-आकांक्षाओं का सम्मान करें। आभार।

*The question was proposed.*

SHRI RANGANATH MISRA (Orissa): Mr. Vice-Chairman, Sir, I support the attempt to have a Bench, as indicated in the Bill which is under discussion.

Man is not born to litigate, litigation comes as a part of life. Therefore, everybody is anxious that the case should be over and he should be free as early as possible.

Therefore, getting quick justice is very important. The second consideration is that litigation has become very costly and justice should be available within the means of the average man in India. I have a feeling that litigation has really become very costly and in the seats of High Courts, as they are now, lawyers have been charging very heavy fees. Therefore, if you want litigation to be cheap and to be quick, and if these be the main considerations in finding out where a high court should be located, my colleague is, probably, justified, in demanding a bench of the Gujarat High Court at Rajkot. Rajkot has its own interest in the people of India. It is associated with the name of Mahatma Gandhi. Gandhiji did not want litigation. He wanted cases to be disposed of amicably.

SHRI LALITBHAI MEHTA: In fact, Mahatma Gandhi started his legal practice in the city of Rajkot.

SHRI RANGANATH MISRA: Therefore, Rajkot has a special claim to be considered differently from what Mr. Justice Jaswant Singh has indicated as the guideline in regard to the reference made to him. The reference made to him had nothing to do with Rajkot as such. But, since the point was common, reliance has been placed.

Article 214 of the Constitution says, every State shall have a High Court. While for the apex court, you have a separate provision under article 130 that it has to sit in Delhi--that is the mandate--and it can sit elsewhere as the Chief Justice, with the consent of the Government and the President, would indicate, there is no such provision for the High Courts. In fact, locating a High Court bench, ordinarily, under the constitutional scheme, does not require a Bill or legislation.

It can be done by the Chief Justice in agreement with the State Government concerned. My own feeling is that if you have circuits on a test basis initially and a little freely, and operated for some time, one would ultimately know, by assessing for a couple of years of activity, which are the suitable places for locating the circuits of the High Court on a permanent basis.

I belong to Orissa. We came under the Calcutta High Court as our parent court till 1916. In 1911, Bihar and Orissa became separate from

**3.00 P.M.**

Bengal. But Bengal or Calcutta had jurisdiction over Bihar and Orissa areas for five years more. In 1916, we had the Patna High Court established. The Patna High Court had jurisdiction over Orissa and though Orissa became a separate Province in 1936, it continued to have the jurisdiction till July, 1948. Therefore, this has been going on for quite some time. At Cuttack, we had a Circuit Bench of the Patna High Court where two Judges used to come for about six weeks in one term before summer, and for four weeks in November and December. That is how ten weeks of activity was there as a Circuit Bench. Initially, instead of opening a bench of the High Court at some place, if we think of a little free arrangement of circuits being located, automatically, material will be available for assessing and the assessment would indicate the places where, probably, regular courts can run. And if this is done, it may be smooth.

The next consideration I have been thinking of is this. In fact, we were thinking of experimenting before I retired from the court, but it did not materialise quickly on account of other problems. That is, you could have three or four Judges in the High Court who could go round in the old Britain type of system and do justice--be there in the district court, work some time in the day time or in the afternoon for two hours, three hours or four hours, dispose of cases and go round again to some other place. The quality of judgment may not be important. But the ultimate justice is more important. Reasons, one need not look for in every case. This is what we have been doing now. The alternative disposal system is almost of this type. So, while I support the effort that Rajkot should have a Bench of the Gujarat High Court,....

I would alternately add this that we can have a Circuit Bench, to start with, which may function for a specified period and go back, and by the assessment that you make, after running of the court for some time, you can decide whether Rajkot can justify a regular Bench. A Bill is not really necessary for that. But since a Bill has come to highlight the difficulties and the concept of the local demand, I support the effort that has been made.

SHRI P. PRABHAKAR REDDY (Andhra Pradesh): Sir, I thank you for giving me this opportunity to speak. I rise to support the Bill, brought forward by the hon. Member, Shri Lalitbhai Mehta, to establish a permanent Bench of the High Court of Gujarat at Rajkot in Gujarat. Sir, while supporting the Bill, I must state the reasons why I am supporting the Bill. It

is well known that the number of pending cases is mounting in various courts throughout the country. The hon. Minister of Law, while giving a reply in this House, has said that the number of pending cases in various High Courts has gone up to 34,37,000. This is as of June 2000. The number was merely two lacs in 1991. That means, in nine years, the number has gone up to 34,37,000. In another five, six years, we can well imagine what the number will be. He has also given the break-up. Allahabad-- 8,00,000; Madras-- 3,53,000; Calcutta-- 3,00,13; Bangalore-- 2,89,000, Kerala-- 3,83,000. The position in Andhra Pradesh seems to be a little better with 1,55,000 cases only. These are the cases pending in the High Courts. But in the subordinate courts, the problem is much worse. As of 31.12.98, there were two crore two thousand cases.

THE VICE-CHAIRMAN (SHRI T.N. CHATURVEDI): Mr. Prabhakar Reddy, here, we are discussing only the High Courts. There will be another occasion to discuss the total justice system. The point is that you better highlight this. The total justice system will be discussed at a later date because of the time constraint.

SHRI P. PRABHAKAR REDDY: Sir, I will certainly complete my speech within six minutes. I will be within my time. We have established the Fast Track Courts. After the hon. Law Minister has taken over the charge of this Ministry, he has taken a number of initiatives, that is, setting up of the Fast Track Courts, filling up judges posts, changes in the procedural laws, establishment of special courts etc. I am coming to the point. I am on the High Court only. When these steps are taken, it is going to bring further pressure on the High Courts, because, speedy justice means, we should not limit only to a particular level. It must be taken to its logical conclusion. When we are setting up Fast Track Courts and other things at the lower levels, naturally, there will be more disposals, and there will be more number of cases that will be coming to the High Courts. Why am I saying this? When we do this, there is a need for strengthening, for taking measures to see that the cases are disposed of speedily in the High Courts, and also in the Supreme Court. In this connection, I feel that there is an imperative need for setting up of more Benches in various centres in the States. One is speedy disposal. Another is accessibility. The right to appeal to a higher court is a right guaranteed to every citizen. I am of the view that in some States, cases are not reaching the High Court level because of the distance. If we see the statistics of the cases that are filed in the High Courts as well as in the Supreme Court, I think it will be very clear that the cases are coming to the High Courts only from those districts which are nearby. I do

not know if I am wrong. The hon. Minister can correct me. But a majority of the cases that come to the High Courts or the Supreme Court are filed by those people who are living in the proximity, and the people who are living in districts which are far off from the High Courts, are not able to reach because of various difficulties, that is, expense involved--travelling as well as lodging. Therefore, there is a need, and wherever the situation warrants, there must be Benches. Therefore, I wholeheartedly support this Bill. I am making another request. Just as we are advocating for more Benches of High Courts, there is need for having a Supreme Court Bench in a place like Hyderabad.

