

**श्री सभापति :** आप एक-एक करके बोलिए ...(व्यवधान)... यह कुछ भी रिकॉर्ड पर नहीं जा रहा है ...(व्यवधान)...

**श्रीमती सुषमा स्वराज :** \*

**श्री सभापति :** सदन की कार्यवाही दो बजे तक के लिए स्थगित की जाती है।

The House then adjourned at eight minutes past twelve of the clock.

The House re-assembled at two of the clock,

MR. DEPUTY CHAIRMAN in the Chair.

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### THE PROTECTION OF HUMAN RIGHTS (AMENDMENT) BILL, 2005 - Contd.

MR. DEPUTY CHAIRMAN: Now, further consideration of the Protection of Human Rights (Amendment) Bill, 2005. Shri Virendra Bhatia. Not here. Shrimati Brinda Karat. Not here. Shri S. Anbalagan. Not here. Shri Ramdeo Bhandari...

SHRI RAVULA CHANDRA SEKAR REDDY (Andhra Pradesh): Sir, if he is not ready, I shall speak now.

MR. DEPUTY CHAIRMAN: Yes. Shri Ravula Chandra Sekar Reddy.

SHRI RAVULA CHANDRA SEKAR REDDY: Sir, thank you for giving me this opportunity to speak on the Human Rights (Amendment) Bill. A number of amendments in this Bill are physically intended to change the system of nominating the Chairperson of the National Human Rights Commission as well as the Chairperson of the State Human Rights Commission. Earlier we used to have retired Chief Justice of the Supreme Court and retired Chief Justice at the State level being nominated for the chairmanship. Now the Government would like to include the Judges who are in service. Sir, I would like to request the Government to strengthen the organisation rather than changing the system in appointments. We must strengthen it; we must give them some powers. More importantly, we want to know how many recommendations have so far been sent to the Government of India and to the concerned State Governments, how many of them have been accepted and have been implemented, and, how the Government is acting upon the recommendations of the Human Rights Commission. Sir, from my own party, we had gone to the National Human

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\* Not recorded.

Rights Commission on a number of occasions, like, in situations when the people in villages were killed and the local administration failed to contain the lawlessness in the villages. We have been forced to knock at the doors of the National Human Rights Commission, time and again, when the Governments, both at the State level and at the Central level, have miserably failed on a number of occasions in protecting the life and property of individuals. Basically, when political clashes took place in Andhra Pradesh, we have approached the Human Rights Commission. I would like to know from the Government as to what action has been taken on those representations.

As far as this Bill is concerned, the hon. Minister explained its aims and objects. The only new thing is that the Human Rights Commission will now have the power to inspect the areas without prior notice. That is a welcome amendment. One should have that power to enter any premises without notice. Otherwise, it will become a ceremonial feature, and people come to know about the visit and set the things in a proper manner.

Sir, the other aspect is regarding interim relief, interim compensation, that can be awarded by the respective Commissions. And, who has to pay it? It is also again by virtue of clause 18 which says, "it may recommend to the concerned Government or the authority". Again, it is a recommendation. The Government need not comply with it. They can as well sleep over the matter; they can as well refuse to do it. They need not comply with the recommendations. I would like to request the hon. Minister to see that it is made mandatory; otherwise, the very purpose of awarding some interim compensation will not at all reach affected persons.

Sir, my next point is this. They would like to bring in the Chairpersons of the Scheduled Castes Commission and the Scheduled Tribes Commission within the purview of this Commission. They want to make the Chairpersons of the Scheduled Castes Commission and the Scheduled Tribes Commission as *ex-officio* members of the Human Rights Commission. I don't know why they have left out the Chairpersons of the Minority Commission and the National Commission for Women. I would like to request the hon. Minister to enlighten us as to the intention of making the Chairpersons of the Scheduled Castes Commission and the Scheduled Tribes Commission as the *ex-officio* members of this Commission. What is the reason for not making the Chairpersons of the Minority Commission and the National Commission for Women as *ex-officio* members of this Commission? So, these two things have to be clarified.

Sir, as I have earlier stated, the reports of the Human Rights Commissions should be made public; it should be made available to every person. The Commission sends some reports to the State Government, and if these reports are not made known to the people, if these reports are not published, then what purpose it is serving. If it is published, if the findings and the recommendations of the Human Rights Commission, both at the national level and at the State level, are made known to the people and the action taken by the respective Governments, then, the people will come to the conclusion as to the helplessness or taking a partisan attitude of the respective Governments. If it is made known to the people, then, we can have some say over the Governments. The people will judge the performance of those respective Governments. So, this is one aspect.

The next point is this. I request the Government to see that the required infrastructure is provided to the organisation. They have neither men nor the required infrastructure to go-ahead with their visits and to prepare their reports. They are neither given the required infrastructure nor the required powers so as to enforce the law. So, this is the most important aspect. Without giving the required infrastructure, without giving the required teeth to implement the legislation, the very purpose of constituting the Human Rights Commissions, making enactments and amendments will all remain only on paper, and in practice, it will not be helpful to the people. The affected persons who are knocking at the doors of the Human Rights Commissions are going there under compelling and inevitable circumstances only. If it is not done, it is going to be another regular police station-like a thing. So, I request the Government to see that the required infrastructure is given and the required money is provided to the Commission. I also request the Government to see that the reports of the Commissions are made public. The hon. Minister has to explain as to why they want to go in for in-service people. Earlier, we used to have the retired Chief Justice as the Chairperson of the National Human Rights Commission. Now, you are going in for in-service judges. Similar is the case with the State Human Rights Commissions. Please explain the logic behind this. With these comments, I conclude, Sir.

SHRIMATI BRINDA KARAT (West Bengal): Thank you, Sir. I would like to apologise, Sir, that I was not present when you had called my name. I was participating in a protest demonstration of women who are fighting for their human rights. It is very much linked to what we are discussing today in the House. So, I hope, you will condone my absence for that time.

Sir, I believe, that when we are talking about the Human Rights Commission, although we limit ourselves to the framework of the amendments which the Government has moved, I think, this just provides to the House and the Government also an opportunity to review the experience of the last 13 years since the Commission was formed, and what is there in the law wherein we can further strengthen the functioning of the Human Rights Commission. Because, I think, there is a unanimity across the House that in the last 13 years, the National Human Rights Commission has proved to be an institution which has, within the framework of its mandate, provided a very great service to the people of this country, and, in particular, Sir, to the poor people of this country.

Sir, working with the women's organisation, I have the experience of NHRC. We are in very close touch with the Human Rights Commission and a very important point they have added to the whole language and definition of human rights in this country unlike many Western countries which limit the understanding just to the aspect of individual liberty, which is an important pillar of human rights but not the only pillar. Our Human Rights Commission has gone beyond that and has also looked at the social inequalities because there is a stronger reality and a premise, I think, of the human rights that you cannot have individual liberties, if your society is based on social inequalities because an unequal citizen cannot access any individual liberty. I think, one of the very important contributions of the National Human Rights Commission has been that they have been able to broaden the understanding of what constitutes human rights and we have, I think, added to the entire struggle, all over the world, of citizens for human rights to say that there cannot be human rights unless you also talk about economic and social inequalities, you cannot divorce the aspect of human rights from that very basic premise. In this, Sir, a very important contribution of the National Human Rights Commission has been the commitment to protect their autonomy. In our country, we have seen many Commissions and Commissions are functioning to the best of their ability, but one of the handicaps and disadvantages of such commissions are that in the public perception, since they are appointees of the particular Government in power, rather than come through a broad-based selection process, which constitute a sort of a wider selection committee, on many of the aspects they are not seen as impartial ...*(Interruptions)*... So, the point I was making, Sir, is that the aspect of autonomy of the Commission which, I think, is very, very important because we have seen that it is precisely through the instrumentality of the nominations in a non-partisan manner that Commissions have a very

important mandate in protecting and advancing the rights of any specific section of people; it is their mandate to protect; somehow, it can get eroded through this process of political nominations and to that extent, Sir, I think, the way the Commission is selected is very important. In 1993, when the Parliament adopted it, I think, it was a very, very important point that the law-makers included it at that time--to provide for a broad-based selection committee which includes the representatives of the Government, the Prime Minister himself, the Leader of the Opposition and the Speaker, the Opposition Leader in the Rajya Sabha and, of course, the Home Minister. Therefore, we can always expect that this Commission will consist of persons who are mandated to protect the autonomy of the Commission and they have done so. I think, we can be proud of it. Therefore, I was very happy when I read the amendments that the Government have moved in this direction. There was an amendment which could have been interpreted that the selection process can go on even in the absence of a member of the selection committee. I am also very happy to see the second lot of amendments that our Home Minister has moved in this House. A very important amendment. He has very specifically mentioned the phrase, "in the absence of"; and I welcome that because if there had been any interpretation, it could have led to a situation where one could have tried to push a particular selection process through, and you have stopped it. It is a good amendment that you have moved. I am happy about it.

However, Sir, alongwith the selection process, another crucial aspect, autonomy of the Commission, must be protected by the Government. The second very important thing is the status of the Commission. Sir, we have seen our Women's Commission and I would like to take this opportunity to put it before the House. Look at the discrimination against the Women's Commission. It has the lowest status today of all the Commissions.

Therefore, it is about time that the status of the Chairperson of the Women's Commission and the members of the Women's Commission should be at the same level as of other Commissions because otherwise if you are calling a civil servant and you have the rights of a civil court and you are calling a Secretary or even a Minister of Government and you have the lower status in that, then how are you going to have any authority? So, in that, Sir, our Human Rights Commission has a very clearly defined status and that status is precisely because it is the Chief Justice, a person who has served as the Chief Justice of India who has to be the Chairperson of the

Commission. Now we have had the experience of last 13 years. We have seen in different times different Governments may try and erode the mandate of Human Rights Commission. But they have stayed firm under strongest of the pressure. They have stayed firm. I know, Sir, in 2002 there were several cases, which went before the Human Rights Commission. There were many and it is a specific case of a specific State in which there was so much pressure on the Human Rights Commission not to act. But they protected their mandate and they were autonomous about it. Why? -- Because of the status of the Chief Justice? ...*(Interruptions)*... In the case of Women's Commission there was a problem about that. But I am happy to say for the Human Rights Commission. I am not going to any particular State or so because I do not want to get into that. Therefore, I feel that this amendment which has been moved by the Government to permit any person who as a Judge of the Supreme Court, who has been there for three years, to be the Chairperson, it is not going to help the status of the Commission, it is not going to help in taking forward the mandate of the Commission. Therefore, I have already spoken to the hon. Home Minister about this and I would plead with him that when we do not have any negative experience about it, I would really request you, Sir, to think about it again. I can understand if there are any extraordinary...

THE MINISTER OF HOME AFFAIRS (SHRI SHIVRAJ V. PATIL): We are accepting that amendment.

SHRIMATI BRINDA KARAT: Thank you very much, Sir. I am very happy and I am very, very grateful to you that you accept that because I know that there is a question of choice when it came before the Standing Committee -- our hon. Member, Sushmaji, is the Chairperson of it -- I know that very important arguments had been put by the Government - the question of availability of choice etc. But I feel, Sir, that when the circumstances were not such it was not required. I am very grateful to the Home Minister that he has made this intervention and he assures us that he is going to accept the amendment. Along with that, Sir, the second point I want to raise in this is that the National Human Rights Commission status is something that I am on and this point relates directly to it. I understand the concern of the Government to broad base the accessibility of the National Human Rights Commission to the poorest citizen of this country. Somebody who is there who can only access a local court, who cannot come to Delhi to the National Human Rights Commission, you have a concern which you have expressed in that amendment that any court can direct and let them

bring it to the National Human Rights Commission. I know your intention. Your intention is to broad base the accessibility of citizens to the Commission. But, Sir, there is another angle here because when we are talking about the status of the Commission, then we have to protect the status. If it is going to happen any munsif court or any magistrate's court is going to say, 'tomorrow you have to go and that the National Human Rights Commission is directed by this court Commission to look at this case' I feel it is not going to help either the accessibility or the status of the Commission. Therefore, I have moved an amendment to say, yes, it is necessary to have a contact between the courts and the Human Rights Commission. Therefore, the basic premise of the Government I accept, I agree with. My amendment is that as far as States are concerned, let it be the High Court there and as far as the national level is concerned, let the Supreme Court make a reference. The Supreme Court makes a reference and, therefore, the Human Rights Commission, accepts it, that is fine. Otherwise if you look at it we are making the Commission subservient to a much lower court with a much lower status. So, I request the hon. Minister also to think about this aspect and accept this recommendation.

SHRI SHIVRAJ V. PATIL: If an individual can go to the Human Rights Commission, why should we stop a magistrate on behalf of an individual forwarding the application to the Human Rights Commission?

SHRIMATI BRINDA KARAT: You see, Sir, that is an important point. My point here is, that individual has already gone to the court and it is up to that court to look at that case. What is there as a mandate of the court to look at a particular case of Human Rights? Why should that lower court refer it to the National Human Rights Commission? There also, the question of Centre-State relations, so many aspects are there. If there is a case of Human Rights violation, let the Munsif Court or the Magistrate Court refer it to the State Human Rights Commission if they want to bring another institution into it. In that case, Sir, the court has every right and every responsibility to opine on the particular case which is there before it. But, if the courts are going to escape their responsibility and put all the Human Rights cases sent to the State Human Rights Commission, then, I am afraid, you will have to have, not only State Human Rights Commission, but District Human Rights Commission, Block Level Human Rights Commission also. It is not going to work, Sir. Therefore, my point is, there is a State Human Rights Commission. The individual can approach the Human Rights Commission but please maintain and protect the status of the National Human Rights Commission.

The other point that I would like to make here, Sir, is regarding the size of the Commission as far as the States are concerned. Now, there is an amendment moved, I have read the logic behind it. It has been said that because of the financial burden on many of the States and specifically on the North-Eastern States to have a separate State Human Rights Commission, they want to reduce the number from five to three. That is fine. But if it is mentioned in the Act itself that State Human Rights Commissions will consist of three members instead of five members, then, Sir, I don't think it is going to help because there are many large States. I have seen, Sir, my friend, Mr. Vayalar Ravi is here, he knows about it. In Kerala when the State Women's Commission had five Members, the UDF also thought the same thing to save some of the money. Hon. Member, Mr. Antony is here. He was the Chief Minister, at that time. So, they said, "we will reduce the number of members from five to three". But the number of cases that the Commission has, it is virtually impossible to deal with so many cases with such a small infrastructure. So, now, with discussions.

SHRI A. K. ANTONY (Kerala): We have not only decided to reduce the number of members of the Women Commission, but also of all other Commissions. When we took over, the State was in a very difficult financial position. So we thought to reduce the number of members of all the Commissions from five to three. But there is no discrimination against women.

SHRIMATI BRINDA KARAT: Correct, Sir. So, we can reduce the strength of all Commissions and accessibility to Human Rights across the country for men, women and children! But, I am saying that we should avoid it for the simple reason that there are very large States where there may or may not be and most probably there are a very wide range of violation of human rights. So, please do not reduce it from five to three in a blanket way and please change it. Sir, I have two more points which the National Human Rights Commission had suggested. One point has already been raised by the hon. Member speaking before me. I think that is a very important point, Sir. That is in Section 11. There are two points. The first point that I want to take is slightly different. That in Section 11(1), the Commission had suggested that when you are appointing a DIG, any police person to work in the Commission, what they had requested, Sir, 'please consult the Commission, have some concurrence with the Commission.' I don't think, Sir, that is a very unreasonable demand because we know in our



National Women's Commission, I don't want to mention any names, but we have seen, Sir, the appointment of A, B, C, how for months together the entire working of the Commission was sabotaged. It was sabotaged for various reasons. So, we already have an experience. When you have that experience, when you are giving the status to the Commission, then, what is wrong? Then, ultimately the decision can be of the Government. We don't mind that. But, at least add this word 'in consultation'. I am not saying mandatorily they will be the final word. No, but kindly add this, that in consultation with the Commission, the DIG rank person etc., will be included. Along with that, Sir, one more very important point, because we have the Right to Information Act, and I am very confident that this Government is not going to take any step which is going to weaken that Act, in any way, and one of the very important points is, Sir, that of transparency.

Therefore, the issue of publication of Reports. We have seen this in our own House; something is laid on the Table of the House. Nobody knows what it is. We don't know. So many Reports are laid. But, actually, we do not know what they are -- whether it is good or bad and whether the Government has taken action or not. It is our responsibility to look into them as Members of Parliament. We cannot blame the Government for it. But a Commission, Sir, which works so hard and produce Annual Report or any special Report, which is called upon to do according to its mandate, if the Government, for its own reasons, does not within the mandated stipulated time place that Report in Parliament, can we put a gag on the publication of that Report? Now, the NHRC raised that point. Then, the Ministry officials, who had come, said, 'no, no. Our accountability is to Parliament. You cannot have a mechanism which will come between accountability of Government to Parliament.' They are using us to gag another autonomous institution. I think that is unwarranted. Therefore, it is a small matter. I don't want to make a mountain out of a molehill on this. But, the point is, I would request the Government on this also to kindly think about this aspect and let the Reports of the NHRC be published.

And lastly, why women are not mandated to be a member of the Commission? Why only seven members? How many women members we have in all these years? I think, one. Therefore, I know that hon. Shivraj Patil is very, very sympathetic. He has done a lot of work.

THE MINISTER OF LAW AND JUSTICE (SHRI H. R. BHARDWAJ): We have very prominent members in this House.

SHRIMATI BRINDA KARAT: Yes, you have. But, it is not mandatory. It is up to the subjective decision of the Selection Committee. I want it mandatory. You do have *ex-officio* Chairperson of the Commission. But, fortunately, at least, the Chairperson of the National Women Commission is reserved for women. I thank Parliament for doing that, at least. But, Sir, I request, through you, the hon. Minister please mandate, at least, for one woman in the Commission, since we will be considering your amendments, I request the Minister to do it. Thank you.

SHRI S. ANBALAGAN (Tamil Nadu): Sir, I thank you for giving me this opportunity to speak on the Protection of Human Rights (Amendment) Bill, 2005, on behalf of the AIADMK Party. This Bill seeks to amend the Protection of Human Rights Act, 1993, which established the NHRC of India. The Protection of Human Rights Act has long been in need of an amendment. It has been criticised by independent NGOs and the NHRC itself for the limitations it places on the NHRC's powers, independence and effectiveness.

The first attempt to revise the Act came after 13 years after the establishment of the NHRC. But, the amendment Bill fails to address the concerns expressed by civil society and by the NHRC itself during the past 13 years. In fact, apart from two half-hearted attempts to upgrade the monitoring powers of the NHRC, the amendment Bill actually contains regressive provisions that will further undermine the NHRC's independence and functioning.

The Bill, among other things, has a provision to relax criteria for appointment of Chairpersons of the National and the State Human Rights Commissions to provide for more choice. At present, only retired Chief Justices of the S.C. are eligible to become NHRC Chairperson while only retired Chief Justices of HCs can become Chairperson of SHRC. The criterion is being relaxed to allow all retired judges of the SC with, at least, three-year experience to be considered for appointment as the Chairperson of the NHRC and also to allow all retired HC judges with a minimum five-year experience to be considered for appointment as SHRC Chairperson.

Sir, other salient features of the Bill are: enabling the NHRC to inquire into the cases of human rights violation referred to it by courts, in addition to the present system of making an inquiry *suo motu* on a petition by the victim or on behalf of the victim; enabling the NHRC to make surprise

visits to jails, now possible only after intimating the State Government concerned; and enabling the NHRC to recommend an award of compensation or interim relief to victims during the process of inquiry. At present, the Commission can do so only after completion of the inquiry.

The Bill provides for increasing the penalty for publishing juveniles' names from Rs. 1,000 to Rs. 25,000, making it mandatory for States to constitute Juvenile Justice Boards and Child Welfare Committees and ensuring that juveniles are not detained with adults in jail.

The Bill also seeks to enable the NHRC Chairperson delegate some of his powers and functions to the Secretary-General; enable the Commission to transfer cases to SHRCs if it feels the complaint falls within the latter's jurisdiction and reduce the number of SHRC members from five to three.

In addition, the Bill provides for appointment of common chairpersons/ members of an SHRC for two or more States, particularly for smaller States which may be unable to establish separate commissions for financial and other reasons.

The Amendment Bill could have been an opportunity to bring about substantive changes in the functioning of the NHRC. But unfortunately, there is no attempt in that direction. The Amendment Bill does little to address the fundamental weakness of the Protection of Human Rights Act. The omissions are glaring. There is no attempt to address the desperate need to have the NHRC independently inquire into human rights violations by the Armed Forces. Nor does the Amendment Bill seek to empower the Commission to initiate proceedings for prosecution and grant interim compensation, as it may consider necessary, restricting its role to making recommendations. The need to guarantee the NHRC's financial independence has not been considered necessary. So, I would request the hon. Minister to pay heed to the demands across the country and take care in implementing the provisions of this Bill. Thank you very much, Sir.

**प्रो. राम देव भंडारी (बिहार) :** माननीय उपसभापति जी, मैं अपनी पार्टी की ओर से इस बिल का समर्थन करने के लिए खड़ा हुआ हूँ। महोदय, भारतीय संविधान में देश के नागरिकों के मौलिक अधिकारों की व्याख्या की गई है और उनका संरक्षण कैसे होगा, सुरक्षा कैसे होगी, इसका भी प्रावधान किया गया है। कई कानून बने हैं, जिनके माध्यम से भी उनके मौलिक अधिकारों की रक्षा का प्रावधान किया गया है। मगर इसके बावजूद भी देश को मानवाधिकार आयोग की आवश्यकता पड़ी। इसके पीछे कुछ बुनियादी कारण हैं। अभी भी देश के कई हिस्सों में जो गरीब हैं, कमजोर हैं, दलित हैं, पिछड़े हैं, महिलाएँ हैं, उन पर अत्याचार हो रहे हैं। जो स्टेट मशीनरी है, जो स्टेट का प्रशासन है, पुलिस है, उन्हें सुरक्षा नहीं देती है। कभी-कभी तो पुलिस स्वयं

अत्याचार करती है। प्रशासन की ओर से भी अत्याचार होता है। जो दबंग लोग होते हैं, गुंडे एलिमेंट्स होते हैं, वे भी अत्याचार करते हैं, जुल्म करते हैं। जब कोई नागरिक चारों तरफ से निराश हो जाता है, तो वह मानवाधिकार आयोग में अपनी गुहार लगाता है।

महोदय, राष्ट्रीय मानवाधिकार आयोग में 70 हजार मामले एक वर्ष में आते हैं। ये ऐसे मामले हैं जो मानवाधिकार आयोग के समक्ष आ जाते हैं, कई हजार ऐसे मामले हैं जो इस आयोग के समक्ष नहीं आते हैं। कई बार पुलिस के डर से, स्थानीय प्रशासन के डर से या ग्रामीण क्षेत्रों के दबंग लोगों के डर से ऐसे मामले आयोग तक नहीं आ पाते।

महोदय, मानवाधिकार आयोग का अपना एक लिमिटेशन है। मैं माननीय सदस्यों को सुन रहा था जो इंफ्रास्ट्रक्चर की बात कर रहे थे। वे कह रहे थे कि आयोग के पास इंफ्रास्ट्रक्चर नहीं है। जहां भी वे जांच-पड़ताल के लिए जाते हैं, उन्हें स्टेट गवर्नमेंट पर निर्भर रहना पड़ता है। कानून में एक संशोधन हुआ है। पहले जब जेल के निरीक्षण के लिए जाते थे तो स्टेट गवर्नमेंट को पूर्व सूचना देनी पड़ती थी। अब इसमें बदलाव आया है। यह अच्छी बात है। आयोग औचक निरीक्षण के लिए किसी डिटेंशन सेंटर या जेल में जाना चाहे तो जा सकता है। महोदय, कई राज्यों में आयोग नहीं है। जिन राज्यों में आयोग हैं, वे काम नहीं कर रहे हैं। अधिकांश मामले स्टेट गवर्नमेंट की मशीनरी के खिलाफ होते हैं और स्टेट गवर्नमेंट नहीं चाहेगी कि हमारे खिलाफ जो आरोप हैं, वे साबित हो जाएं। इसलिए स्टेट गवर्नमेंट का सहयोग नहीं मिलता है। अगर स्टेट में मानवाधिकार आयोग है, तो वह सक्षम होकर काम करे, इस प्रकार का प्रावधान होना चाहिए।

महोदय, मैं कल अरुण जेटली साहब को सुन रहा था। वह बहुत विद्वान अधिवक्ता हैं, देश के नामी-गिरामी अधिवक्ता हैं। कमीशन में नियुक्ति की बात हो रही थी उन्होंने कहा कि पहले रिटायर्ड चीफ जस्टिस ऑफ इंडिया को चेयरमैन के रूप में नियुक्ति की जाती थी। इसमें प्रावधान रखा गया है कि एक न्यायाधीश ने सुप्रीम कोर्ट में तीन वर्ष की सेवा की है, उन की भी चेयरमैन के रूप में नियुक्ति की जा सकती है। उन्होंने कहा था कि यह जो बदलाव है, यह "चेयरमैन ऑफ चॉइस" के लिए किया गया है। महोदय, इस कमेटी में प्रधान मंत्री जी हैं, लोक सभा के अध्यक्ष हैं, भारत सरकार के गृह मंत्री हैं, लोक सभा व राज्य सभा के विपक्ष के नेता हैं, राज्य सभा के उपसभापति हैं। राज्यों में - मुख्य मंत्री हैं, विधान सभा के अध्यक्ष हैं, गृह मंत्री हैं और विधान सभा में विपक्ष के नेता हैं। देश के ऐसे प्रतिष्ठित लोगों के द्वारा अनुशंसा की जाती है, तो कोई सवाल नहीं उठता कि इस प्रकार की बात कहीं से भी आनी चाहिए कि "चेयरमैन ऑफ चॉइस" के लिए परिवर्तन किया गया है। महोदय, कभी-कभी ऐसा होता है कि जो रिटायर्ड चीफ जस्टिस हैं, वे नहीं मिल पाते। वैसी स्थिति में अगर यह प्रावधान किया गया है तो मैं नहीं समझता कि यह अच्छा प्रावधान नहीं है। मैं सहमत हूँ कि यह अच्छा प्रावधान है।

महोदय, एस0सी0/एस0टी0 कमीशन के चेयरमैन को एक्स-ऑफिसियो मेंबर बनाने की बात है। एक सदस्य मायनॉरिटी कमीशन के चेयरमैन की भी बात कर रहे थे, विमेन कमीशन के चेयरमैन की भी बात हो रही थी, मैं चाहूंगा कि राज्यों में जहां बैकवर्ड कमीशन है उसके चेयरमैन को एक्स-ऑफिसियो मेंबर बनाया जाए। आयोग में सभी तरह के मामले आते हैं, सभी सेक्शंस के मामले आते हैं और अन्य आयोगों के चेयरमैन गहराई से उनकी बात को समझ सकते हैं। जहां राज्यों में बैकवर्ड कमीशन हैं, इन के चेयरमैन को भी इस में एक्स-ऑफिसियो मेंबर बनाया जाए।

महोदय, आयोग को एक्जीक्यूटिव पावरस दिए जाने की आवश्यकता है। इस समय मगर मैं समझता हूँ कि वे सफीसिएंट नहीं हैं। सर, जैसा मैंने पहले कहा कि यह आयोग ऐसे लोगों के लिए है, जो चारों तरफ से सताए हुए हैं और जिन्हें कहीं से न्याय नहीं मिलता है, वे यहाँ आते हैं। कारत जी ठीक ही कह रही थीं, दिल्ली तक सभी लोगों की पहुँच नहीं है। ये गरीब लोग हैं, कमजोर लोग हैं। ये दिल्ली तक नहीं आ सकते हैं। इसलिए महोदय, जिलों में भी ऐसी व्यवस्था होनी चाहिए कि उनको जिले में भी मानवाधिकार आयोग के माध्यम से न्याय मिल सके। ऐसा प्रावधान, ऐसी व्यवस्था होनी चाहिए।

महोदय, स्पीडी इन्वेस्टिगेशन की बात भी होनी चाहिए। Justice delayed is justice denied. इन्वेस्टिगेशन जल्दी हो। जब उसकी रिपोर्ट सरकार को भेजी जाये, तो सरकार उस पर त्वरित कार्रवाई करे। अगर उसे पार्लियामेंट में लाने की आवश्यकता है, तो वह उसको पार्लियामेंट में लाए।

महोदय, मैं कुल मिलाकर यह कहना चाहता हूँ कि यह बहुत ही महत्वपूर्ण आयोग है। मैं पुनः दोहराना चाहता हूँ कि यह उनके लिए बहुत उपयोगी है और बहुत महत्व का है, जो गरीब हैं, दलित हैं, पिछड़े हैं, वूमैन हैं। कमीशन को एक्जीक्यूटिव पावर देनी चाहिए, इनफ़ास्ट्रक्चर देना चाहिए। अगर एक्जीक्यूटिव पावर में और भी बढ़ोतरी करनी पड़े, तो बढ़ोतरी करनी चाहिए। मैं, इन्हीं शब्दों के साथ, इस बिल का समर्थन करता हूँ। धन्यवाद।

DR. ABHISHEK MANU SINGHVI (Rajasthan): Mr. Deputy Chairman, Sir, I rise in support of this Bill, and I wish to make some suggestions and comments. We should be very clear that we are discussing an important subject, an important Bill and an important Commission. There can be no two views about the vital importance of human rights, and we should be a happy nation that, on the whole, a nascent institution like the National Human Rights Commission, under a relatively new Act, has discharged its functions and role reasonably, and creditably. It has achieved international recognition and status within a relatively short time and most important is, its views and decisions have greater moral authority than mere legal efficacy. That it has done so is partly because of the objectivity, the impartiality and the great detail of research, which it has brought to bear upon its task. The life of any legislation must be periodically reviewed. It is a constantly evolving dynamic process and it is good that after these few years of the National Human Rights Commission we have brought in an amendment in the light of experiences gained, and in the light of the constantly evolving situation. The proposed legislation has several positive features and we all know about that; so, I will not take time on that, but just to mention and highlight, it is very useful and important, for example, to amend the definition of the international covenants, because in international law, no single instrument carries universal effect, no single instrument carries universal authority. A host of international instruments relating to human rights create

a corpus of international jurisprudence which becomes both, practice and convention and is followed by all the nations. Now that this Act amends the definition to include that entire corpus of international law-generating instruments, in a sense, we are going to adopt and go not by minimalist standards, but increasing the standards to somewhere nearer maximum standards and that is very good. Secondly, the provision regarding surprise visits, surprise checks, surprise inspections is also very welcome, and, I think it was more by oversight than by design that the original one intended that there should be full notice. I happen to have been a counsel in the D.K. Basu custodial torture, custodia death case, and the crux of the guidelines which the Supreme Court laid down regarding custodial torture or custodial deaths was surprise visits at jail houses, at police stations to check such an abuse. So, I think that is again a very welcome and laudatory amendment proposed. Thirdly, the power of the National Human Rights Commission to transfer matters to State Commissions is also a beneficial, useful provision. After all, the National Human Rights Commission is only one. It is an apex institution at the national level and it de-clogs the system if it has the authority and the power to decentralise adjudication to the various other State Commissions.

That again, I think, is something to be welcomed and applauded.

Sir, may I come to three specific issues where I want to make suggestions and partly agree and partly oppose those who have spoken before me?

The first issue is -- and on this issue I broadly agree with the speakers before me -- that, perhaps, the power for any adjudication body or Magistrate or Munsiff to refer to the NHRC may not serve the purpose it is intended to. There are different kinds of courts all over the country, and to permit a reference by anyone at any time in any court to the NHRC may, perhaps, impliedly, without quite intending it to be so, dilute the status and authority of the NHRC. It may also open the floodgates for a huge number, which will become unmanageable by the NHRC. I, therefore, have a simple suggestion for the hon. Minister to consider which will, in fact, achieve the purpose which this Bill seeks to implement and yet not open the floodgates. The human right issues arise in public law, and public law is administered in our country by courts which are known as 'writ jurisdiction courts'. Under article 226 of the Constitution, certain courts exercise power of an extraordinary nature to issue writs. Now, since that deals with human rights and public law issues, it might be best to make a small amendment and to

provide that the reference to the National Human Rights Commission can be made by all courts which exercise writ jurisdiction power. Additionally, of course, the Supreme Court can always refer to the NHRC, which it has already been doing. So, this twin power of allowing referrals by courts, at the High Court level exercising writ jurisdiction plus the Supreme Court, will suffice to achieve the purpose which the Minister seeks to achieve without opening the floodgates. Moreover, if it is intended that even lower courts should be able to refer to the NHRC matters arising, then, perhaps, another simple additional amendment can be made saying that 'the lower courts may refer such matters to the High Court of that State, to the Bench exercising writ jurisdiction, which may then, in its wisdom, decide whether the matter deserves to be referred to the NHRC. There will be this additional filter, which I submit, will do both -- not open the floodgates to the NHRC; it will provide a filter as well. And, since the public law and human rights issues have to be administered in this country by courts exercising writ jurisdiction, it will channel such references through the appropriate forum, namely, the High Courts exercising writ jurisdiction. So, this is the area where I broadly agree with the preceding speakers, but with the amendments and suggestions which I have made, which, I believe, will also achieve the purpose which the Minister seeks to achieve.