Hyderabad is strategically located. It is closer to States like Kerala, Tamil Nadu, Orissa, Madhya Pradesh. It is centrally located. Therefore, I appeal to the hon. Law Minister to take these steps. With these words, I support the Bill.

SHRI RAM JETHMALANI (Maharashtra): Thank you, Sir, for giving me this opportunity to speak. I won't take more than a few minutes, but I do wish to compliment Mr. Lalitbhai Mehta for having brought this Bill before the House, and the passion with which he spoke does attest to the intensity and the wide-spread prevalence of the feeling and the desire amongst not only the people there but the entire bar, and, more than anything else, the entire educated class there feel that this is a very serious injustice to that region. Ultimately, justice has got to be delivered at the doorstep. That is the ideal. But we realise that they can't have a High Court bench sitting in every district; we realise that they can't have it in every village; therefore, some balance has to be drawn. This balance has been drawn by the framers of the Constitution itself. Sir, I wish to highlight, because I am glad that the hon. Law Minister is present here--that this attitude of reluctance to set up benches has started in the Supreme Court. In my informal discussions with Judges of the Supreme Court, Sir, I have found one shibboleth which I regard as a meaningless cliché, that this will disturb and break up the integrity of the Court. Sir, I have never understood this kind of a sentence. It is all right, it is a very high sounding sentence, but it makes no sense. Sir, it makes no sense because the Constitution-makers have repudiated this theory. The Constitution-makers put an Article, 130, in the Constitution, which states:

"The Supreme Court shall sit in Delhi and in such other place or places, as the Chief Justice of India may, with the approval of the President, from time to time, appoint."

Therefore, Sir, the Constitution-makers did not attach the slightest importance to this very wonderful argument of the integrity of the Court and maintaining the integrity of the Court. The Constitution-makers wanted that the Court benches must spread out in parts of the country, and, Sir, I am one of those who have believed--and I have argued with the Supreme Court--that the benches of the Supreme Court must be set up in the South, must be set up in the East and must be set up in the West, apart from the one that we have. Sir, because of this reluctance, based upon a fanciful ground, it has percolated down to the High Courts, and the High Courts, with respect, Sir, are trying to defeat the sovereign will of Parliament. The sovereign will of Parliament is first indicated in Section 51 of the Reorganisation Act of 1956. Sir, it is well to recall that Saurashtra and Kutch are both culturally distinct areas. Saurashtra was a separate State, and so was Kutch. One had a High Court, and the other had its own Judicial Commissioner's Court. When the new State of Bombay came into existence in 1956, they merged there. But after they merged, and ultimately when the new Bombay Reorganisation Act of 1960 came up, in Section 41 of the Act--they, of course, set up one more bench in Nagpur--they distinctly, expressly provided: "The powers under Section 51 of the old Reorganisation Act of 1956 shall remain intact." Under that Act, a permanent bench can be created by the President of India, after consultation with the Chief Justice and the Governor. "Consultation" here does not mean "concurrence" of the Chief Justice and the Governor. The President is advised by a democratically elected Government--and I say a democratically elected Government knows the wishes, the aspirations and the needs of the people of every particular region--and if an advice is given to the President, he is only bound to consult the Chief Justice and the Governor of the State.

If those two are recalcitrant, who don't listen to good advice, the Central Government, I suggest, must assert its authority under the Act and the Will of the Parliament and override the Will of the Supreme Court and this kind of artificially induced reluctance. This Bill has become necessary. Why? It has become necessary because we are continuously surrendering our Executive turf to the Judiciary. The Judiciary has to function within its own parameters. We are all supporters of complete judicial independence and integrity. But I am also a supporter of division of powers, such kind of division of powers that the Constitution has created. The Executive turf and the Legislative turf cannot be interfered with by the Judiciary, and the Judiciary is now suffering from a tendency to do so. I suggest that our

young Law Minister, who is part of a democratically elected Government, must reflect the wishes of the people of that region, and, after due consultation, establish a permanent Bench of the High Court at Rajkot, as this Bill demands, so that this Bill becomes unnecessary. We know that these Private Members' Bills are, ultimately, intended to be an occasion for expression of the wishes of a particular region or a particular class of people. We know what happens to the Private Members' Bills. This Bill will now get into some subterranean well from which nobody will rescue it during the duration of this Parliament. Therefore, today, it is for the Government to act and not to wait for this Private Member's Bill to become law. It will never become law, at least, during my life-time. I hope, Government will have respect for my age and mortality, and it will set up a High Court Bench at Rajkot and make this Bill totally unnecessary. We must tell the Supreme Court and the Judges that, ultimately, they are all servants of the people; they are all public servants like every other public servant; and the Will of the Parliament shall prevail.

THE VICE-CHAIRMAN (SHRI T.N. CHATURVEDI): Apart from your age, he should also respect your good advice. That is what you mean.

SHRI LALITBHAI MEHTA: He also represents the State of Gujarat. So, he has to take care of the interests of the State of Gujarat.

SHRI RAM JETHMALANI: If he does this, he would not have to contest a seat for the Rajya Sabha. He can go there and get elected to the Lok Sabha.

THE VICE-CHAIRMAN (SHRI T.N. CHATURVEDI) : This is another piece of good advice.

SHRI LALITBHAI MEHTA: We will definitely welcome him to Gujarat to contest the election.

THE VICE-CHAIRMAN (SHRI T.N. CHATURVEDI) : Shri Ka Ra Subbian. You have five minutes. Kindly be brief. I know you will be brief.