The second area -- before I come to the contentious area of retired Chief Justice or Judge -- which, I think, needs to be thought out, is a little technical. But I must address that. The interim relief could be given by the NHRC earlier also, and it is being continued by the amendment. There is no change, which is good. However, earlier, compensation could not be specifically given. Now, we have provided that compensation can be awarded. It seems to be a good thing. But let me raise a few questions which, I think, can be easily met by amendments to make it efficacious. We must not forget that the NHRC, as it today stands before and after the amendment, has only recommendatory powers; it has no enforcement powers. Secondly, the compensation can normally be awarded after full adjudication by a decree. 'Compensation' means, you have adjudged, adjudicated, found one party guilty or innocent and then awarded money. Now, both these things, the NHRC does not do and cannot do under the present Act. It does not do a full adjudication. It cannot pass a full decree, and whatever order it ultimately passes is not enforceable. If that be so, to merely provide that compensation may be granted may create two problems of a serious nature, which may not have been foreseen.

Today, because the NHRC cannot give compensation, the person is, at least, entitled to go to the normal civil court and seek compensation. In that civil court, he would get a decree, which he can enforce. Now, if he goes to the NHRC and gets an order of compensation, which he cannot enforce, he will be both without a remedy in the NHRC and also not be able to go to a civil court, because you cannot have dual remedy or double damages on the same course of action. So, I think, the solution will have to be, providing for the case where the NHRC gives compensation, at least, in that limited category; provide that its orders will be enforceable. That will complete the circuit and complete the picture. Or, alternatively, don't provide merely for compensation without enforcement, leave it to the ordinary civil forum where he can seek compensation. Otherwise, it will be a hybrid, half of nothing or half of either side.

Sir, may I now come to the last, but the most contentious point, where I totally disagree with that which has come from the Opposition Benches and from other speakers prior to me. It is suggested that the amendment to permit judges, other than the retired Chief Justice of India, to hold the post of Chairperson, is a prejudicial, undesirable and erroneous amendment. With utmost respect, I totally disagree. Let me approach the problem a little differently.

Let us not forget, Sir, that in this country, we have several statutes, a very large number of Acts -- and I can recite any number of them, from the Excise Act, to Tribunals, to Income-Tax Tribunals and hundreds of tribunals. The important point is, hundreds of tribunals in this country are manned, the norm is, only by retired Judges, either of the Supreme Court or the High Court. It is very interesting to remember that the maximum revenue in this country perhaps comes from the Excise Tribunals because excise generates the maximum; nowadays, a close competitor is Telecom. In the excise field, even a Chief Justice of a High Court is not required to head the tribunal; a Judge of the High Court is sufficient. Let us not forget that the norm for 90 to 95 per cent tribunals in this country is, a retired judge, frequently, only a retired judge of the Supreme Court, or frequently, only a Chief Justice of the High Court, or a retired Judge of the High Court, heads it. Therefore, the provision that it should be only a retired Chief Justice of India is, by itself, an exception. What is now being done is to bring the exception, by amendment, back to the norm.

There is another very important facet, which my friend from the Opposition has forgotten. In the Supreme Court, every judge is equal. The



Chief Justice of India is only the first amongst equals. The junior-most judge of the Supreme Court, in terms of seniority, exercises exactly the same powers as the senior-most judge of the Supreme Court. Are we, Sir, in this debate, forgetting that we trust matters of the greatest moment relevant to this nation to any judge of the Supreme Court? We trust matters of national security, matters of immense public revenue, matters of immense political importance, matters of momentous importance to individual parties, all of them, to a judge of the Supreme Court. The only extra power which a Chief Justice has is that he has the power of allocating work, of fixing the roster, as to which judge will discharge which subject matter of duty. The Supreme Court, for example, sits in roughly ten to twelve Benches. Each Bench is completely independent. The case which they are hearing is entirely in their control. The underlying premise of my friend's argument is as if there is a hierarchical difference between the Chief Justice of India and other Judges of the Supreme Court so far as powers, competence, talent or authority are concerned. This is the fundamental fallacy of the entire argument. My friend is in the habit of not being available after finishing his speech as far as reply is concerned. It also happened the other day. But that is for him, his conscience to decide; it is not for me to comment.

Therefore, Mr. Deputy Chairman, Sir, in a sense, I am sure, without intending it to be so, my friend from the Opposition is really making an insinuation or allegation against normal judges of the Supreme Court who are not Chief Justices, which, as you know, can be only one. Therefore, I think, this constant harping on the fact that a judge of the Supreme Court is, in any manner, exercising truncated power, circumscribed power, limited power, or in any manner, less qualified than the Chief Justice of India, is itself a fundamental fallacy, which arises from my friend's arguments. Ultimately, Sir, we must not forget that it is the individual who matters, not his designation. A Judge of the Supreme Court can be outstanding; a Chief Justice of India may be average. It all depends on the kind of person you appoint. *Vice versa* is also true. Therefore, it all depends on how well the Selection Committee, which is already in place and to which no one is objecting, will choose the candidate. Therefore, let us not put so much emphasis; let us not make insinuations of candidate of choice as far as a mere change from CJI to Judge is concerned. After all, we are talking of the very high status of the Supreme Court Judge. Let us, Sir, also not forget a practical difficulty. At any point of time, the pool of persons you can select from is, in fact, extremely limited if you limit it to the Chief Justice of India

retired category. This is a fact of life. It is not good enough to say that there are always enough. In fact, what happens is that the person retires at 65; there is a person already in place, he may retire after two years. After two years, the available pool may be only two or three. Now, in place, or as opposed, or by contrast to a pool of only two or three, if you have a pool of 20-25 persons of the status of the Supreme Court Judge, no less I think there is absolutely no cause for apprehension or complaint and there should be no doubt. This is really an unfortunate innuendo or suggestion created as if there is some kind of a diminution of standards while forgetting that very high tribunals -- and I gave the example of Telecom Tribunal, which is very high revenue earner and only a Judge of the Supreme Court is to head it -- the Excise Tribunal, not even a Chief Justice of the High Court is to head it, only a Judge will suffice. Therefore, Sir, may I suggest, in conclusion, that this Bill, which is undoubtedly a very significant and important Bill, deserves to be considered constructively and passed with two suggestions which I have made as far as the reference to the NHRC is concerned and as far as the compensation issue is concerned? I submit, Sir, for the kind consideration of this august House that no change is required as far as the pool of potential candidates is concerned and that that amendment is very salutary, indeed is desirable. Sir, I, therefore, move this Bill for consideration along with the suggestions which I have made. Thank you.

KUMARI NIRMALA DESHPANDE (Nominated): Sir, I shall be very brief. I would like to share an experience of Jammu and Kashmir how human rights violations take place and how they can be prevented. Wherever we used to go, we were flooded with complaints from local people about human rights violations, of course, mainly by the Armed Forces. But in one area I was surprised not a single complaint came. Then I tried to find out the reason. I was told that some Colonel has been posted, who is very reasonable. So, I wanted to meet him and I found that he had given instructions to all those who were working in his area to treat the local people as friends, help them, but treat the militants very severely. So, make a distinction between the two. Then he also tried some kind of interfaith prayers and all that. The result was that there was not a single human rights violation in that area. If both the Police Force and the Armed Forces can be sensitised, if they can be given some such suggestions as that officer did it on his own -- the results will be really wonderful. If the whole Police Force and the Armed Force can be sensitised to be humane,

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teat the criminals, militants and terrorists in whatever way you think proper, but the local people, the ordinary people, should be treated as dignified citizens, as friends and if this thing can be done, we will have very few human rights violations.

So, Sir, my first suggestion is, I don't know if that can be incorporated, that one finds that there is an element of communalisation in all these agencies. So, if we can orient them in a proper way, we will have less complaints to deal with. I would also like to say that, unfortunately, I don't know why, but one finds communalisation in the Police Force of many States to such an extent that it becomes really difficult to work in that area. I would also like to say that during the Gujarat carnage, we, as civil society activists, found that the National Human Rights Commission was a source of moral strength to all of us. I would like to compliment the National Human Rights Commission, especially its Chairman, for this. But its recommendations were not honoured by the then Government. And sending the complaints back to the State Commission when such a situation arises, would be disastrous. It was only the NHRC during that period that was fair, that was trying to help the people at the grass-root level. So, sending it back may not be proper in such extraordinary situations.

Last but not the least, I would like to say that the NHRC should have more teeth and more status. I feel that a retired Chief Justice alone should be appointed. Because, in those days, we could find that our NHRC Chairman was respected all over the world. We live in a world where status does count, so, it would be better to have a retired Chief Justice. Also, along with that, I would request that the NHRC should be given more teeth. Thank you.

**श्री श्रीगोपाल व्यास (छत्तीसगढ़) :** धन्यवाद उपसभापति जी, मैं तो सोच रहा था कि मेरे ह्यूमन राइट्स का वॉएलेशन तो नहीं हो रहा है। मुझे इस पर बहुत कुछ कहना है, परन्तु मान्यवर, सबसे पहले तो मैं मंत्री महोदय का ध्यान स्टैंडिंग कमेटी की रिकमंडेशंस पर या उनका जो विचार है, उस पर लाना चाहता हूँ। जो सेक्रेटरी जनरल के अपोइंटमेंट की बात है, उसके बारे में स्टैंडिंग कमेटी ने कहा है: "The Committee is of the view that an express provision needs to be incorporated in the amendment to clear the apprehensions and doubts that the Chairperson may tend to misuse the power in making excessive delegation. The Committee, therefore, recommends that in sub-section (4) of section 3 of the Principal Act, the words "except judicial functions" may be added after the words "such powers and discharge such functions of the Commission."

मैं देख रहा हूँ कि हमारे सेक्रेटरी जनरल मुस्करा रहे हैं। मैं इन सेक्रेटरी जनरल के बारे में नहीं कह रहा हूँ, पर मैं समझता हूँ कि यह बहुत महत्व का सुझाव है जिस पर अवश्य विचार किया जाना चाहिए था। व्यक्ति कोई कितना बड़ा भी होकर भिन्न-भिन्न परिस्थितियों में कुछ न कुछ गलती करने की संभावना रहती है। इसका जो मूल कानून था उसमें पूरे कमीशन को ही अधिकार दिया गया था इस प्रकार के अप्वाइन्टमेंट करने का। अब आगे तो प्रावधान किया गया है कि चेयरपर्सन को भी यह अधिकार देने का, मैं समझता हूँ कि इस पर पुनर्विचार होना चाहिए। एक सम्पूर्ण समिति जब विचार करती है तो उसमें कोई शंकाओं और संदेहों को स्थान नहीं रहता है। इसलिए मैं आशा करता हूँ कि इसका विचार जो कोई भी मंत्रीगण या बाकी लोग इसमें जिम्मेदार हैं, उसको अवश्य करेंगे, यह स्टेडिंग कमेटी का रिकमेण्डेशन भी है। उपसभापति महोदय, मैं इस सदन में पहली बार किसी बिल के संबंध में अपने विचार रखने के लिए खड़ा हुआ हूँ। आपने मुझे अवसर दिया है, उसके लिए आपका बहुत-बहुत धन्यवाद। मैंने इस संशोधन को पढ़ने के साथ-साथ इसके मूल कानून पर थोड़ा विचार करना शुरू किया, मैं कानून विशारद तो नहीं हूँ, हमारे दो बड़े-बड़े कानून विशारद, एक उधर के और एक उधर के अपने विचार रख चुके हैं और मुझे सुनने के लिए उधर के कानून विशारद नहीं दिख रहे हैं, शायद उनके पास समय कम रहता है। मुझे आनंद होता जब हमारे पक्ष के जो विद्वान अधिवक्ता हैं, वह कह रहे थे, उसके बाद उससे जुड़ी हुई बात उधर से कही जाती, तो शायद उनके साथ न्याय होता। उनकी अनुपस्थिति में कुछ कहना मुझे भी अच्छा नहीं लग रहा है।

उपसभापति महोदय, माननीय शिवराज पाटिल जी यहां उपस्थित हैं। मैं जानता हूँ कि वह भारत सरकार की सभी प्रकार की जिम्मेदारियों को संभालने वाले व्यक्ति हैं। गृह मंत्री होते हुए भी उन्होंने पिछली डिबेट में अनेक मंत्रालयों के साथ बातचीत करके मैं उस बात को ठीक करूंगा, ऐसा कहा था। मैं जब इस संशोधन को पढ़ रहा था और इसके साथ-साथ मूल कानून को पढ़ रहा था, तो पहले तो मेरी समझ में यह नहीं आया कि स्वाधीन भारत में यह इतनी देरी से क्यों हो रहा है ! यह कानून भी 1993 में बना है और उसके बाद 13 साल बाद हम कुछ संशोधन करने जा रहे हैं, बीच में कितनी ही घटनाएं हो गई हैं, मैं इस सदन में अनुभव कर रहा हूँ कि लोग आपकी अनुमति से विषय से हटकर भी अपने विचार प्रकट कर रहे हैं। क्या मुझे अनुमति है कि मैं मूल कानून से जुड़ी हुई कुछ बातें सदन के ध्यान में लाने के लिए कहूँ। आप उसमें से कितना मान्य करेंगे और कब करेंगे, यह मैं नहीं कह सकता हूँ। यह कानून का संशोधन है प्रोटक्शन ऑफ ह्यूमैन राइट्स बिल के बारे में, किसी कमीशन में अमेंडमेंट करने के बारे में नहीं है। दि प्रोटक्शन ऑफ ह्यूमैन राइट्स की बात आती है या ह्यूमैन राइट्स की बात आती है, तो चूंकि मैं एक वैश्विक संगठन से जुड़ा हुआ हूँ और सवा सौ से अधिक देशों में भारत मूल के लोग रहते हैं, वे सभी उन देशों की प्रगति में सहायक होते हैं, उनको कई बार अनेक अन्यायों का सामना भी करना पड़ता है। जब वहां के लोगों से मैं प्रवास के दौरान मिलने जाता हूँ या उनके ई-मेल पढ़ता हूँ, तो मैं सोचने लगता हूँ कि इसके लिए हम लोग क्या कर सकते हैं ! बात तो मानव अधिकारों की है और वे चाहते हैं कि भारत में जो लोग रह रहे हैं, इतनी बड़ी जनसंख्या में रह रहे हैं, वे क्या दुनिया के बाहर के ह्यूमैन राइट्स के प्रवक्ताओं पर अपना जीवन चलायेंगे। भारत में भी मानवाधिकार आयोग है, वह सारे मानवों के बारे में विचार करेगा, कब करेगा, यह तो मैं नहीं कह सकता हूँ। परन्तु कम से कम आज मैं उनके लिए इस सदन में आवाज रखने की अनुमति चाह रहा हूँ।

मान्यवर, भारतीय मूल के लोग बहुत से देशों में बसे हैं, जब कभी उनके ह्यूमैन राइट्स पर आघात होता है, तो वे स्वाभाविक रूप से भारत की ओर देखते हैं। क्या भारत के ह्यूमैन राइट्स कमीशन को उनके बारे में कुछ बोलने का अधिकार है, उनके लिए कुछ करने का अधिकार है, यह प्रश्न सामने खड़ा होता है? इसलिए मेरे मन में आया कि जब कभी भी संभव होगा, मैं माननीय शिवराज पाटिल जी का ध्यान इस बात पर आकर्षित करना चाहता हूँ, चाहे वह आज इस संशोधन के माध्यम से हो या आगे जाकर के हो। आखिर भारत अपनी संतानों को भूल नहीं सकता है। यह देश 100 करोड़ का है। प्राचीन सभ्यता है और मानव जीवन के श्रेष्ठतम आदर्श यहाँ पर स्थापित किए गए हैं। इसको केवल हम ही मानते हैं, ऐसा नहीं है, सारी दुनिया के लोग मानते हैं। जब हमारे ह्यूमैन राइट्स कमीशन के बारे में विदेशों में इतनी अच्छी भावना की अभिव्यक्ति सभी ने स्वीकार की है, तो फिर मैं सोचता हूँ कि क्या वे देश मानवाधिकारों का निर्धारण करेंगे जो कल जन्मे हैं, जिनका कुछ ही शताब्दियों का इतिहास है? आज वे मानवाधिकार आयोग बनाते हैं और भारत में चल रही घटनाओं पर टिप्पणियाँ करते हैं। तब मुझे यह लगा कि हमारा जो इस मूल कानून का चैप्टर-1 है, क्या उसमें यह जोड़ना संभव है? मैं सोच रहा था कि जिन लोगों ने संशोधन पर विचार किया है, मैं उनकी कुछ सहायता कर सकता, उनके साथ बैठता और विचार-विनिमय में कुछ भाग लेता, तब मुझे ध्यान में आया कि जहाँ चैप्टर-1 में हमने कुछ बातें कही हैं, वहाँ क्या यह जोड़ना संभव है? उसे कब जोड़ना है, उस पर तो आप विचार करेंगे। उसमें जो दो बातें कही गयी हैं, उसमें तीसरी बात का मैं सुझाव दे रहा हूँ कि जो एक्टिविटी का स्कोप है, उसमें क्या यह जोड़ना संभव है कि हम उन देशों के बारे में भी विचार करेंगे जहाँ पर भारतीय मूल के लोग रह रहे हैं या प्रवासी भारतीय रह रहे हैं? आज आपको यह विचित्र लग सकता है कि संशोधन पर बात करनी चाहिए। किन्तु चूंकि हम 13 साल बाद मानवाधिकारों पर विचार करने चले हैं, इसका स्वागत है, परन्तु विचार यह भी करना पड़ेगा कि सौ करोड़ का यह देश, क्या अपने उन तीन करोड़ बंधुओं के बारे में नहीं सोचेगा जो उसकी जड़ों से जुड़े हैं, जो कहीं पर भी मार खाने के बाद भारत ही आते हैं? महोदय, भारत तो सदा के समान उदार है। वह अपने पुत्रों को ही नहीं, किसी का भी अपने यहाँ स्वागत करता है। इसलिए यह मेरा नम्र निवेदन है और आग्रह भी है। वास्तव में तो जो लोग इस अमेंडमेंट को लाए हैं, उनको भी इन सारी मौलिक बातों पर विचार करना चाहिए था। पता नहीं यह क्यों नहीं किया गया, मुझे नहीं मालूम, किन्तु मैं सारे विश्व में रहने वाले अपने बंधुओं की ओर से यह निवेदन करना चाह रहा हूँ कि आज नहीं तो कल, भारत अपनी संतानों की बात सुनेगा। हजार साल में हम दुर्बल रहने के कारण उनके बारे में विचार नहीं कर सके, आक्रमणग्रस्त रहने के कारण नहीं कर सके, किन्तु क्या हम स्वाधीन होकर भी उन बंधुओं की चिंता नहीं करेंगे? यह ठीक है कि हमें जेल में जाकर कुछ लोगों से बातचीत करने का, उनके मानवाधिकारों के रक्षण करने का प्रावधान इस बिल में किया गया है - वह स्वागतयोग्य है। वहीं पर जो हमारे बंधु इस प्रकार पीड़ित हैं, उनका भी विचार होना चाहिए। मैं इसमें जब ह्यूमैन राइट्स की परिभाषा पढ़ रहा था, तब मुझे लगा कि दुनिया में ह्यूमैन राइट्स की दो परिभाषाएँ नहीं हो सकती हैं। क्या ह्यूमैन राइट्स केवल वही हैं जो भारत की कोर्ट्स में एन्फोर्सबल हैं? इस पर विचार करने की जरूरत है। ह्यूमैन राइट्स, ह्यूमैन राइट्स हैं। वे भारत में एन्फोर्सबल हैं या नहीं हैं, यह कितने महत्व का है, यह भी विचार करने का विषय है। मनुष्यमात्र ही नहीं, इस देश की संस्कृति में मानवोत्तर सृष्टि का भी हम विचार करते हैं, प्राणियों का करते हैं, वनस्पति का करते हैं। तो फिर मानवाधिकार केवल भारत में यदि एन्फोर्सबल नहीं है, तो क्या हम इसका विचार नहीं कर सकते हैं? जब हमने कमीशन को कुछ अधिकार दिए हैं,

तब मैं सोचता हूँ कि इन बातों का भी विचार होना चाहिए। मैं जब पढ़ रहा था, तब मैंने देखा कि कमीशन को ऐसी अंतर्राष्ट्रीय संधियों पर भी विचार करने का प्रावधान किया गया है जो ... (समय की घंटी)...

**एक माननीय सदस्य :** सर, उनकी मेडन स्पीच है।

**श्री उपसभापति :** नहीं। मेडन स्पीच नहीं है।

SHRI SHREEGOPAL VYAS: That is all. It is not a maiden speech. Sir, I take note of it. I have to make a few more important points.

MR. DEPUTY CHAIRMAN: I have given you six minutes more than the allotted time.

**श्री श्रीगोपाल व्यास :** मैं आपसे यह निवेदन कर रहा था कि जब यह अधिकार या उनके कार्यक्षेत्र में यह प्रावधान है कि हम ऐसी अंतर्राष्ट्रीय संधियों के बारे में विचार करें, भारत सरकार से रिपोर्ट मांगें, तो फिर मेरा यह आग्रह है कि भारत सरकार से कमीशन आग्रह करे कि भारत के बाहर जो बंधु रह रहे हैं, जिस किसी भी संधि के अंतर्गत इसका विचार करना संभव है, उन संधियों की भी समीक्षा हो। भारत के बाहर रहने वाले बंधुओं पर अन्याय होता है, बड़े-बड़े देशों में हो रहा है। अमेरिका में हो रहा है, हमारे देवी-देवताओं का अपमान हो रहा है। अभी मलेशिया में, चूंकि हमारा जो मानवाधिकार आयोग है, उसने कुछ नहीं कहा, वहां लोगों ने एक "हिंदू राइट्स एक्शन फोर्स" बनाई है। रशिया में हुआ है, वहां तो जानकारी के लिए, लोगों को उपासना के स्थल से भी वंचित कर दिया गया है। वहां के किसी एक धर्म के या पंथ के अधिकारी की हठधर्मिता के कारण, वहां के रहने वाले दस-पंद्रह हजार बंधुगण उपासना से वंचित हैं। अनेक देशों की ऐसी स्थिति है। बंगलादेश की कहानी बताऊंगा, तो बहुत लंबी हो जाएगी, परंतु वहां के बंधु आ रहे हैं और कहानी कह रहे हैं। कौन सी बाध्यता है हमारी? हम उन बंधुओं को, जो कल तक हमारे साथ थे, हमने जो विभाजन स्वीकार किया, उसके कारण उनके दुख-दर्द को सुनने के लिए हम तैयार नहीं हैं। किस प्रकार की अमानवीय यंत्रणा वे भुगत रहे हैं, जब उनकी फिल्म यहां दिखाई जाती है, सारी दुनिया में दिखाई जाती है, तो हृदय रो उठता है।

महोदय, अभी कुछ बहनें यहां पर बहनों के अधिकार की बात कर रही थीं। बंगलादेश में हमारी बहनों के साथ जो अत्याचार हुआ है, यह मानवता को लज्जित करने वाला है। मैं पूछना चाहता हूँ और जानना चाहता हूँ कि हम यहां सी करोड़ लोग रह रहे हैं। कल तक जो हमारे बंधु हमारे साथ थे, आज चाहे वे पाकिस्तान में रह रहे हों, बंगलादेश में रह रहे हों या श्रीलंका में रह रहे हों, उनके दुख-दर्द को सुनने का भी तो कुछ प्रावधान होना चाहिए।

महोदय, मेरा एक और सुझाव है। जहां हमने इस आयोग के फंक्शन्स कहे हैं, उसमें क्या हम यह जोड़ सकते हैं, मेरा यह सुझाव है, बहुत सी बातें उसमें कही गई हैं - to inquire into this and to inquire into that. हम क्या इनक्वायर कर सकते हैं, क्या कोर्ट बना सकते हैं, यह विषय एक तरफ है। हम उसमें इतना तो कर सकते हैं, to pronounce its concern over obvious violations of human rights? कोई व्यक्ति कंप्लेंट करेगा और वह भी पब्लिक सर्वेन्ट के खिलाफ करेगा, तभी हम उसकी तरफ ध्यान देंगे, ऐसा क्यों होना चाहिए? बड़ी-बड़ी आपदाएं आती हैं। मेरा सुझाव है कि जब व्यापक हिंसा होती है, व्यापक वातावरण के

प्रतिकूल एक्शन लिए जाते हैं, हज़ारों वन काटे जाते हैं, एक व्यक्ति का नहीं, पूरे समाज का नुकसान होता है। हम जब कहते हैं कि सुओ मोटो हमें काम करना चाहिए, तो फिर सुओ मोटो, मैं जानना चाहता हूँ कि यह कमीशन बड़ी-बड़ी घटनाओं के बाद भी क्यों नहीं जागता है? उसको क्या अधिकार नहीं दिए गए हैं? इस देश में जब इन्डिविजुअल लिबर्टी की बात होती है, तो मुझे बहुत दुख के साथ कहना पड़ता है और आप सब भी उस दुख को अनुभव करते होंगे कि यहां बड़े से बड़ा व्यक्ति भी, साधारणतया शिकायत करने का जिसका स्वभाव नहीं होता, उसके बारे में भी कमीशन कोई ओपीनियन नहीं देता है। उदाहरण के लिए मैं कांची के आचार्य की बात यहां रखना चाहता हूँ, वे संन्यासी हैं। उनके खिलाफ इतनी बड़ी बात कही गई। अच्छा होता कि भारत का मानवाधिकार आयोग स्वयं ही उठकर, उनको जिस प्रकार से गिरफ्तार किया गया, जिस प्रकार का व्यवहार उन जैसे श्रेष्ठ व्यक्ति के साथ हुआ, करोड़ों की श्रद्धा के वे पात्र हैं, हमारा मानवाधिकार आयोग स्वयं उठकर उनके अधिकारों की रक्षा के लिए क्यों नहीं आगे आता है? इस प्रकार के कई प्रश्न हैं।

अभी कश्मीर के बारे में माननीया बहनजी कह रही थीं। कश्मीर के हज़ारों लोग सारी दुनिया में विस्थापित होकर घूम रहे हैं। उनकी प्रदर्शनी लगाकर गोटियर सरीखे विद्वान लोग सारी दुनिया में कश्मीर के पंडितों की प्रदर्शनी लेकर घूम रहे हैं। उनके ह्यूमन राइट्स नहीं हैं क्या? आज वे अपने घर से विस्थापित हैं। वैली में कोई नहीं है। वे टेंट लगाकर, एक-एक टेंट में पच्चीस-पच्चीस लोग, पचास लोग परिवार सहित रह रहे हैं। उनके भी तो मानवाधिकार हैं। आज हमारा कर्तव्य भी है, केवल अधिकारों की बात नहीं है। मैं माननीय मंत्री महोदय से कहूंगा कि आज नहीं तो कल इन बातों पर विचार हो और उचित प्रकार के प्रावधान किए जाएं। मैं आपको अपनी ओर से आश्वस्त करना चाहता हूँ कि ऐसे किसी भी प्रयास में मैं भागीदारी भी लगाना चाहता हूँ। हो सकता है कि जल्द-बाजी में यह संशोधन लाया गया हो। मैं तो किसी के विरुद्ध ऐसा कुछ कहने का अभ्यस्त नहीं हूँ, परन्तु मैं आपसे निवेदन कर रहा हूँ, आप से मांग कर रहा हूँ कि इस पर यथाशीघ्र पुनर्विचार हो। अन्तर्राष्ट्रीय संधियों के जो प्रावधान आए हैं, उनके प्रकाश में, हम अपने ऑब्जेक्टिव में, चैप्टर-1 के क्लॉज-1 में, शुरु में ही जोड़े, 'the countries where people of Indian origin or pravasi Bhaartis live' मेरी आपसे पुरजोर मांग है और विनती है कि आप इस बात पर जरूर ध्यान देंगे। मानवाधिकार की परिधि में भारत के सभी नागरिक चाहे वे छोटे हों या बड़े हों, साधु हों या संत हों, उनकी आदत शिकायत करने की नहीं होती है। हज़ारों साधुओं और संतों को इस प्रकार की यातनाएं सहनी पड़ती हैं। कहीं पर कोई भी उनकी मानहानि का काम कर देता है, तो उनके खिलाफ एप्लीकेशन देने का उनका स्वभाव नहीं है और न ही उनका स्वभाव वकीलों के पास जाने का है। मैं यह चाहूंगा और आप सभी चाहेंगे, मैं यह जानता हूँ, आप सभी की भावनाएं मेरे साथ हैं कि ऐसे सभी लोगों के अधिकारों के बारे में, किसी व्यक्ति की कम्प्लेंट या कोई कोर्ट का निर्देश, उसके लिए न रुकते हुए, स्वयं भारत का मानव अधिकार आयोग आगे बढ़कर, समस्त दुनिया में जो हमारे आदर्श हैं, उनके अनुकूल हमारे देश के नागरिकों के अधिकारों की रक्षा करेगा। आपने मुझे समय दिया, इसके लिए मैं आपको धन्यवाद देते हुए, अपना स्थान ग्रहण करता हूँ।

SHRI TARLOCHAN SINGH (Haryana): Mr. Deputy Chairman, Sir, we are discussing about the Human Rights Commission and the amendments being recommended by the Government. Sir, violation of human rights is

now an international problem and with the increase of education among the public and with awareness about such Commissions and laws there is always an eager demand on the part of the public to appear before any such commission to get relief because the excesses, as it has been noticed, are mostly by the police or by the Government officers against the people. Although we have made this Act in 1993, I am very happy to say that our National Human Rights Commission has earned good reputation. All over the world, when people talk about the role of India in providing relief, we always get an appraisal in the world because successive Governments have always selected chairpersons and members of the Human Rights Commission from the best available persons in this field. I would request the Home Minister to consider that when you appoint these commissions, they are all recommendatory bodies because the Government cannot afford to have a parallel authority to take decisions. All commissions, the National Human Rights Commission, the Scheduled Castes Commission, the Tribal Commission, the Minority Commission, the Women Commission, the Backward Commission, are recommendatory bodies. But to make them effective, the Government has always tried to give them special authority and that authority came to the Scheduled Caste Commission, the Tribal Commission, the Minority Commission. You give Cabinet status to their Chairpersons so that the functioning of the Commission *vis-a-vis* the Government machinery becomes more effective because if a Commission is headed by a Cabinet Minister, when you call the Government machinery, they give better respect.

So, here also, the Human Rights Commission, being headed by a retired Chief Justice, carries much weight. The Human Rights Commission, being a supreme body in India, when they summoned any official and they called for records; naturally, the general habit of the public is to see who the person is sitting on the Chair. So, if a retired Chief Justice of the Supreme Court is heading it, then, naturally, the respect of the Commission increases. I do not know the reasons why we are now going to dilute this authority of the Commission, whereas the need was to strengthen it further. By strengthening it further, you would have gained much more effectiveness and efficiency in the Commission. But we do not know the reason behind this. We want to change its Chairmanship from a retired Chief Justice to a Judge, even in the States. It is, of course, up to the Government to do what it wants. But, looking at the functioning of the Commission, I feel that we should not try to dilute it in any way to give less authority to the person heading the Commission.