SHRI KA. RA. SUBBIAN (Tamil Nadu): Thank you, Mr. Vice-Chairman, Sir, for giving me this opportunity to associate myself with other senior Members of this august House. I am supporting this Bill brought by our learned colleague demanding the establishment of a High Court Bench at Rajkot. Right to justice is a Fundamental Right under article 21 of the Constitution, as observed by the Supreme Court. As you are fully aware, justice should not only be done but it should also appear to be done. Now,

after 52 years of independence, we have got a Supreme Court in Delhi and High Courts in all States. There are High Court Benches in a few places in the States. It is a general demand, not only of the litigant-public but also of everybody from different walks of life, that there should be decentralisation of the Judiciary, namely, that justice should be delivered at the doorsteps. For that purpose High Court Benches should be established at different places in the States. As far as the southern States are concerned, ever since independence, we have been constantly demanding that a Supreme Court Bench should be established at Chennai. As far as the Madras High Court is concerned, it is a chartered High Court with 125 years of existence.

Among all the Bar Associations of India, the Chennai Bar Association is considered to be one of the best Bar Associations. Several advocates from Chennai and other parts of Tamil Nadu have been appointed as High Court judges and a number of judges from Tamil Nadu have served in the Supreme Court. As observed by my learned friend, Shri Ranganath Mishra, a former Chief Justice, in regard to the filing of cases either in the Mofussil courts or in the High Courts or in the Supreme Court, 60 per cent of the cases are filed by the litigant public in Delhi and only 40 per cent of the cases are filed in other parts of the country. Tamil Nadu, Andhra Pradesh, Kerala and Karnataka are situated far away from Delhi. If a litigant wants to file his case in the Supreme Court, he engages a High Court lawyer. It is common practice that a Supreme Court counsel is engaged only through a High Court lawyer. If we take into consideration the cost of living, the cost of litigation and the cost of engaging a Supreme Court lawyer, how much amount do we have to spend? There are other expenses also like rail fare, air fare, etc. As demanded by my learned friend, a Supreme Court Bench should be established at Chennai. The hon. Prime Minister, the Law Minister and many other political leaders want that a Supreme Court Bench should be established. But the Supreme Court is objecting to it. All the Supreme Court Judges have passed a resolution to the effect that no Supreme Court Bench should be established anywhere in India.

THE VICE-CHAIRMAN (SHRI T. N. CHATURVEDI): You have made your point about establishing a Supreme Court Bench. That point is well taken. You talk about the establishment of a High Court Bench.

SHRI KA. RA. SUBBIAN: I am coming to that point. Supreme Court Judges are saying that the establishment of a Supreme Court Bench outside Delhi would undermine the authority and dignity of the Supreme

Court. I am not able to understand it. The dignity and quality of judgements depend on the calibre and independence of judges, whether they sit in Delhi or in Chennai. My request is that a Supreme Court Bench should be established at Chennai. We have also been demanding for the establishment of a separate Bench at Coimbatore. To serve the litigant public of southern parts of Tamil Nadu, the Government has decided to set up a separate Bench at Madurai. When our great leader, Shri Karunanidhi, was the Chief Minister of Tamil Nadu, he made a lot of efforts for the establishment of a separate Bench at Madurai. The work is in progress at Madurai. Land has already been allotted for this purpose. My demand is that a High Court Bench should be set up at Coimbatore. The hon. Law Minister has visited Coimbatore a number of times. Coimbatore is considered to be the Manchester of South India. It is an industrial town.

THE VICE-CHAIRMAN (SHRI T.N. CHATURVEDI) : And a very hospitable one.

SHRI KA. RA. SUBBIAN : So also the congenial atmosphere and the sweet waters of Siruvani that we get there. So, the establishment of a bench of Coimbatore would serve not only the people living in the Coimbatore district, but also those living in and around Coimbatore district, namely, Salem, Namakkal, Erode, Trichy, Nilgiris and other places. So, there should be a bench of the Madras High Court at Coimbatore. In fact, the Committee, which was appointed to consider the establishment of benches of the High Court in Tamil Nadu, had submitted its report in favour of Coimbatore district. In fact, it was only based on that report that the constitution of the Madurai bench has now been sanctioned. So, my fervent appeal and request to the hon. Minister is that he should give his sanction to the establishment of a bench of the Madras High Court at Coimbatore.

Sir, it is to be appreciated that after assuming the office, our Law Minister is straining his every nerve -- as was pointed out by my learned friend -- to reduce the number of pendency of cases not only in the district courts, but also in the High Courts and the Supreme Court, and to have early disposal of the cases. It is only to dispose of the cases as early as possible that fast track courts have been established even in district centres. Pendency of cases in all the courts is known to one and all. Thus, in order to clear the pendency of cases and to render justice to the litigants by early disposal of the cases, the Minister has taken this step of setting up courts at all possible places. So, Sir, constitution of separate benches in all

cities and towns throughout the country is a must for the early disposal of the cases. Sir, I would conclude by saying that a separate bench of the Madras High Court should be set up at Coimbatore. With these words, I conclude.

THE VICE-CHAIRMAN (SHRI T.N. CHATURVEDI): You support the Bill also.

SHRI KA. RA. SUBBIAN: Sir, I support the Bill moved by Shri Lalitbhai Mehta for the establishment of a permanent Bench of the High Court of Gujarat at Rajkot.

THE VICE-CHAIRMAN (SHRI T.N. CHATURVEDI) : I am not completely innocent of this particular issue, since I was the Secretary, Department of Justice, at the time when the Jaswant Singh Committee was appointed and the report was submitted. Now, Shri Ahmed Patel.

श्री अहमद पटेल : मान्यवर, आपने मुझे वक्त दिया उसके लिए मैं आपका बहुत-बहुत धन्यवाद करता हूँ और आभारी भी हूँ।

ललित भाई मेहता जी जो अपने प्रायवेट मेम्बर बिल के जरिए राजकोट में परमानेंट हाईकोर्ट बेंच की डिमांड लेकर आए हैं, कंसीडर करने की बात लेकर आए हैं मैं उसका समर्थन करता हूँ। ललित भाई जब राजकोट में हाईकोर्ट बेंच की बात करते हैं तो सिर्फ राजकोट की बात नहीं करते हैं बल्कि पूरे सौराष्ट्र और कच्छ रीजन की बात करते हैं। जैसे कि यहाँ कहा गया, इन्सान को जो हालात हैं वे मजबूर करते हैं कभी कभी लिटीगेशन के लिए, इन्सान खुद नहीं चाहता है कि वह कोर्ट में जाए, कोर्ट-कचेहरी के घक्कर लगाए बल्कि कभी कभी हालात ऐसे हो जाते हैं कि मजबूरी की वजह से उनको कोर्ट में जाना पड़ता है।