Secondly, Sir, in this Commission, there is a provision that they do not take any case which is more than one year old. This, I think, is a big deficiency in the working of the Commission because one year is a very small period for a person from anywhere to go and appeal before the Commission. Various incidents have taken place, and it has not been possible for the affected persons or the public to go before the Commission within a year. And, there are some important cases which occurred before the formation of the Commission in 1993. These cases are still pending in the Courts. People expect that the Human Rights Commission should be given some special exemption to listen to these cases such as the 1984 anti-Sikh riots. That is still a black spot on our system, and the people wanted that this Commission also should probe into this. Similarly, people wanted that this Commission should go into the Hashimpura massacre where the minority people were killed in Uttar Pradesh. This case is 19 years old. There are some cases where huge killings have taken place, but this Commission cannot intervene. So, some special provision should be made whereby in cases where mass killings had taken place, we should refer such cases to this Commission. I am happy that there are certain good amendments being made, that you are allowing the Commission to visit jails, because it has been noticed that there are maximum human rights violations taking place in jails against the prisoners. Of course, the Commission should visit the jail premises without informing the authorities in advance. Otherwise, the officials would get alert and everything would be set in order by the time the Members of the Commission visit the jail premises. So, if the Members of the Commission visit the jails without informing the Government concerned, then, that will bring better results. You are also allowing the National Human Rights Commission to transfer cases to the State Human Rights Commission.

Sir, as I mentioned to you earlier, the Commission is a recommendatory body. You have now mentioned in the amendment that the Commission can recommend to the State Government for paying compensation to the victims either partly or wholly during the enquiry or after the completion of the enquiry. Also, there should be some clause in this Bill to make the recommendations of the Commission binding on the Governments concerned. It is very often seen that the Commissions make recommendations, but the States do not implement them. We must ensure that the recommendations of this Commission are properly implemented. It is indeed good that you have provided that any complainant can get the

Inquiry Report of the Commission. That will be very helpful, and we are also happy that the Inquiry Report of the Commission will be published.

Sir, another provision which has been recommended is that there will be dual membership; that is, one person can be a Member in two States. I don't think this can be workable because the States have a huge number of cases pending with them, and also, the working of the State Commissions has not been up to the mark. Most of the States had no Chairperson, and in some States, there are still vacancies. So, if they are now allowed that one Member can represent two States, then, the efficiency will go down. Sir, I must bring, though you, to the notice of the Home Minister that there is a provision in the Act that the National Human Rights Commission will have Associate Members.

And, those members are Chairpersons of the Scheduled Castes Commission, the Minority Commission and the Women Commission. Sir, for the last two-and-a-half years, due to a small technical reason, the Chairperson of the Scheduled Castes Commission was debarred to attend the meeting of this Commission. Only an Ordinance was to be issued because this Commission was bifurcated into the Scheduled Castes Commission and the Tribal Commission. So, by issuing a small Ordinance, the Chairpersons of both the Scheduled Castes Commission and the Tribal Commission could be allowed to attend the meeting of the Human Rights Commission. Now, this amendment is coming after two-and-a-half years. For the last two-and-a-half years, neither the Chairperson of the Scheduled Castes Commission nor the Chairperson of the Tribal Commission could attend the meeting of this Commission. Sir, there is a provision in the Act as to why these associate members are there. They are there because they represent the Scheduled Castes, the minorities, women and these are the major sectors of our society. As per the provision, every month, a meeting will take place. But, the experience shows that the Chairperson of the Human Rights Commission holds only three or four meetings in the whole year. So, the provision of the Act to hold a meeting of the Commission every month is not being implemented.

Secondly, Sir, you appoint these associate members so that they are aware of all the things which are going on. They are not the whole-time members of the Commission. They work in their own offices. But, they should be aware of all what is happening. But, there is a distinction. These members are there only to attend the meeting, and in that meeting, all other criminal cases, all cases where the Commission is taking steps on that,

these members are debarred to know or to discuss those cases. So, I also want to bring this to the notice of the worthy Home Minister.

Sir, I have one more point to make. Because of the Act made, Kashmir is out of the purview of all these Commissions. The maximum violations are taking place in that State, and no Commission can go there and take notice of it. So, this provision may be discussed sometimes how to bring that State into the purview of all such Commissions.

Sir, in the end, I will request the Home Minister, through you, Sir, that we should try to give more teeth to this Commission, make it more respectable in the eye of the world because human rights is an issue at the international level. Maximum media coverage comes for the Human Rights Commission and the human rights violation. India will get a good name, if this Commission is more effective, and the Chairperson of this Commission is more and more effective and respectable. We should not try to minimise or in any way lower the status of the Chairperson of the Commission.

Sir, in the end, I would like to bring one more thing to the notice of the worthy Home Minister. Sir, eight years back, the Supreme Court referred the Khalra Committee Case to the Human Rights Commission. It was reported in the Supreme Court that more than 2000 persons were cremated without taking notice of who they were. They were cremated in Amritsar in 1984. The case went to the Supreme Court. The Supreme Court held an inquiry, and issued order to the Human Rights Commission that the Commission should now go into the detail to find out who those persons were and what had been done. So, this case is pending with the Human Rights Commission for the last nine years. Only this year, or, a few months back, they have been able to give a report of 700 persons, and that too, only a compensation. Till today, the Human Rights Commission has failed to give any relief to the complainant or to launch any prosecution. I recommend that we should ask the Human Rights Commission that this is a case which was discussed and sent by the Supreme Court, and the Supreme Court's order has not yet been implemented. -The people of Punjab are very angry over this issue because thousands of people were killed at the hand of the police, and shown as if they were in the shoot-out or missing. So, that case should be decided, prosecution should be launched against the defaulter and compensation should be paid to 2000 people who are already in the list given by the Supreme Court. Sir, with these words, I conclude. Thank you, Sir.

**श्री मांघी आज़ाद (उत्तर प्रदेश) :** महोदय, मैं मानवता संरक्षण संशोधन विधेयक, 2005 के समर्थन में खड़ा हुआ हूँ।

महोदय, भारतीय संविधान के शिल्पकार बाबा साहेब डॉ० अम्बेडकर ने देश के नागरिकों को बहुत से संवैधानिक अधिकार के साथ-साथ मौलिक अधिकार भी प्रदत्त किए हैं। लेकिन आज भी देश में बहुत सारे दलित, शोषित व मजलूम समाज के लोगों के मौलिक अधिकारों का हनन आए दिन होता है। इस समाज के लोग अज्ञानता एवं अनभिज्ञता के कारण अपने मौलिक अधिकारों को समझ नहीं पाते हैं और इस नासमझी के कारण इन मौलिक अधिकारों की रक्षा भी नहीं कर पाते हैं। इस कारण आज देश में सामाजिक विषमता, आर्थिक विषमता के साथ-ही-साथ सामंती जुल्म-ज्यादती के कारण दलित, शोषित मजलूम लोगों के मौलिक अधिकारों का हनन आए दिन होता है और बाध्य होकर ये गरीब मजलूम लोग अपनी गुहार मानवाधिकार आयोग में लगाते हैं। किंतु मेरा मानना है कि जितने लोगों के अधिकारों का हनन अज्ञानता के कारण होता है, वे सभी मानवाधिकार आयोग में अपनी गुहार नहीं लगा पाते और न्याय से वंचित रह जाते हैं। अतः मैं माननीय गृह मंत्री जी से अनुरोध करूंगा कि इस मानवाधिकार आयोग को और व्यापक बनाने की जरूरत है। इस के लिए प्रचार-प्रसार को व्यापक बनाकर जन-जन तक पहुंचाने की जरूरत है। साथ-ही-साथ इस आयोग की शक्तियों को भी बढ़ाए जाने की आवश्यकता है ताकि आयोग स्वतंत्र एवं निष्पक्ष रूप से कार्य कर सके और पीड़ित एवं भुक्त-भोगी समाज को न्याय दे सके।

**[उपसभाध्यक्ष (श्री कलराज मिश्र) पीठासीन हुए]**

महोदय, इसी प्रत्याशा में कि सरकार आयोग की शक्तियों को बढ़ाने का कार्य करेगी और इसे जन-जन तक पहुंचाने का काम करेगी, मैं इस संशोधन विधेयक का समर्थन करता हूँ। धन्यवाद।

SHRI V. NARAYANASAMY (Pondicherry): Sir, I rise to support the Protection of Human Rights (Amendment) Bill, 2005, moved by the hon. Home Minister. Sir, Justice Ahmedi Committee made certain observations for improving the National Human Rights Commission as also the State Human Rights Commissions. On that basis, the amendments have been brought forward. There are some arguments made as far as the Chairman of the National Human Rights Commission is concerned. There are arguments and counter-arguments in this regard. Sir, the Chairman, according to the existing provision, should be the retired Chief Justice of the Supreme Court. Some suggestions have come to say that since very few retired Chief Justices are there in the country and since the age-limit is 70 years to occupy the position, it would be very difficult for the Government to identify the retired Chief Justice for this post. Therefore, the amendment has been sought by the hon. Home Minister to consider retired Judge of the Supreme Court on merit.

But I found that a controversy is made and I do not see any reason in the controversy, because the people who have got meritorious service in

the judiciary who have been the Chief Justices who were committed to the human rights have been occupying the position--Justice Ahmedi, Justice Venkatachalaiah, now Justice Anand, were all senior Supreme Court Chief Justices who occupied that position. Now, by bringing forward this amendment, the Government would be in a position to identify the human rights activists who are in the service and after the retirement, they can be considered.

Secondly, for increasing the facilities to the Commission, a provision has been made. Sir, today I would like to bring to the notice of the hon. Home Minister that there are some States where in the name of religion people are being tortured. It is in the sense that it is in the name of anti-conversion in some of the States. I do not want to name those States where in the name of anti-conversion certain people belonging to a certain religion are being harassed by certain religious activists. This is going on in some of the Northern States. When the State Human Rights Commission intervenes, the State Government interferes in it. Some of the State Governments are not allowing the State Human Rights Commission to investigate, to go to a particular area to see whether in the name of anti-conversion people are being harassed or not. Sir, it came to my knowledge and I also brought it to the notice of the authorities. Every person has got a right under the Constitution to profess any religion. The only thing is that no one should be compelled. If I want to profess a particular religion nobody should prevent me from embracing that religion or accepting that religion or following the principles of that religion. But unfortunately, Sir, in one religion in the name of majority religion some people are trying to suppress the minorities. I brought this to the notice of the hon. Home Minister that there is interference in the activities of the State Human Rights Commissions when they go for investigation to find out the facts. People praying inside have been attacked. This type of activity, which is going on, is a clear violation of the human rights. There are several such cases taking place in various districts in a particular State. It is unfortunate when such a situation arises because law and order is a State Subject and the Central Government cannot interfere. Therefore, this is a very serious matter. I want the hon. Home Minister to intervene when a State becomes a party to this kind of attack on the people of minority community in a particular State. We will have to approach the Central Government only to give protection to these people because the State Government has become a party to that act. I want the hon. Minister to consider that aspect also. It is good that there is provision for reconstitution of the State Human Rights Commission. In our

Standing Committee also we considered it and we have accepted it. Sir, one thing on which I would like to seek clarification from the hon. Minister, some other hon. Members have already sought, is regarding the District Magistrate referring the matter to the State Human Rights Commission and also the National Human Rights Commission. This needs reconsideration by the hon. Minister because the Human Rights Commission is an authority which has to see if there is any violation of the human rights or not. If a magistrate who is a lower authority is referring a matter to the higher authority, for this there should be some reason as to why they are doing it. But, unfortunately, that has not been explained in this Bill. I want the hon. Minister to consider that aspect. Sir, day in, day out the human rights activists are complaining to the Central Government to give teeth to the National Human Rights Commission.

It is good that the hon. Minister has made a clear provision to inspect jails and see conditions there and also inspect the places where an occurrence has taken place and going there for an on the spot study and submit a report.

Sir, my submission is that the Report of the Human Rights Commission has to be taken very seriously by the State Government and the Central Government. Sir, in some of the States I find the appointment of the Members has not been done in full because in some States some Members are there, in some States even the head is not there, Members are only working. This is the situation which has to be avoided. As far as the National Human Rights Commission and the State Human Rights Commission are concerned, there should full quorum of the Chairman and the Members so that there can be effective functioning by the Commission. Therefore, I want, that also to be considered by the hon. Home Minister. This is a very important amendment that has been brought forward. I support the amendment that has been brought by the Hon. Home Minister and the UPA Government has been giving utmost importance to the Human Rights. I wholly support the Bill, with the observation which has been made by me. Thank you, Sir.

**श्री लक्ष्मीनारायण शर्मा (मध्य प्रदेश) :** उपसभाध्यक्ष महोदय, इस बिल में जो लगभग 17 संशोधन पेश किए गए हैं, उनमें से काफी संशोधन बहुत अच्छे हैं और मैं उनका समर्थन करता हूँ, लेकिन इस बिल से ऐसा मालूम पड़ता है कि जैसे दंतहीन कोई अधिकार जिस आयोग को हों, उस प्रकार का यह आयोग है, क्योंकि इस आयोग की सिफारिश को मानना सरकार के लिए बंधनकारी नहीं है। अगर यह बंधनकारी होता, तो वास्तव में इस आयोग की सिफारिशों का भी महत्व होता।

मान्यवर, कुछ इसी प्रकार की शंकाएं हैं, जिनकी ओर मैं सदन का ध्यान आकर्षित करना चाहता हूँ। आयोग के अध्यक्ष को चयन करने की जो समिति है, उसके लिए जस्टिस अहमदी ने यह सुझाव दिया था कि जो सिटिंग अध्यक्ष हैं, उनको भी इसमें शामिल किया जाना चाहिए, लेकिन उनको इसमें शामिल नहीं किया गया और इसका कोई कारण भी सरकार ने नहीं दिया है। दूसरा, आयोग के अध्यक्ष, सचिव और पुलिस महानिदेशक की नियुक्ति सरकार करती है, जो सरकार न करे, बल्कि आयोग की सिफारिशों के अनुसार अगर इनकी नियुक्ति होती है, तो वह उचित होगा। यह जो अहमदी समिति है, उसने इस प्रकार का सुझाव भी दिया था, लेकिन सरकार ने उसको नहीं माना।

मान्यवर, जैसा अभी बताया गया कि एक मजिस्ट्रेट निर्देश देता है, जब वह आयोग को कोई विषय रेफर करता है। यह भी बहुत अनुचित लगता है। अगर किसी आयोग को एक छोटा मजिस्ट्रेट निर्देश दे, तो यह बिल्कुल उचित प्रतीत नहीं होता। इसलिए इस पर भी विचार किया जाना चाहिए। फिर, आयोग जो अपनी रिपोर्ट देता है, यद्यपि कानून में यह व्यवस्था है कि तीन महीने के अंदर सरकार उसका जवाब देगी, लेकिन सरकार जवाब नहीं देती है, क्योंकि बंधनकारी नहीं है। इसलिए समिति ने यह भी सिफारिश की थी कि अगर सरकार तीन महीने के अंदर जवाब नहीं देती है, तो वह रिपोर्ट अंतिम मानी जानी चाहिए। इसमें यह भी सिफारिश की गई थी कि आयोग की रिपोर्ट सदन के पटल पर रखी जाएगी, विधान सभा में रखी जाएगी, पार्लियामेंट में रखी जाएगी, लेकिन आमतौर पर यह देखा गया है कि आयोग की रिपोर्ट पार्लियामेंट के पटल पर नहीं रखी जाती, क्योंकि यह बंधनकारी नहीं है। मेरा सुझाव है कि अगर सरकार आयोग की रिपोर्ट पार्लियामेंट में नहीं रखती है, तो आयोग को यह अधिकार होना चाहिए कि वह सीधे पार्लियामेंट में अपनी रिपोर्ट रखे। अगर यह बात होती है, तो वास्तव में इस आयोग का कोई महत्व होगा, वरना जैसा मैंने कहा, यह एक दंतहीन आयोग है। अगर आयोग की सिफारिशों को नहीं माना जाता, तो कोई कारण नहीं है कि इसका कोई विशेष महत्व रहे। मैं निवेदन करना चाहूंगा कि आयोग की रिपोर्ट को संसद में रखने का जो प्रस्ताव है, सरकार उसे करे और अगर सरकार नहीं करती है, तो स्वयं आयोग उन रिपोर्ट्स को सदन में भेजे। अगर यह होता है, तो काफी उचित रहेगा।

मान्यवर, इन्हीं शब्दों के साथ मैं इस बिल में जो कुछ संशोधन आए हैं, उनका समर्थन करता हूँ, लेकिन निवेदन करता हूँ कि जो मैंने सुझाव दिए हैं, उन पर सरकार विचार करे। आप इस आयोग को दंतहीन मत रखिए, आयोग की सिफारिशों को बंधनकारी बनाइए। अगर आप इस प्रकार का प्रावधान करेंगे, तो उससे इसकी बहुत प्रकार से सफलता होगी। बहुत-बहुत धन्यवाद।

**डा. प्रभा ठाकुर (राजस्थान) :** धन्यवाद उपसभाध्यक्ष जी, आपने मेरे अधिकार को संरक्षण दिया। यहां सदन में क्योंकि मानव अधिकार की चर्चा हो रही है और यह एक महत्वपूर्ण विधेयक इस दृष्टि से भी है कि मानव अधिकार के संरक्षण, संवर्धन और सशक्तिकरण के लिए जितनी बार चर्चाएं हों, उनके सशक्तिकरण के लिए चाहे जितने संशोधन आएँ और ये आयोग जिस भावना और उद्देश्य से बनाए गए हैं -- राष्ट्रीय मानवाधिकार आयोग या राज्य मानवाधिकार आयोग, ये सही मायने में उस भावना का परिपोषण कर सकें या क्षमतावान हों, इसके लिए इनकी कैसे और अधिक सामर्थ्य या ताकत बढ़ाई जाए, इस उद्देश्य से यह मानव अधिकार संरक्षण संशोधन विधेयक, 2005 सरकार द्वारा लाया गया है, मैं उसका समर्थन करने के लिए खड़ी हुई हूँ।

महोदय, आयोगों का गठन तो किया गया, राष्ट्रीय अयोग भी है और राज्यों में भी हैं, लेकिन सरकार ने महसूस किया कि उनको और अधिक ताकत कैसे दी जाए। इसमें जो विशेष बिन्दु हैं, वे हैं कि राष्ट्रीय और राज्य मानवाधिकार आयोगों में एक बेहतर तालमेल बने, मानव अधिकार आयोग और अधिक क्षमतावान बनें और अनुसूचित जाति, जनजाति के लोगों को न्याय मिले, इसी भावना से इन आयोगों के अध्यक्षों को इस आयोग का सदस्य बनाने की व्यवस्था विधेयक में की गई है और यह महत्वपूर्ण है। मैं उम्मीद करती हूँ कि इस व्यवस्था से और अधिक अनुसूचित जाति, जनजाति के गरीब, कमजोर और दलित समुदाय के लोगों को, विशेषकर ग्रामीण क्षेत्रों के ऐसे लोगों को, जिनका अपनी आर्थिक और सामाजिक मजबूरी के चलते कई तरह का शोषण और उत्पीड़न सहना पड़ता है, इससे शायद उनका मनोबल भी बढ़ेगा और उन्हें राहत, सहायता और न्याय भी मिल सकेगा।

महोदय, विधेयकों में संशोधन इस सदन की एक सामान्य प्रक्रिया है। अनेकानेक विधेयक आते हैं, विधेयकों में संशोधन किए जाते हैं, वक्त और जरूरत के अनुसार, लेकिन मैं एक बात यह कहना चाहूंगी कि मैं लोक सभा में भी रह चुकी हूँ, इस सदन की भी सदस्या हूँ, चार वर्ष मुझे यहां हो गए हैं, यहां कई महत्वपूर्ण विधेयक पारित होते हैं, जोकि मानव कल्याण के लिए, इस देश की जनता के कल्याण के लिए, उन्हें न्याय दिलाने के लिए होते हैं। महोदय, इस देश का इतना सशक्त और महान संविधान है, संसद है, विधायिकाएं हैं, कितने ही धर्म हैं, नियम-कानून हैं, अदालतें हैं, पुलिस है, थाने हैं, समाजसेवी संगठन हैं, इन तमाम व्यवस्थाओं के अंतर्गत यदि समाज को या मानवता को उत्पीड़न से मुक्त करने के लिए अनेक कोशिशें की जाएं, लेकिन उसके बावजूद भी यदि मानवीय अपराधों में वृद्धि होती रहे, यदि मानव उत्पीड़न के मामलों के प्रसंगों में बढ़ोत्तरी होती जाए और यदि ऐसी ही स्थिति जारी रहती है तो यह सोचने को विवश होना पड़ता है कि ऐसी कौन-सी प्रक्रिया निर्धारित की जानी चाहिए कि जो भी विधेयक यहां बनाए जाएं, कानून के रूप में जो लागू हों या ये आयोग गठित किए जाएं, उनका सही मायने में लाभ पीड़ितों को मिल सके। क्योंकि महोदय, मेरी दृष्टि में यह सारी एक्सपेंस और यह सारी प्रक्रिया तभी सार्थक हो सकती है, जब पीड़ितों को उसका लाभ मिले, किसी भी तरीके से उनको न्याय मिले। इसके लिए यह जरूरी नहीं है कि बहुत से नियम व कानून बना दिए जाएं, विधेयक लाए जाएं अथवा संशोधन किए जाएं, कानूनों की इस देश में कोई भी कमी नहीं है। देखा तो यह जाना चाहिए कि किस तरह यह संभव हो कि जो पीड़ित हैं, उन्हें इन सबका लाभ मिले। इसके लिए ऐसी कोई व्यवस्था लाने की जरूरत है कि जवाबदेही को और अधिक कठोर बनाया जाए, न्याय की कोई समय-सीमा निर्धारित हो एवं ऐसी कोई प्रणाली बने, कोई व्यवस्था सुनिश्चित हो, जिससे जो भी लोग इससे संबंधित हैं, जो भी बेकसूर और असहाय लोग पीड़ित हो रहे हैं, उत्पीड़न और शोषण के मामले सामने आ रहे हैं या मानवाधिकारों का अतिक्रमण हो रहा है, वह रूक सके।

इस विधेयक में एक बात बहुत अच्छी है कि जहां पर भी लोकसेवकों का कोई मामला होगा, उन्हें दोषी पाया जाएगा, उसकी जांच करने का अधिकार भी इस आयोग को होगा। किसी जेल या निरोग केन्द्र का निरीक्षण करने के लिए भी यह आयोग सक्षम होगा, लेकिन महोदय, मैं यह जानना चाहती हूँ कि यह आयोग केवल निरीक्षण ही करेगा या कार्यवाही करने में भी उतना ही समर्थ होगा? अगर कहीं पर कोई लोकसेवक भी दोषी पाए जाते हैं तो उन पर लगाए गए आरोपों को गंभीरता से लिया जाना चाहिए। यह बहुत अफसोस की बात है, कई बार हम पुलिस



4.00 P.M.

के संरक्षण में ही यातनाओं के कई प्रसंग सुनते और पढ़ते हैं। जब हिरासत में मौतों के समाचार सुनाई देते हैं, उससे इस देश की पूरी मानवता पीड़ित होती है। यदि पुलिस कस्टडी में ही इस तरह की परिस्थिति बन जाएगी, तब फिर संरक्षण कहां पर मिलेगा? आज इस देश में एवं इस समाज में यह परिस्थितियां क्यों बन गई हैं कि पुलिस को देखते ही आम आदमी भयभीत होने लगता है? वह उसे अपना मित्र क्यों नहीं समझता? महोदय, बेसिक समस्या यहीं से शुरू हो जाती है। ये जो लोकसेवक हैं, ये चाहे कस्टम से, एक्साइज़ से या बैंक से जुड़े हुए हों, अथवा फिर चाहे पुलिसकर्मी ही क्यों न हों, इन सभी के अपने-अपने उत्तरदायित्व हैं, जिम्मेदारियां हैं। कई बार इनके कारण आम आदमी एवं गरीब आदमी को मानसिक यातना एवं उत्पीड़न भुगतना पड़ता है, उसकी जवाबदेही किसकी होगी? महोदय, जब तक इस देश में जवाबदेही सुनिश्चित नहीं होगी, जब तक किसी व्यक्ति को यह डर नहीं होगा कि यदि वह दूसरों को पीड़ित व परेशान करेगा, उन्हें शोषित करेगा और इस सबकी जिम्मेदारी उसी की होगी और इससे उसके पेट पर भी लात पड़ सकती है, तब तक कुछ भी ठीक नहीं हो सकेगा। ऐसे मामलों में उस व्यक्ति को दंडित किया जाए, उसे सस्पेंड किया जाए अथवा उससे जुर्माना लिया जाए। लेकिन, महोदय, ऐसा नहीं होता है। आम तौर पर हम देखते हैं कि तमाम कानूनों के बावजूद भी उनका लाभ नहीं मिल पाता है। पीड़ित को इसलिए न्याय नहीं मिल पाता है क्योंकि जो दोषी हैं, उन्हें सजा नहीं मिलती है। इस संबंध में तो हम यहीं देखते हैं कि "मर्ज बढ़ता गया, ज्यों-ज्यों दवा की"।

इस विधेयक के पीछे बहुत अच्छी भावना है। मैं उम्मीद करती हूं कि इसका लाभ मिलेगा। इसमें एक चीज़ यह भी जोड़ी जानी चाहिए कि यह आयोग अगर पीड़ितों के मामले में कोई सिफारिश करता है तो ऐसी व्यवस्था होनी चाहिए कि आयोग जिनके विरुद्ध भी रिपोर्ट दे, उस पर सरकार के द्वारा तत्काल कार्यवाही की जाए और उस रिपोर्ट पर अमल किया जाए। उस अमल किए जाने की भी कोई समय-सीमा निर्धारित होनी चाहिए। इसके अलावा यदि कहीं पर आतंकवादियों से संबंधित प्रसंग हों, कहीं पर कोई भिखारी बच्चे या श्रमिक बच्चे हों, क्योंकि यह भी एक बड़ा भारी उत्पीड़न है।

**उपसभाध्यक्ष (श्री कलराज मिश्र) :** प्रभा जी, आपका समय हो गया है।

**डा. प्रभा ठाकुर :** ऐसे में सुओ मोटो अपनी आत्म-प्रेरणा से भी यह आयोग निर्णय ले सके, दंड का कोई प्रावधान कर सके और अपनी रिपोर्ट दे सके ताकि अपराधी को सजा मिल सके, महोदय, इसमें ऐसी कोई व्यवस्था होनी चाहिए।

महोदय, अनुसूचित जाति एवं जनजाति के लोगों को इससे राहत मिलेगी, कमजोरों को राहत मिलेगी, बल्कि उन्हें सहायता मिलेगी, इसकी मैं उम्मीद करती हूं। यह विधेयक और भी अधिक प्रभावी और कारगर सिद्ध हो, इसके लिए सदन में जिन लोगों के भी विचार और सुझाव आए हैं, जिससे यह और भी अधिक प्रभावी बन सकता है, मैं चाहूंगी कि सरकार उनको भी इसमें जोड़ते हुए, इसे सख्ती से लागू करे। धन्यवाद।

**SHRI EKANATH K. THAKUR (Maharashtra):** Thank you, Sir. Sir, I am speaking on this in a broader perspective. In the entire discussion that has gone before, I believe that a very, very constricted, a very, very myopic view, a very, very purblind view of the word or the term 'human rights' is

being taken. I would have wished the hon. Minister had brought certain consequential and supporting legislation to this Act of 1993. This Act says in its definition clause, in section 2(d) that "human rights" means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in it. Sir, through your honour, I would like to point out to this House that like liberty, equality and dignity, not only these words alone, but under this section, you know which is enlarged now, under amendment 2(f), Government is saying that we are going to abide by covenants and conventions of the United Nations not only up to 1966, but also even till today and in future. And what are these covenants? I have worked on behalf of this country in a body of the United Nations and those covenants relate to civil, political, economic, social and even cultural rights as 'human rights'. But, Sir, whenever this House takes up a discussion on human rights, they seem to take it only in terms of a treatment or a trial or torture or trauma of an individual in police custody or, maybe, in prison. They also take that opportunity to spit venom, demonise the Opposition Party and bring in issues relating to minority and say that this was the atrocity committed on minorities. I for one, would wish that when we are talking of human rights, we should look to everybody as human and not as a party man or partisan man because इंसान बहुत मिलते हैं इंसानियत नहीं मिलती। मैंने कहा था कि -

"मंदिर, मस्जिद और गिरिजा घर में बांट दिया भगवान को,  
घरती बांटी, सागर बांटा, मत बांटो इंसानों को।"

**श्रीमती वृंदा कारत :** मत बांटो भगवान को।

**श्री एकनाथ के. ठाकुर :** हम बोलते हैं कि इंसान को मत बांटिए आप। भगवान को तो बांटकर रखा है आपने। आपने पहले से ही भगवान को बांटकर रखा है। यह प्रोफेट इसका है, रामा-कृष्णा मेरा है। आपका तो कोई नहीं है वृंदाजी, मैं जानता हूँ।

**श्रीमती वृंदा कारत :** मेरा सब कुछ है।

**श्री एकनाथ के. ठाकुर :** भगवान को आप नहीं मानते।

**उपसभाध्यक्ष (श्री कलराज मिश्र) :** आपने इंसान की बात कहदी, इसलिए उनका वही है।

SHRI EKANATH K. THAKUR: Brindaji, You may be an agnostic, or you may be an atheist, I do not know. But, I will tell you that this country, if it has to be a modern and progressive country, it has to visualise India with right sense of human rights. And, Sir, my Party Chief, Shri Balasaheb Thakare sees human rights in a different perspective. He thinks human rights as, first, the right to life, second, it is the right to food, third, it is the

right to work, fourth, the right to employment, fifth, the right to health, sixth, the right to proper education. Today, this morning, we had a lecture on 'Millennium Goals' in this session, which was specifically arranged by inviting an expert. I don't want to go into all that. But, you have to see what is the progress in this respect. In case of rights of children, what is the progress?

Millions and millions of children are dying hungry. They are out of school. जिस देश का बचपन भूखा हो, उसकी जवानी क्या होगी? And what are the human rights. We are talking about only proper treatment by policeman? There are going to be good, bad and indifferent people in all societies, in all sections and in all institutions. If we conceive only treatment by police as a human right and wax eloquent on that and enter into technicalities as to how the pool of judges will be available, and so on and so forth, are we delivering justice to these children, for example? रोटी, कपड़ा और मकान क्या हमने दिया है? Today, according to the Government, 26 per cent people are below Poverty Line. What is Government's definition? If you take the definition of the United Nations, or the World Bank, the people living below one dollar a day are considered poor. By that definition there are 35 crores people. And, Sir, it is two dollars a day, I have said it earlier, two dollars is what the OECD countries...*(Interruptions)*..

THE VICE-CHAIRMAN (SHRI KALRAJ MISHRA): Your allotted time is five minutes only.

SHRI EKANATH K. THAKUR: ... what Europe and America spend on cattle, on a bullock, or an oxen or a cow. They spend two dollars a day on an animal. If you take two dollars a day as a definition of poverty, then 80 per cent of our people are poor. They are dying. They are dying of hunger. The people are committing suicides. Under human rights the Government should bring in a legislation to say that our policy is 'zero starvation death' and for 'zero starvation' भुखमरी नहीं होगी। Here, we are Government of India and we say anybody who has no food, there is a kitchen facility where he can go and take food for the day. That can be done. That has been done by many Governments of the world. Is our Government doing that? We are talking only of police torture. In all societies; there are going to be these kinds of tortures. I do condemn the tortures, traumas of prisoners and others, just as I do condemn atrocities, whether they are genocides or no genocides, atrocities of every kind, whether they are Muslim atrocities on Hindus, or Hindu atrocities on Muslims; I condemn them. I also condemn atrocities on the Sikhs which everybody has forgotten. But sitting in Delhi, we can't forget the atrocities on Sikhs.

So, why use every occasion to flog the Opposition? I would urge upon the hon. Home Minister and I know he has very good intentions, and he hopes also to see an India where all these rights, which I referred to earlier, as the rights should come to us naturally as human rights. In terms of guarantee by way of law, they have to come. I hope that some day these laws will come here in Parliament under which our people will live and consider them real human rights, guaranteed human rights like Right to Food, (*Time-bell*), Right to Work, Right to Employment, Right to Health, and Right to Education. Thank you, Sir.

THE VICE-CHAIRMAN (SHRI KALRAJ MISHRA): Shri Praveen Rashtrapal, you have seven minutes.

SHRI PRAVEEN RASHTRAPAL (Gujarat): Mr. Vice-Chairman, Sir, we belong to a sovereign republic which is not only democratic, but it is also socialist and secular. If we understand this name of our nation very well, it will be very easy to understand what the human rights are, and what mechanism we should introduce in view of the wishes declared by the Indian Constitution. Because, the Constitution has ensured its citizens liberty, equality, fraternity and justice. These are not ordinary things. The said Constitution has also referred to fundamental rights<sup>24</sup> of the citizens, and, these fundamental rights given in the Indian Constitution are more or less human rights of the citizens in this country. One of my colleagues referred to the work not being done by the National Commission for Hindus, or Indian citizens residing in other countries. We should understand that this Commission has got a geographical jurisdiction in the country only. In that case, it will be very difficult for the National Human Rights Commission of India to go to other countries and help the Indian citizens.