जब वे कच्छ और सौराष्ट्र एरिया की बात करते हैं और कच्छ से जब इन्सान निकलता है तो उसको 7 घंटे अहमदाबाद पहुँचने में लगते हैं, अगर बस से सफर करता है तो उससे भी ज्यादा वक्त लगता है। जब जूनागढ़ या पोरबंदर से निकलता है तो 5-6 घंटे लगते हैं, जब भावनगर से निकलता है तो 3 घंटे लगते हैं। जब ललित भाई जी अपने बिल पर बात कर रहे हैं तो सिर्फ राजकोट के लिए नहीं कर रहे हैं बल्कि पूरे सौराष्ट्र और कच्छ के लिए बात कर रहे हैं। इन्सान जब वहाँ जाता है तो न सिर्फ उसका लायस बल्कि बाकी चीजों पर खर्च होता है। वकील की फीस के अलावा बाकी खर्च भी होता है। जिनके पास पैसा है वे तो एफोर्ड कर सकते हैं लेकिन जो गरीब इन्सान हैं जो जस्टिस के लिए, उसको न्याय मिले इसके लिए अगर अहमदाबाद जाते हैं और उनको एक घक्कर नहीं, कई घक्कर लगाने पड़ते हैं तो उनकी जो व्यथा है, उनको जो तकलीफ है, उनकी जो मुश्किलतात हैं वे समझ में आती हैं। जब हम गुजरात की बात करते हैं तो गुजरात चार रीजन्स में बंटा हुआ है। साउथ गुजरात - सूरत और बाकी जो एरिया है वह, सेंट्रल गुजरात की जब हम बात करते हैं तो उसमें खेड़ा, आनन्द और अहमदाबाद की बात करते हैं। नार्थ गुजरात की बात करते हैं तो साबरकांठा, बनासकांठा, मेहसाना की बात करते हैं और जब सौराष्ट्र, कच्छ एरिया की बात है तो इसमें राजकोट, कच्छ आदि एरियाज की बात करते हैं।

मैं ललित भाई जी को राजकोट के बारे में मुबारकबाद दूंगा और मैं चाहूंगा कि वहां परमानेंट बेंच आए लेकिन उसके साथ साथ जैसे जेठमलानी जी ने पूरे हिंदुस्तान के लिए कहा, उसी तरह से गुजरात के जो बाकी के दो रीजन हैं - अहमदाबाद में जो हाईकोर्ट है उससे तो सेंट्रल गुजरात कवर होता है, नार्थ गुजरात भी कवर हो जाता है लेकिन राजकोट के साथ सूरत को भी बेंच मिलनी चाहिए और जैसे मिश्र जी ने कहा, इन्होंने परमानेंट बेंच की बात की, तो इनकी जो डिमांड है वह सिर्फ जेनुइन ही नहीं बल्कि जस्टीफायेबल भी है। और कानून मंत्री जी गुजरात को रिप्रेजेंट करते हैं इसलिए मैं डिमांड नहीं करूंगा कि आप यह बेंच दे दीजिए, बल्कि इसलिए डिमांड करूंगा कि उनकी डिमांड जेनुइन और जस्टीफायेबल है। इसीलिए हम चाहेंगे कि आप कोई ऐसा रास्ता निकालें ताकि राजकोट को परमानेंट बेंच मिले या बाकी जगह सूरत में भी कहूंगा, जैसे मिश्र जी ने सर्किट बेंच के लिए कहा, तो इसके लिए कम से कम आप एक्सपैरीमेंट तो करिए, एक अनुभव तो करिए कि यह जस्टीफायेबल है या नहीं। मेरे ख्याल से हम इसलिए नहीं कह रहे कि कानून मंत्री जी वहां से रिप्रेजेंट करते हैं, बल्कि इसलिए हम कह रहे हैं कि उनकी यह डिमांड जेनुइन और जस्टीफायेबल है और इसीलिए उसको कंसिडर करना चाहिए तथा कोई रास्ता निकालना चाहिए। अगर उन्होंने इसके बारे में कोई रास्ता नहीं निकाला तो मैं समझूंगा कि वह गुजरात के साथ अन्याय कर रहे हैं। इसीलिए मैं उनको खास जोर देकर भी कहूंगा कि ललितभाई जी जो बिल ले कर आए हैं वह बहुत ही जेनुइन और जस्टीफायेबल है, न सिर्फ राजकोट के लिए बल्कि गुजरात के दूसरे एरियाज के लिए भी, जैसे मैंने कहा कि अहमदाबाद से तो नार्थ गुजरात, सेंट्रल गुजरात कवर होता है, सूरत या बलसार से जो इंसान निकलता है उसको भी 6-6 या 7-7 घंटे लगते हैं और काफी कुछ खर्चा होता है। इसलिए राजकोट के साथ-साथ कम से कम सूरत का भी कंसिडर करने का कोई रास्ता निकालिए ताकि वहां की जो जनता है, जो जरूरतमंद लोग हैं और जिनकी यह जेनुइन डिमांड है, वह फुलफिल हो सके।

इसके साथ ही ललितभाई मेहता जी जो बिल लाये हैं, उसका मैं समर्थन करता हूँ।

THE VICE-CHAIRMAN (SHRI T. N. CHATURVEDI): Shri S. G. Indira. You have only three minutes.

SHRIMATI S. G. INDIRA (Tamil Nadu): Sir, at the outset, I support the Bill. This Bill has been brought by the hon. Member, Shri Lalitbhai Mehta, for setting up of a High Court Bench at Rajkot for disposal of cases arising in the districts of Porbunder, Junagarh, Bhavnagar, Surendranagar, Kutch and Rajkot. Sir, you have given only three minutes. So, I would like to...

THE VICE-CHAIRMAN (SHRI T.N. CHATURVEDI) : You may take a minute or two more.