But all other covenants are there by the UNO. I refer to an All World Conference called by the UNO Human Rights Commission when Mary Robinson was the Chairman of the UNO Human Rights Commission, and that Commission took place in Geneva. The subject of the Commission was 'Discrimination on the basis of Race, Caste, Descent and Work'. And, at that time, the then Government of India took a stand that there is no discrimination in this country on the basis of race, caste and descent. I am extremely happy to inform this House that the National Human Rights Commission took a correct stand that in this country, in spite of freedom, in spite of fifty years of freedom, there is discrimination on the basis of caste, there is discrimination on the basis of work, and there is discrimination on the basis of descent. And, for that, again the said Commission took a

historical stand in a State of this country when a majoritism was working against the minoritism by a State-sponsored terrorism and a particular minority was to be annihilated by a State-sponsored pogrom. At that time, it was the National Human Rights Commission which came to the rescue of the victims in that particular State. My senior friend, Mr. Jaitley, who is also elected from Gujarat questioned, "Why are you switching over from 'Chief Justice' to 'Judge'?" In a way, he is right. But, at the same time, I would like to know from him, why a State Human Rights Commission in the State of Gujarat was not appointed all these years. The Chief Justice was available there, but why couldn't the State Government constitute the State Human Rights Commission? I know the reason. If he is able to tell me the reason afterwards also, I will be very happy to know that. But I do not want to go into that discussion.

Now, Sir, if we refer to the Indian Constitution, you have got the Right to Equality, you have got the Right to Freedom, you have got the Right against Exploitation, you have got the Right to Culture and Education and the last but the most important right, which is relevant to this Commission, is the Right to Constitutional Remedies. Now, as far as these Constitutional Remedies are concerned, then only our Commission can help us. There are ordinary rights, there are civil rights and the Fundamental Rights as enshrined in the Indian Constitution. We have got district level courts, we have got State level courts, and we have got the Supreme Court, where you get legal remedies. But for that, a citizen has to go to court. A citizen is required to take assistance from a lawyer. A citizen is required to spend money. It is very expensive. The justice is not cheap. The justice is not speedy because of the volume of work and various specific laws that are there. If those violations are taken care of speedily by these courts, whether it is district, State or at national level, it would have been helpful. The National Human Rights Commission is the only Commission which can intervene when there is an exploitation of a worker by an employer, when there is injustice on the minority by the majority, when there is atrocity on a so-called lower caste by the higher caste, when there is atrocity on a woman by man, when there is atrocity on a child by a major, when there is exploitation of rural unemployed or urban unemployed, etc. All these things, which are directly concerned with the right of a human being, will not be taken care of by any court, and it is here where we require presence of a National Human Rights Commission. So, I am here only to support the Bill; I am here only to support the mechanism, but, at the same time, I want the attention of the hon. Home Minister that let this Commission be the most powerful

Commission in this country because, day-by-day, the atrocities on the weaker sections, the atrocities on the women, the atrocities on the minorities, the exploitation of children in the name of adoption, the exploitation of tribal women in the name of marriage by the rich people, are all increasing which were not there before twenty or thirty years ago.

So, only the National Human Rights Commission can help. For that, I wish to say that more and more powers must be given to the National Human Rights Commission. At this stage, I shall quote Justice M.P. Thakkar, from a lecture he made twenty years ago. The title of the lecture was "Law as an instrument for socio-ethical revolution". Justice Thakkar was a Judge in the Gujarat High Court. Then he retired from the Supreme Court. Now, he is no more with us, but he was a most revolutionary judge, as we can understand from some of his judgements.

Sir, I quote from his lecture: "Law is the expression of common will of the society, which must reflect its aims and aspirations. Law mirrors the code of conduct, which the society expects from its constituents, and reflects ethically the conscience of the society. Can anyone imagine the enforcement of an unjust or unethical law? Law sanctions pro-social conduct and condemns anti-social conduct. Surely, the society cannot impose on its constituents conduct, which will damage or destroy itself. In no society can the law tolerate or encourage that is anti-social and condemns what promote social objectives. Law cannot, therefore, shut its eyes to the monster of economic exploitation and injustice".

Now, no court would interfere in a case of exploitation of a poor man; only the National Human Rights Commission can intervene; only the National Human Rights Commission can work effectively. Hence, I would request the hon. Home Minister that this Commission may be given more powers, powers of direct jurisdiction and more support. Matters like reducing the number of judges, persons to be appointed, and so on may be left to the Government; a permanent mechanism may be in place in consultation with the Chief Justice of the Supreme Court or the respective High Court Chief Justice. But, what is required is, more and more powers to the National Human Rights Commission. Thank you, Sir.

SHRI N. JOTHI (Tamil Nadu): Sir, I shall speak only on a few points. I would request the hon. Home Minister to consider a few suggestions that I wish to make.

Sir, as per Section 3 of the original Act and Section 21, members of the State Human Rights Commission are appointed, of which other than the Chairperson and Members, two members shall be appointed. Section 3 reads, 'Two members to be appointed from amongst persons having knowledge of, or practical experience in, matters relating to human rights. What I wish to submit is, Sir, you may add further, after 'human rights', 'of which one shall be a woman member'. A woman member needs to be accommodated here.

SHRIMATI S.G. INDIRA (Tamil Nadu): Sir, I associate myself with the point made by the hon. Member.

SHRIMATI BRINDA KARAT: Yes, yes.

SHRI N. JOTHI: Sir, to my knowledge, almost all States and also the Central Government, has got only male members. This is subject to what the hon. Home Minister has to say. I would like this to be done to both in the constitution of the State Commissions as well as while constituting the National Commission.

Sir, there is yet another thing that I wish to say. Kindly go through Clause 5(3). In clause 5, the disqualifications with respect to persons who are functioning as members have been given; hon. Minister may look at page 3 where it has been enumerated. For example, a member may be disqualified if he is adjudged an insolvent, engages in private trade, is unfit to continue in office by reason of infirmity of mind or body, and others. I am referring to clause 5(3)(c) of the Bill. Of course, I accept that it is mentioned in the main Act itself. It is high time we pay a little more attention to that.

In the Bill, it is mentioned that the President can pass order for the removal of Member. But there is a disparity that I could see and genuinely feel. It is said, "He is unfit to continue in office by reason of infirmity of mind"? Immediately following it is, "If he is of unsound mind." What is the difference between the 'infirmity of mind' and 'of unsound mind'. Both are one and the same - he is incapable of acting. That is all. Maybe, at intervals, one may behave badly or one may behave very badly continuously. In any way, he cannot be a fit person. So, he is unfit to continue in office by reason of infirmity of mind or unsound mind, both are one and the same. Of course, it is there in the parent Act itself. The hon. Minister can pay a little attention on that. Thirdly, I would like to insert one particular disqualification. I am telling this out of my experience in my State. Sir, one particular member was charge-sheeted for having violating Dowry Prohibition

Act. He faced the trial. He was the member of the State Human Rights Commission. He went to the Court and stood as an accused person in dock, but he continued to be a member of the State Human Rights Commission. However, he was a charge-sheeted person but there was no scope for removal of that person at all. He continued and exploited his full term. Sir, we discuss that charge-sheeted politicians should be thrown out and they should be disqualified from contesting elections. Then, how could a charge-sheeted person be member of the State Human Rights Commission? I think, if his behaviour leads to moral turpitude, he must be removed. I go a step further. If a member is charge-sheeted -- I am not saying about private complaint cases -- he cannot function as Human Rights Commission member. Please pay little attention on these suggestions. Thank you.

**श्री राम नारायण साहू (उत्तर प्रदेश) :** माननीय उपसभाध्यक्ष महोदय, इस महत्वपूर्ण बिल पर बोलने का समय देने के लिए, आपका धन्यवाद। महोदय, यह मानव अधिकार संरक्षण (संशोधन) विधेयक, 2005 एक अत्यंत ही महत्वपूर्ण विधेयक है, साथ ही यह एक सामाजिक ढाँचे के ताने-बाने की आत्मा भी है। आज की तेजी से बदलती सामाजिक परिस्थितियों में, इस बिल का महत्व और अधिक बढ़ गया है। परन्तु साथ ही वर्तमान परिवेश में, एक नया प्रश्न और खड़ा हो गया है कि मानव अधिकार किसके लिए होने चाहिए और इनका मापदंड क्या होना चाहिए? अर्थात् क्या अमानवीय व्यवहार करने वाले को भी वही अधिकार प्राप्त होने चाहिए, जो एक सभ्य, सामान्य एवं जिम्मेदार नागरिक को प्राप्त होते हैं। यह समस्या अक्सर सुरक्षा एजेंसियों या जांच एजेंसियों के सामने आती है। जब वे एजेंसियां अमानवीय अपराध करने वाले उग्रवादी तथा अपराधी प्रवृत्ति वाले लोगों से, सख्ती से निपटने का प्रयास करती हैं, तो उस समय मानव अधिकार की दुहाई देने वाले सामने आ जाते हैं। इन परिस्थितियों में की गई कार्यवाही को मानव अधिकार के चश्मे से नहीं देखा जाना चाहिए। इसका यह अर्थ बिल्कुल भी नहीं है कि अपराधी के साथ हम भी अमानवीय व्यवहार करें, परन्तु हमें दोनों के साथ अलग-अलग मापदंड अपनाने होंगे।

आज जिस गति से उग्रवाद, क्षेत्रीय माफियावाद, धार्मिक उन्माद या राजनीतिक अपराध फैल रहा है और जो लोग अपने कृत्यों से मानवता को भी शर्मसार कर देते हैं, हमें उनके बारे में अलग से सोचना पड़ेगा। हमें आज मानव अधिकारों की सीमाओं को दोबारा निर्धारित करने की आवश्यकता है, ताकि हमारी सुरक्षा एजेंसियों को कार्य करने की ताकत मिले तथा अपराधियों के मनोबल पस्त हों। इसके साथ ही सामान्य सभ्य एवं जिम्मेदार नागरिकों को मानव अधिकारों के सम्पूर्ण कवच से संरक्षित एवं सम्मानित किया जा सके। धन्यवाद।

**SHRI C. PERUMAL (Tamil Nadu):** Sir, I rise to speak on the Bill. This is an important Bill considering increasing incidents of gross violation of human rights. But the unfortunate thing about this is that majority of the population are not aware of such a provision. Unless a legislation is brought to the notice of the general public, I believe there is no use in going on making laws. We see that only important cases are filed and taken up by



the Commission. We all know that courts take a long time in the disposal of cases. Therefore, this Bill has been brought.

The offices of the Commission are located in State capitals or in big cities; they are not located in district headquarters or in rural areas and as such the people living in the rural areas neither have access to this nor they know about it. I demand that an office of the Commission should be set up in every district headquarters. Another important factor is that wide publicity should be given about the Commission.

The Human Rights Commission has been created so that there should not be any delay in the disposal of cases. So, its orders should be implemented by all concerned. The Commission should not delay the cases and wherever necessary award interim relief. Moreover, the vacancies in the Commission should be filled without any delay. And a Woman Member should also be appointed.

It has been observed that in many cases, in many States, a different charge is filed for an offence. If a person is accused of a simple offence, he is booked for a big offence, for example, possession of heroin. Thereafter, the victim is forced to accept the crime by giving him harsh treatment. This sort of thing should not happen. The Human Rights Commission should look into this and take stringent action against police personnel. The Commission should send a circular to all the State Governments regarding this.

I strongly demand that the Commission should be given enough powers; otherwise, its purpose will not be served. Nowadays, the Right to Information Act is being given wide publicity. Likewise, this Act should also be given wide publicity. This Act should be made effective to serve the purpose it was intended for. Thank you, Sir.

SHRI ARUN JAITLEY (Gujarat): I am sorry, Sir, for this indulgence. We have a Privilege Committee meeting. So, I may have to go for ten minutes before I come back.

Yesterday, when we opened this debate, we were very grateful to the hon. Minister when he indicated that he was probably going to accept some of the suggestions. One suggestion, which he may consider in the course of his reply, is regarding one of the amendments proposed here. When Mrs. Karat was speaking, the hon. Minister intervened to say that there was a difficulty because if any individual could move the NHRC, then obviously any court would also be entitled to make a reference to the

NHRC. The difficulty would be that you are making one basic change in the Act. Earlier, composition and constitution of the Commission at the national level was mandatory. The words used in the Act were that "there shall be a National Human Rights Commission." As far as State Governments were concerned, the word used was, "may." That is now probably being rightly amended by you; and now every State is mandated to have a Commission. Would it not be appropriate that the National Commission gets references essentially from the Supreme Court and the High Courts, and the State-level Commissions gets references from any court which may include the Supreme Court, the High Court, or even any magisterial court? Because otherwise what will happen is that if the NHRC gets flooded with complaints from the magisterial courts as well, then there may be a difficulty. Even though you are bringing an amendment empowering the NHRC to transfer complaints from itself to the State Commissions, it may be entitled to transfer complaints it receives from the public or an aggrieved citizen to the State Commission once a court, even a magisterial court, directs the NHRC to look into a complaint, it may not be empowered to transfer that complaint to the State Commission. Therefore, magisterial courts, if you create a separate provision, may make a complaint to the State Commission itself.

SHRI SHIVRAJ V. PATIL: I hope you will be here in the House to hear the reply. Sir, I would like to thank the hon. Members for having shown so much of interest in the amendments suggested to this law by the Government and for having given very good suggestions.

Sir, I would like to limit my comments to the general principles relating to the human rights, then to the amendments suggested by the Government, then to the amendments suggested by the hon. Members and then conclude my reply on this Bill.

In India, the Constitution provides that the citizens have Fundamental Rights and all the Fundamental Rights are nothing, but human rights. The basic law provides that citizens have Fundamental Rights, not only they have Fundamental Rights, but these Fundamental Rights can be enforced by moving the courts under article 32 and article 226. That is one of the most important aspects relating to the Fundamental Rights available to the citizens in our country. Then, there are laws under which the Fundamental Rights are protected. For instance, the Prevention of Untouchability Act is one of the most important laws which protects the Fundamental Rights of the citizens in our country.

SHRI ARUN JAITLEY: I will be just back.

SHRI SHIVRAJ V. PATIL: We all know that in the Legislatures, in the Parliament as well as in the State Legislatures, questions are asked from the Government as to how the Fundamental Rights were violated and as to how the Government failed to protect the Fundamental Rights of the citizens. That is one of the most powerful instruments available to the representatives of the people to protect the Fundamental rights. We have a strong judiciary in our country. At the apex is the Supreme Court, at the penultimate level are the High Courts, and at District and Taluk levels, there are courts. Through these courts, the Fundamental Rights given to the citizens are protected and, fortunately, for us, we have a very, very strong media in our country. Every violation of a Fundamental Right is highlighted in the media, in the newspapers and now, on televisions. Those facts are brought to the notice of the Government and the people in the country. Media is a very powerful instrument for creating public opinion. Though media does not have the power to punish anybody directly, yet the public opinion is so strong that the Fundamental Rights of the citizens are protected. Over and above this, we created the Human Rights Commission. Initially, this Human Rights Commission, the National Human Rights Commission, was brought into existence. It was provided in the law itself that the State Governments may have the State Human Rights Commissions. This is over and above what was already available to the people in the country.

Sir, over and above all these things, in my opinion, what is really helping is the ethos of the people. The people in the country are themselves protecting the human rights of one another. For every man committing a crime or violation of human rights, we have hundreds and thousands of people, 99 per cent of the people, protecting the human rights. What is it that is helping us to protect our human rights? When I say this, I do say that there are exceptions to the rule and those exceptions should not be considered in order to come to the correct conclusion. What is the ethos, what is our attitude towards life in India should not be forgotten. The most important thing in our country is that not only we respect and protect the human rights of our neighbours but also we respect and protect some rights, not human rights, of the living creatures. We respect even trees. We respect even animals. That is our attitude towards life and it is really helping us.