SHRIMTI S. G. INDIRA: Sir, the main objective of the Bill is the avoidance of the huge pendency of cases, their quick disposal, quick redressal of poor people's grievances and so on. Every individual in India has the right to file cases in lower courts and also in the High Courts. Justice should not be denied to the poor. Here, I would like to make a

mention about the State of Tamil Nadu. There is a need for the setting up of a Bench of the Supreme Court at Madras. The setting up of a High Court Bench was initiated and approved by our Puratchi Thalaivi during 1991-95. That work is going on. The previous Government also followed it up and gave the financial and other approvals. Now, the recent judgment delivered by the Supreme Court talks elaborately about the huge pendency of cases in lower courts. It has advised the lower courts about the quick disposal of pending cases. There is this requirement of a Supreme Court Bench at Madras. People find it difficult to file their cases because for filing a case, a client has to first approach an advocate. After getting an appointment with the advocate, he has to go through all the formalities. For filing a case and getting it registered, he has to wait for 20 days or a month or sometimes even for two months. Poor people who want to file cases have to come and stay at district headquarters for long. A poor man, who is the only bread-winner of the family comes out for filing a case and the whole family is affected. So, all these things should be taken into consideration. Sir, the Law Minister is making so many amendments in favour of women and others. I request him to do something in this regard. A permanent bench of the High Court should not only be established at Rajkot but also in other States. I would like to bring it to the knowledge of the Law Minister that we have very eminent lawyers in Tamil Nadu. They have to come all the way to Delhi, with their clients, for arguing their cases in the Supreme Court. If a Supreme Court bench is set up at Chennai, then it would be very easy for the people to get speedy and inexpensive justice.

Sir, I would like to point out one more thing. There is a Debt Recovery Tribunal at Madras. Bank debts of more than Rs.10 lakhs are filed before this Tribunal. So many cases are pending in this Tribunal. Another Tribunal has been set up at Chennai. Now, I request the hon. Law Minister to set up another Debt Recovery Tribunal at Madurai, which will serve the people living in the southern part of Tamil Nadu. As so many cases are pending in the Debt Recovery Tribunal at Chennai, the cases are not disposed of quickly. Therefore, there is a strong need for setting up a Tribunal at Madurai. If it is established, then it would help the people living in the southern part of Tamil Nadu. Sir, I welcome this Bill. Thank you, Sir.

SHRI FALI S. NARIMAN (Nominated): Mr. Vice-Chairman, Sir, we have really two Bills today, almost in tandem, about the establishment of a permanent bench outside the principal seat of High Courts in two different States, and we are dealing with the first. Sir, I must confess that I am a

strong proponent of greater accessibility of justice to people around the country. Despite all that, my learned friend and colleague, Shri Jethmalani, said, "I believe, this is not a matter, strictly speaking, of law, but of perception". And the perception is this. Before the Constitution, we had High Courts and a very few benches, and, probably, we did not need so many benches because the direct jurisdiction of the courts were from the district courts i.e. bottom upwards. The High Courts really had no direct jurisdiction. But, with the advent of the Constitution, with article 226, which is, perhaps, the most important article in our Constitution, wherein each State, there are a vast proliferation of administrative tribunals, authorities all over the place, the only direct access to justice of the established courts is through the High Court under a writ petition under article 226. Therefore, that is one very important consideration which makes some marked difference from the period before the Constitution and the period after. I am, of course, at the same time, opposed to a needless fragmentation of the High Courts; and, I think, as on all things, we have to strike a balance. In the matter of establishing permanent benches, of course, Sir, there are strong centres of power, strong lobbies which propose it; strong lobbies which oppose it. I recall the instance of Jaipur. There used to be a permanent seat at Jodhpur for many, many years, Sir, as you will recall, there was a very, very strong demand that there should be a bench at Jaipur as well. There was a huge furore; advocates from one side to another trooped to Delhi, back and forth and so on, and strongly opposed it. And, ultimately, it was established, and it is functioning well. The same thing happened in the case of Aurangabad. There was a long litigation, after the High Court agreed to establish a bench at Aurangabad. There was a litigation which came right up to the Supreme Court. Ultimately, a bench was established at Aurangabad, and we now have two benches in Maharashtra State: one at Nagpur and the other at Aurangabad. The reasons why benches are opposed are, as Mr. Jethmalani said, they destroy the functional integrity of the court. This is stated by people and I don't mean to be disrespectful to anybody who don't want to be inconvenienced and judges in the High Courts do not want to be inconvenienced; it would be an inconvenience, I dare say, to travel from one place to another. That seems to be the basic reason why it is being opposed. I still recall this about functional integrity. I have never been a proponent of that theory ever since my leader, Jamshedji Kanga, used to tell us about a very distinguished Scottish judge, Norman McLeod, who sat in Bombay and he used to say: "You just give me a table and a chair and make me sit under a tree; I will

do justice in this land." This is how the justice system started in our country. I don't see why we should have all this panoply of justice, with innumerable *chopdas* and innumerable appendages that go with all the justice, etc.

It is quite possible to deliver justice on a much more equitable and reasonable basis than is being done. I am, therefore, strongly of the view that wherever it is needed, I think, it should be allowed. The question is, who will assess this need? I personally believe that this need has to be assessed by a proper appreciation of the interests which are involved: first is the State Government, of course-- and primarily, the State Legislature-- that is why you will find Resolutions sometimes of the State Legislature, as in the case of Dharwad, which we have in the next Bill. That is where, I think, we have felt the need for assessment. There is a difficulty there. We have centres of power and we have people lobbying. But one group that you should not ask, and that is lawyers'. You don't ask lawyers. That is my plea; because lawyers in Ahmedabad will say, "We must not have a Bench at Rajkot." And lawyers in Rajkot would say, "We must have a Bench at Rajkot." You will be left totally high and dry and you will not know whether to have a Bench or not; because they constitute a very important centre of power, and that is why, I personally believe that you have to assess it on an objective basis, as far as possible, without leading to the fragmentation of the court. That is why, I share what my learned friend, Mr. Justice Ranganath Misra, has said. If my learned good friend, Mr. Lalitbhai Mehta, would lower his sights a bit for a moment, he should accept that we should try this as an experimental measure. When the Law Minister requests the Chief Justice, and if the State Government approves, let us have a Bench at a place where there is already an established court, in order to see whether it can function. Try it for six months. Send a couple of High Court judges over there; you need not have a building. You can sit wherever you can. Maybe, on a cot where the judge used to sit. It makes no difference. Have Circuit Benches to start with. It might be very acceptable to the judges also because they don't have to shift their place of residence. Once you try that and once people get used to this idea that justice is also accessible in a place like Rajkot, then, it would be, I think, very possible, in course of time, to have a permanent Bench there as well. That is why I support this Bill, in principle.

I would also request the Law Minister to take this matter up with the relevant authorities because, after all, in a democratic process, we can't

have a referendum on whether we should have a Bench at Rajkot or we should not have a Bench at Rajkot. You must do it democratically. You must see whether, in the Legislature of that State, by and large, there is a consensus amongst all the political parties and whether the people need it. I believe, people definitely need a Bench which is nearest to their place, where they will be able to have justice. Today, as I said, the justice system operates on writs, mainly.

It is unfortunate, but it is a fact. So much so that many lawyers have forgotten how to draft plaints and written statements. As Mr. Ranganath Misra will agree, the civil laws somehow have really got out of the conspectus of all the lawyers in this country. But we are not ..... Now it is the writ jurisdiction which is the whole thing. The client also wants a writ, he wants a stay immediately, etc., etc. The accessibility is very important. Therefore, I strongly support this venture at least of Lalitbhai in principle. The point is not whether it should be a permanent Bench or it should not be. I think it is left to the authorities to decide whether it should start with a circuit Bench. I would only strongly recommend that the Law Minister should accept this in principle. Thank you.

**श्रीमती जयन्ता देवी बारपाल (राजस्थान) :** उपसभाध्यक्ष महोदय, मैं आपके माध्यम से विधि मंत्री जी से आग्रह करना चाहूंगी कि आप न्यायदाता हैं और सभी के प्रति आप न्याय करते जा रहे हैं। ऐसी सूरत में मैं एक छोटी सी मांग रखना चाहती हूँ। महोदय, हमारे राजस्थान में बीकानेर एक बहुत बड़ा शहर है। यहां न्यायालय तो है लेकिन हाई-कोर्ट की बेंच नहीं है। महोदय, जब गंगानगर, हनुमानगढ़ के लोग बीकानेर से जोधपुर जाते हैं तो उनको आने-जाने में 2 दिन का समय लगता है और यह 2 दिन का समय एक गरीब किसान और मजदूर के लिए बहुत ही महंगा पड़ता है। ऐसी सूरत में मैं अपनी मांग को इनके साथ सम्बद्ध करते हुए यह प्रार्थना करूंगी कि बीकानेर में भी हाई-कोर्ट की एक बेंच खोली जाए जिससे लोगों को न्याय मिल सके। आप कहेंगे कि किसी को पुरस्ते हुए देखकर, इसका भी खाने को मन हो आया।

**उपसभाध्यक्ष (श्री टी.एन. चतुर्वेदी) :** बीकानेर की बात ठीक कह दी आपने।

**श्रीमती जयन्ता देवी बारपाल :** मैं विधि मंत्री जी से आग्रह करूंगी कि हमारी मांग को भी इसमें सम्मिलित कर लीजिए।

**DR. L.M. SINGHM (Rajasthan):** Sir, I would like to say that the demand for Benches of the High Court in every State has to be considered on their merit, from case to case. There can be no general principle that there should be as many High Courts as there are district headquarters. There can be no general principle that there should be as many as High Courts as there are Divisional headquarters. But there is a case for Rajkot. There is no doubt about it. The case of Rajkot rests specially on the fact,

the historical facts that there was a High Court in Saurashtra earlier before the consolidation of the States in Saurashtra. What is more, Rajkot is far away from Amedabad and the distance is a very considerable factor. I do not think it is the case between Bikaner and Jodhpur. It is a few hours journey, only a few hours journey. It is not a case as it is with some other States. But surely, if there is a State demographically as large as Gujarat, there is a case for one more Bench of the High Court in Rajkot. I do not think that any general sweeping principle can be laid down for establishing Benches of the High Courts. I recall the time when there was a great deal of resistance to the establishment of a Bench in Jaipur in Rajasthan. As yet it has come about, as perhaps, it should be. It is something that has provided relief to many litigants. It is obvious that the decision to establish a Bench of the High Court has to be taken on the basis of the convenience of the litigants and not the convenience of lawyers and judges.

But it is also necessary that the Chief Justice and his colleagues in the High Court should assess this matter. I hope this discussion will lead to a substantially positive and favourable perception of the whole issue of Benches in Gujarat. In Gujarat, a case has been made out and, in fact, it could have been established even at the time of reorganisation. But the provisions of the Act will have to be dealt with, the opinion of the High Court has to be obtained, public opinion will have to be ascertained and, I am told that so far as the successive Governments of Gujarat are concerned, there has been a support for the establishment of a Bench at Rajkot across the political spectrum. I am glad that the hon. Law Minister has taken up this issue. I am glad that he has taken the initiative. It will, I hope, be fruitful; and, to that fruitful decision, this debate will also make its own contribution.

A Private Member's Bill is, at least, the seed of an idea, and this seed of an idea has the potential of coming to fruition. I do hope that this initiative, which has been taken by one of our colleagues by a Private Member's Bill to voice the demand for the establishment of a Bench at Rajkot, would be favourably considered by the High Court and the Government -- Government after Government. In Gujarat have made the recommendation for the establishment of a Bench at Rajkot and, I think, it is in this light that we must view this proposal. On the other hand, we cannot possibly make a generalisation and have as many High Court Benches as there are districts or as many High Court Benches as there are divisions, because that would undermine the quality of the bar, the quality of

preparation and the quality and coherence of adjudication. We do need one Bench in Gujarat, but it does not mean that there should be as many Benches as there are districts or divisions. That is how we should deal with it. I am sure, the hon. Minister of Law, the Chief Justice of the High Court of Gujarat and others concerned with this decision will take it in that light and come to a constructive solution to the problem. Thank you.

THE MINISTER OF LAW, JUSTICE AND COMPANY AFFAIRS AND MINISTER OF SHIPPING (SHRI ARUN JAITLEY): Mr. Vice-Chairman, Sir, a very large number of hon. Members have expressed themselves, at length, on the Bill which Shri Lalitbhai Mehta, has moved. I must confess, not because I happen to represent the State, but for several other valid reasons, to a large extent, that I myself agree with the spirit with which it has been brought before the House. There is a desirability today for creation of Benches in several States in the country. I also agree with the observations that there is a very strong case. The Government of India has taken a position. There is disagreement between the Government and the Supreme Court on this. We are in favour of creation of a Bench of the Supreme Court outside Delhi, particularly in the South. I myself hold the opinion that even before we get back, there is a need, at least, to have some kind of a circuit arrangement for the North-East where it is extremely costly for the litigants, keeping the economy of that region in mind, to come for even the smallest matters to Delhi and appear before the Supreme Court. And this reason of desirability stems out of two or three factors. The Justice Jaswant Singh Committee had recommended twenty-one factors to be considered, but the principal factors are: Is it going to help the process of administration of justice by enabling people to get quicker and cheaper justice. Or, is it going to make the whole process of administration of justice extremely costly, time consuming, as far as litigation is concerned?

I must say, and I agree with the Members who said, "The consideration, here, is not, and should never be, what suits the interests of the lawyers of the Bar." The consideration, equally, should not be, is it convenient or inconvenient for the judges', if you ask them to go and administer justice elsewhere? The principal factor has to be, on which side the scales in favour of the litigants are weighed. Mr. Prabhakar Reddy was reading out the figures of the pending cases of arrears. I have repeatedly been making a statement that the Supreme Court arrears, in the last few years, in the last one decade, have substantially come down. It had a peak figure of about 1,04,000. It has come down to about 22,000 today. In the

District Courts, where you said there is a grave problem, at least, in one sense, there is no problem there, inasmuch as, the arrears are not rising. We are static at a figure of about 20 million, that is, 2 crores. Therefore, if we had some new schemes, new procedures, we could beat down the figures. At least, the figure is not increasing. The filing in the District Courts -- all over the country, there are about 12,000 courts -- and the disposal, every year, is practically the same. So, some steps are capable of resolving the problem. The slowest layer of litigation in this country is the High Courts. Ten years ago, there were 19 lakh cases. There was some confusion in the figure. Today, it has crossed 34 lakhs. On an average, it is rising at a pace of about 1.5 to 2 lakh cases every year. Therefore, the filing in most of the High Courts -- there are some exceptions -- is much more than the disposal undertaken by those High Courts. Therefore, if you look at the sole problem of quicker justice, the most acute problem is the one, pendency in the High Courts. They have become the slowest layer, as far as the judicial process is concerned. The second factor is, besides having become the slowest layer, there are States where we have experimented the creation of Benches. You have, in Maharashtra, besides Mumbai, a Bench in Nagpur and a Bench in Aurangabad. In Madhya Pradesh, there is a Bench in Indore, there is a Bench in Gwalior, with a principal seat in Jabalpur. Now, with the creation of Chhattisgarh, we have a full High Court, as far as Chhattisgarh is concerned. We have two Benches, though closer to each other, in Lucknow and Allahabad. We had two Benches in the erstwhile full State of Bihar. There are States where we had more than one Bench. The Government has already taken a decision, a Bench in Madurai is in the process of being set up. We are also, I must say, in the process of taking a decision with regard to a Bench in North Bengal. Mr. Nariman raised a question regarding the functional integrity of the High Courts. And it is referred to; in some cases; it is functional integrity, in some cases it is with different platitudes. Will the majesty or the authority of the court look dissected, if you have courts scattered in different parts of the State itself? What does the experiences of these States, where Benches have been created, tell us? Has the administration, in any way, suffered? Has the administration of justice suffered? In fact, if at all, the Bar has developed, the litigants are now closer to the courts, the courts are closer to the litigants. Therefore, in large States, the problem is not merely distance. Distance creates several problems. So, a litigant, in a large State, has difficulties. He has not only to travel a long distance, but he has, perhaps, to hire a lawyer in that new city, where the High Court is located.

At many places, he has to carry his district-level lawyer along with him because the litigant may not be very literate to explain. He has to stay there overnight and arrange for an accommodation for himself. Sir, recently, I was visiting one of the new High Courts we have created at Nainital for the State of Uttranchal. When I went for the inauguration of the Uttranchal High Court, everybody was very pleased that the city had got a court. One problem we did not realise in a hill-State where the economy has still to develop. Nobody realised that the hotels in Nainital are, probably, the costliest in that part of the country. So, every time a litigant has to go there. The distances in the hills are such that he can't go and come back the same day.

So, those hill State litigants have not only to go there, but stay overnight. Last time, when I went there, the litigants, whom I met, were complaining that litigation had actually become costlier; they said, "we now have to come to a State where there are tourist hotels. We can't stay in those tourist hotels and find some cheap hotel for ourselves." Today, litigants are facing this difficulty in going to a High Court. Therefore, there are several considerations which will have to be borne in mind. The distance factor and the problems that it can create for the litigant is perhaps one of the most crucial ones. Now, demands have been coming from several States, as far as this issue is concerned. And, I must confess that I have tried to analyse this whole campaign, that is, with regard to creation of benches, which has started in different areas. What are the real hurdles; why is it that these demands are not met? And, I am candid about it. I think, actually, we ourselves create the first problem. How? Actually, when demands come from different districts, it is not objectively assessed as to which is the centre where a bench is required -- as Dr. Singhvi rightly said, a high court bench can't be in every district; in every division. Therefore, it may be desirable to have a bench of the High Court, in some States, outside the principal seat. But when competitive politics takes over, we start demanding it in almost every second district of the State. Therefore, if there is a proposal under consideration in one part of the State, a competitive demand from the other part of the State will also arise. In fact, I have not the least hesitation in saying that, in West Bengal, even though a very strong case for a bench in North Bengal has been made out, some delay has been caused by the fact that two competing districts have actually been demanding it, and those districts are, perhaps, within 40-50 miles of each other. This is a legitimate problem; therefore, those who are in position, who have to decide, start thinking that will it not open the Pandora's Box?

**4.00 P.M.**

And that is when this whole argument from the judicial fraternity comes. Well; the functional integrity will be destroyed because when one bench is created, every third district is going to demand this from us, as far as those districts are concerned. Therefore, we will have to objectively assess as to which are the areas where benches are required. The second difficulty is, as far as Rajkot is concerned, in the year 1983, the Gujarat Government had appointed a Committee, headed by Justice Palekar, to find out as to where, in Gujarat, benches are required, because there had been demands from different centres. In Gujarat, the principal seat, which was originally at Ahmedabad, has now been recently located, probably, closer to Gandhinagar. Justice Palekar Committee, in 1985, returned the report, saying that they did not see any reason in having a bench outside the principal seat. Then, the Government accepted the report. But in the 90's, the position substantially changed. The State Government of Gujarat also recommended the creation of a bench outside the principal seat. When such a demand arises, various consultations are to take place. Justice Ranganath Misra had said that the High Court themselves were competent and no legislation was required for the purpose of creation of circuit benches, and that those experiments should actually be tried in some other parts of the country. I quite welcome this suggestion. But, recently, another difficulty has arisen, in the context of Karnataka -- that is one of the Bills which is listed at item no. 3, and we are going to debate it if time permits. This issue was also taken to the Supreme Court, because a large number of States had been created either under the States' Reorganisation Act or under some special Reorganisation Acts which were enacted. Now, all the Reorganisation Acts, section 51(3) of the States' Reorganisation Act, and, in the context of Gujarat, section 28(3) of the Bombay Reorganisation Act, by which the State was created, have identical provisions with regard to the creation of benches outside the principal seat. In the context of Karnataka, where the States' Reorganisation Act was involved, the Supreme Court had an occasion to consider a petition from one of the Bar Associations from Karnataka. And, I will just read one paragraph out of the judgment that the Supreme Court delivered.

And, I quote, "The High Court is best suited machinery to decide whether it is necessary and feasible to have a Bench outside the principle seat of that High Court. If the High Court does not favour the establishment, it is pernicious to dissect a High Court into different regions

on ground of political or other considerations. So it is out of question -- and I am repeating it, it is out of question -- to decide for establishment of a Bench outside the principal seat of a High Court contrary to the opinion of the Chief Justice of that High Court which has been formed after considering the views of his colleagues." Therefore, the effect of this judgement is, ...*(Interruptions)*...

SHRI LALITBHAI MEHTA: Sir, when he is considering the request for the setting up of a Bench of the Karnataka High Court, he can also consider this request. ...*(Interruptions)*...

THE VICE-CHAIRMAN (SHRI T.N. CHATURVEDI): He is pointing out to the Law Minister the kind of ...*(Interruptions)*...

SHRI ARUN JAITLEY: The Karnataka case also arose out of a demand for creation of a Bench in North Karnataka. The principal seat is in Bangalore, and a seat in North Karnataka has to be created at Dharwar. I cannot use the language which my gifted friend, Mr. Jethmalani, has the capacity to use, but I certainly agree with the spirit of what he and some other hon. Members have said, that this was a power to be exercised by the Government, in consultation with the High Court. But with this interpretation which the Supreme Court appears to have given, the concerned High Court now has virtually a veto in the matter of deciding whether a Bench is to be created or not. When this power, by virtue of a judicial interpretation, now vests in the High Courts itself, there are only three options left. The first option is that the Government has to accept whatever opinion is given by the High Court. In this case, we had written to the High Court, in question, and on the 21<sup>st</sup> of April, this year, I received a letter from the Chief Justice of the High Court that the Gujarat High Court had considered the matter and it did not favour the proposal of a Bench; and the matter ends with that. The second option, which, I think, in situations of this kind, can be taken into consideration is, statesmanship is required between the various institutions, the Parliament, the Government and the Judiciary; and we act in accordance with the requirements of the situation, public policy; we rise to the occasion; we see that there are States in this country where litigants -- and this is not a reference to Rajkot; it has a reference to some other States -- have to travel as much as 600-800 kilometres to reach the High Court. In some States, that is the level of distance. Therefore, in those areas, in accordance with the procedure prescribed in law, we consult all the Constitutional authorities, whether it is the High Court, the Government, the State Government, the Assemblies,

and, therefore, we make sure that cheaper justice is provided to the people. Cheaper justice to the people does not merely remain in the Directive Principles, and it is not for seminars and speeches only, but is effectively implemented by these processes. I do hope that this is an area where this thing applies, since, after the judgement of the Supreme Court, the power is with the High Courts. The High Court would take it into consideration and appropriately recommend where Benches are required, and if such a situation does not happen, the Legislature is always there to remedy the situation which may arise out of this. Sir, as I said in the very beginning, I agree with the spirit of the legislation, namely, that we must have Benches in places outside the principal seat, particularly, where they are required. We do not need Benches merely because there is political demand at every place. Therefore, there will have to be an objective assessment. And, I would, therefore, urge the mover of the Bill, Shri Lalitbhal Mehta, in view of what I have said, to kindly consider withdrawing his Bill.

THE VICE-CHAIRMAN (SHRI T.N. CHATURVEDI): Mr. Mehta, would you like to make any observation or you would like to withdraw your Bill?

श्री ललितभाई मेहता (गुजरात) : महोदय, मेरे विधेयक पर चर्चा में भाग लेने वाले सभी माननीय सदस्यों का मैं बहुत आभारी हूँ। विधि मंत्री जी ने इस सदन में अपने विचार और जो बातें रखी हैं उनको ध्यान में रखते हुए, गुजरात हाई कोर्ट के मुख्य न्यायाधीश ने अगर ना बोल दी है तो विधि के प्रावधान में कुछ संशोधन करने की जरूरत पड़े तो संशोधन लेकर आगे आएँ। लेकिन गुजरात, खासकर कच्छ के लोगों की जो जनभावना है, आवश्यकता है उसे पूरा करने में हमारी मदद करें। जो आम्यासन विधि मंत्री जी से मिला है उस कारण मैं अपना विधेयक वापस लेता हूँ।

THE VICE-CHAIRMAN (SHRI T.N. CHATURVEDI): Does the hon. Member have the leave of the House to withdraw the Bill?

*The Bill was, by leave, withdrawn.*

### THE POPULATION CONTROL BILL, 2000.

श्री राजीव शुक्ल (उत्तर प्रदेश) : उपसभाध्यक्ष जी, मैं अपना विधेयक सदन में विचार के लिए प्रस्तुत करता हूँ कि :

"जनसंख्या नियंत्रण के उपायों और तरीकों तथा उससे संबद्ध और आनुषंगिक विषयों का उपबंध करने वाले विधेयक पर विचार किया जाए।"

उपसभाध्यक्ष महोदय, इस सदन में मैं एक ऐसे विषय पर विधेयक लाकर बोलने के लिए खड़ा हुआ हूँ जिसके लिए मैं समझता हूँ कि मेरा एक राष्ट्रीय कर्तव्य बनता है। यह एक ऐसी समस्या है जो बाकी सारी समस्याओं की जननी है। यह एक ऐसा राष्ट्रीय मुद्दा है जिससे इस देश