Sir, I remember my visit to China. When I was in China, I was invited by the Members of the Legislature for a dinner. One of the Members

sitting with us, who was there at the dinner, asked me, "How many Gods do you have in your country?" I thought it was a very mischievous question asked to me. A Chinese Member of Legislature asking me as to how many Gods we have in our country! I was looking around. Mr. Vajpayee was there; Mr. Rabi Ray was there; so many other Members were sitting there. I was all the time looking at them to get some clue as to how to reply to that question. But they started smiling and they appeared to say, "This is a question, as you know, which you may or may not reply". But then I tried to reply and I said, "We have 90 crore Gods in our country". When I said this, he asked, "Where are the temples built for these Gods?". I said, "Every human being is a temple and what is inside him is the God". This is not an answer which can't be understood by any Indian, but his reply to that answer of mine was really very interesting. That gentleman got up from his seat; he came to me; he took my hand and he shook my hand for nearly two or three minutes. I was surprised why he was so much impressed with God, the number of Gods and things like that. He said, "Mao Zedong also used to tell us that unless you treat other human beings as Gods, you would not be able to treat them as equal people". That was the most stunning reply given to me by him. Now, that is the kind of approach we follow. You are not treating the other human beings as equals alive equally, but above you. You are respecting him as some divine personality. Then only you respect him. This is the ethos; this is the approach that the Indians followed. I would say not only Indians but also all the people in the world. "Do and die unto others as you would have others to do unto yourself". This is what the Bible says. This is what Jesus taught his disciples. Now, what is that? Unless you treat others as you would have others treat you, you are not going to respect his human rights or you are not going to give him any importance. The same thing is said in Quran Sharief and in Islamic philosophy also. The same thing is said in all other religions also. These things have been protecting the human rights not only in our country but also throughout the world.

The United Nations has given us two covenants. One is a covenant on political and civil rights and the second covenant is a covenant on economic, social and cultural human rights. I am very sorry to say that as far as the covenant on political and civil rights is concerned -- one of the hon. Members did refer to it in his speech -- we have taken a lot many steps to protect the human rights mentioned in the covenant on political and civil rights. But we have not taken enough steps to protect the human rights mentioned in the covenant on economic, social and cultural human rights.

We have not. That is the difficulty. There is discrimination against the human rights of those who can go to the court and human rights of those who cannot go to the court; human rights to lead a good life and human rights to exist, to live. As far as human right to live a good life is concerned, we are there to help. But as far as the right to leave is concerned, we are not there as much as we should be. Now so far as the right to make a good speech or a bad speech is concerned, it is available. But the right to work is not given. Right to food is not given. Right to help is not given. Right to education is not given. If it is not given, is there any discrimination against some human beings or not? What do we do with that? One of the things which has to be considered by us is, all the time, when we talk about human rights, we talk about something which goes against the establishment, against the Government servants, against the police, against the officers in the Government service. But is that enough? I am asking a question. If there is an establishment in which the small children are working, you are blaming the officers, but you are not blaming the persons who are employing them. If a person is sitting in a rickshaw being drawn by a human being, whom are you going to criticise? You may criticise the Government. But are you criticising the person who is sitting in that rickshaw? If you are not doing that, are you really concerned about the real human rights? Are you trying to be political or are you trying to gain some points over the statement made by some other person? If it is not there, probably, we shall have to do a lot many things. But fortunately or unfortunately, what is there is there and we are trying to improve upon what is available to us. It is also said 'law is nothing but balancing the interest of all in the society'. This is an effort to balance, to some extent, not fully, the interests of all in the society. This is so far as human rights are concerned. If we are really concerned about the human rights, it will not be sufficient to talk about the human rights which are violated by the Government servants or the policemen or persons like that. We shall have to talk about the violation of human rights by all of us against the weaker sections of the society or against anybody who is not in a position to protect himself. Unless we adopt that attitude, it is not going to be possible to really protect the human rights.

Now I come to the amendments. This law was passed in 1993. Later on it was felt that some improvement should be made in the law. So, in 1998, a Committee was constituted under the Chairmanship of Justice Ahmed. That Committee gave its report in 1999. That report was then considered by the Inter-Ministerial Committee constituted by the then Government in 2000. They accepted it. Then the Inter-Ministerial Committee

gave its report. This report was lying with the Ministry. After we came, we said that if the Committee was appointed, if the report was given and if the Inter-Ministerial Committee has also given the report, why should we not act upon the suggestions?

That was why, we drafted the Bill. And who were the members of the Inter-Ministerial Committee? Mr. Jaitley is not here. The Law Ministry's Joint Secretary was a member of that Committee. And they accepted the suggestions given by the Justice Ahmedi Committee. They are the suggestions with which we have come to this House. It is not we who drafted it. It is they who had done it. We accepted it, and we have come with it. If this is so, and, then, if there is any mistake, we will certainly correct it. But, then, to say that we are trying to slip this into this Bill is not being really fair to us. We are not slipping it into this amending Bill. This was done when they were in power. This has to be remembered by us.

Sir, having said this much, when this matter was drafted into a Bill, this Bill came here; it was referred to the Standing Committee. And who is the Chairman of the Standing Committee? ...*(Interruptions)*... I am not asking the Members from this side alone, the ruling side, but from that side also. And they gave the Report. When they gave the Report, when Justice Ahmedi had given the Report, when the Inter-Ministerial Committee had looked into it, when the matter was sent to the Standing Committee, and when the Standing Committee made certain suggestions. All the suggestions they made, we accepted *in toto*." And, then, we brought that Bill from the Cabinet to this House. Here also, they are making a good point and a very valid point. The point which is being made is this. I am leaving aside the innuendoes and all those things; that is not necessary; that is not the point. But the point they are making is that if the Chairman of the Human Rights Commission was to be the Chief Justice of the Supreme Court or the Chief Justice of the High Court, it gives a prestige to the Commission, and that should not be diluted. I think, it is a very, very correct suggestion. When this was brought to my notice, I had said, "Why should we say that the Chief Justice should not be there as Chairman?" And they were telling me, "Look, we have tried to have the Chief Justices on many other Committees, and it has not been possible for us to have them. That is why we are suggesting that if the retired Chief Justice is available, let him be appointed. But if he is not available, then any other judge of the Supreme Court for the National Commission and any other judge of the High Court for the State Commission should be appointed." We have the Inter-State Council. It has not been

possible for us to find persons who can do it. Many other Commissions are there, in which they have all the time said 'the former Chief Justice or the Justice', should be appointed. And if I remember correctly, a letter was written by the Kerala Government saying that they were not finding a person to be appointed as the Chairman of the Commission. And this is coming. ...*(Interruptions)*...

SHRI A.K. ANTONY: He is trying to argue like this that of all the retired Chief Justices, nobody was willing. Ultimately, we were compelled to write to the retired or the Acting Chief Justice.

SHRI SHIVRAJ V. PATIL: That was the difficulty. That is why, it is suggested. All the same, I am of the same view that in governance, what is important is not the *danda*. This is not important that the long notes are been written. But the prestige is helpful. And I do see the point which is being made by the hon. Members, and I am accepting the amendments suggested by Shrimati Brinda Karatji and Mr. Arun Jaitleyji on these two points, i.e., the former Chief Justice of India should be the Chairman of the National Human Rights Committee and the former Chief Justice of the High Court should be the Chairman of State Human Rights Commission. And I am sorry, the other amendments I am not accepting. ...*(Interruptions)*...

AN HON. MEMBER: Retired Chief Justice.

SHRI S.S. AHLUWALIA (Jharkhand): Of course, it is the retired Chief Justice.

SHRI SHIVRAJ V. PATIL: Retired Chief Justice, former Chief Justice.

This is the background. Let this be understood in clear terms. We don't have anybody in our mind. Moreover, no one person is going to appoint him. The Appointing Committee consists of the Prime Minister, the Speaker, the Presiding Officer of this House and the Leaders of the Opposition. Unless they concur on the name, no person can be appointed. So that was not the intention. But, probably, that was the kind of impression which was created, and that is why I have said these things.

Sir, one of the amendments which has been suggested is: "Don't allow the Magistrate to refer the matter to the Human Rights Commission." I am not in a position to accept this amendment. The scheme of the law that we have with us is this. Any person who feels that his human right is violated can go to the Court and get the remedy. If he thinks that going to

the Human Rights Commission is easier and more helpful, he can go to the Human Rights Commission. He can make an application and can get the relief. What we are suggesting here is that if a matter is considered by a Magistrate, and he comes to the conclusion, after going through the record and going through the evidence, that it is not possible for him to give him the relief under the existing laws, he can refer this matter to the Commission. It is not a direction; the Magistrate is not empowered to direct the Human Rights Commission to entertain his reference and go into it. He can refer it as an individual candidate. The Human Rights Commission has been receiving applications and petitions. All applications received by them are not entertained; they are not gone into, and they are disposed of. If *prima facie*, there is no case, then, they don't go into the details. The same thing can apply here also. But if a Magistrate, who is in a better position to go through the records which have been produced before him, the evidences which have been produced before him, as an individual, can be allowed to make a reference to any of these Commissions, either the National Human Rights Commission or the State Human Rights Commission, why should there be any difficulty? ...*(Interruptions)*...

SHRIMATI BRINDA KARAT: Sir, may I seek a clarification because I have moved an amendment on this issue?

Sir, another point here is that when the Magistrate refers a case to the National Human Rights Commission, the way it has been framed now, your present amendment is that, the Human Rights Commission will have to go back to the Magistrate and say what has happened with that case. You are saying that the Human Rights Commission have a choice either to accept the case or not to accept it. Now, if the Human Rights Commission does not accept a case which the Magistrate has referred, the Magistrate, in his order, may say, "You have to come back to us and tell us within such and such time what is happening with the case which we have referred to you." Our view is that the Magistrates can utilise their judicial authority because once you give them the reference authority, you are also giving them the authority to follow up on that reference. So, my only request is that if you are insistent, because you want to make it more widely accessible, then, please ensure that the Human Rights Commission has the right to reject it and does not have to go back to the Court. Otherwise, it will become subservient.

SHRI SHIVRAJ V. PATIL: Let us first understand that the Magistrate has no right to give a direction to the Human Rights Commission to conduct



that inquiry in a particular manner. He is only referring the matter to them. Supposing there is a case before the Magistrate, and when he is hearing the case, if the facts disclose that certain persons were ill-treated in the jail, and the case has nothing to do with the ill-treatment given to him, he may say, "Let this be looked into." If there are a large number of people, that will be looked into. That does not mean that we, by amending this law, are authorising the Magistrate to direct the National Human Rights Commission to inquire into it and to report it to the Magistrate."

This is not the arrangement. What is provided is, that if any individual can do it, in certain cases, if the magistrate comes to the conclusion that the person before him has his fundamental right, his human right violated, and he is dumb and mute and not capable of going to the Human Rights Commission, with a reference to the Human Rights Commission, application, the magistrate is allowed to send that matter to him because he is in a better position to understand what is a human right, how it is violated, who has violated and all those things. He can refer it to the Human Rights Commission. It does not mean anything at all. There is nothing more than that. ...*(Interruptions)*... And, moreover, you have to understand the total procedural system which is available in the country to understand the implications of this provision. It is not going to create any authority over and above the National Human Rights Commission. The arrangement is...

SHRI S.S. AHLUWALIA: Sir, would you yield for a minute?

SHRI SHIVRAJ V. PATIL: Yes.

SHRI S.S. AHLUWALIA: Sir, I am on a different point. You are saying that a magistrate can refer the case. Instead of a magistrate, if you can mention a district judge, it would be better. Why I am saying this is because, recently, we have seen that the magistrates are so overworked that they have issued warrant against the President of India and the Chief Justice of India. Tomorrow, what will happen is, these applications will come before them, they have no time to verify the details, and they will simply refer it. So, let the district judge see this, take the cognisance of that matter, enquire into it, and then refer it to the National Human Rights Commission. ...*(Interruptions)*...

SHRI N. JOTHI: To the State Human Rights Commission. ...*(Interruptions)*...

SHRI S.S. AHLUWALIA: To the State Human Rights Commission only...

SHRI SHIVRAJ V. PATIL: Just don't worry about all these things. This is not a right given to a magistrate. Now, this is a provision which enables a magistrate to make a reference to the National Human Rights Commission. He is not in a position to direct and say do this thing, or, don't do this thing. He is just allowed to do as an individual can go, any individual can go. Why not a magistrate? What is the difficulty? This provision is made because in many of the criminal cases, the whole thrust of this law is to protect the Government machinery from doing anything to the individual.

SHRI S.S. AHLUWALIA: The magistrate office will become a post office.

SHRI SHIVRAJ V. PATIL: And, that is why it is said that if a magistrate is in a position to know what was done, if it is brought to his notice, his hands should not be tied down, and he should not be prevented from making the reference to the NHRC. This is nothing more than that. Please, just don't worry about it. The Criminal Procedure Code, the Indian Penal Code, the Law of Evidence and this law also will take care of it. And, moreover, Mr. Jaitley was suggesting to me, it appears to be a correct suggestion. He said, 'instead of allowing him to refer it to the National Human Rights Commission, why should it not be said that the matter should be referred to the State Human Rights Commission?' We have no difficulty; we have no objection, if the magistrate, instead of sending it to Delhi, if he sends it to the capital of that State, to the State Human Rights Commission. And, naturally, the magistrate would apply his mind and do it. And, even if the matter is referred to the National Human Rights Commission by amending the law, we are making a provision that he is not bound to go into all the details relating to particular areas of a particular State. He is, the National Human Rights Commission is in a position to refer these matters to the State Human Rights Commission also because we don't want the National Human Rights Commission to be overburdened. But, if there are cases in which it has...(Interruptions)...

SHRI S.S. AHLUWALIA: Through this law, Sir, we are making the magistrate office into a post office for the State Commission. It will become a post office.

SHRI SHIVRAJ V. PATIL: This is without understanding the legal...(Interruptions)...

5.00 P.M.

SHRI S.S. AHLUWALIA: No, Sir, I understand it. I have dealt with this Bill in the Home Committee. ...*(Interruptions)*...

SHRI SHIVRAJ V. PATIL: I think, this is a political stand. I have said it...*(Interruptions)*... This kind of a thing...*(Interruptions)*...

SHRI S. S. AHLUWALIA: This is not a political stand. ...*(Interruptions)*...

SHRI SHIVRAJ V. PATIL: Laws cannot be made like that. I have said this. Why don't you accept it? If you don't accept, then...

SHRI S.S. AHLUWALIA: I never said, 'don't accept it'. I am not giving you a challenge. But, I am telling you. ...*(Interruptions)*...

SHRI SHIVRAJ V. PATIL: This is not...*(Interruptions)*... Sir, I am finding it difficult to accept this. I am not accepting this.

SHRIMATI BRINDA KARAT: Okay, Sir. Can you add something in the rules which will reflect the spirit of what you have said?

SHRI SHIVRAJ V. PATIL: That is right.

SHRIMATI BRINDA KARAT: Reasserting the authority of the National Human Rights Commission. Sir, will you give us an assurance?

SHRI SHIVRAJ V. PATIL: I have understood the intention with which you are saying. What you are suggesting is correct. We do not need any rules to give any authority to the National Human Rights Commission. The Constitution and the law give them the authority. What you are saying is correct. If, because of this kind of understanding, difficulty is going to arise, we will put it in the rules so that this difficulty can be obviated. I can understand that. But, Sir, giving them the authority, rules are not needed. So, this is the position as far as the amendments are concerned.

Then, there are other amendments which are of salutary in nature. By and large, the hon. Members have accepted these amendments. Even this amendment, when Mr. Jaitley spoke to me personally, I thought that he was having the same kind of apprehension, as you have and he was suggesting, why National Human Rights Commission, why not State Human Rights Commission? We will take care of this also. We will not create a problem for the National Human Rights Commission. There are one or two points which are made here and one of the points was the National Human

Rights Commission should be given some authority. Sir, what is said in this respect is correct, that they do not have the direct authority to see to it that that findings given by them become binding on all. But, then, we have many other organisations. In this respect, the most powerful body in the country is the Supreme Court. What is said by the Supreme Court has to be followed. Even if you do not like the order given by the Supreme Court, it has to be carried through. That authority is given to the Supreme Court, the High Court, district courts, the civil courts and the magistrate's courts. That authority is already given. This is not something of the same kind. This is something bigger, different.

If we study the charter given to the Human Rights Commission, it is something bigger. It is related to the policy making, it is related to the research, it is related to the bigger issues. What is provided in this law? If the Human Rights Commission comes to the conclusion that what is said by the Human Rights Commission is something in which punishment has to be awarded, the Human Rights Commission will not award the punishment, but Human Rights Commission will refer the case to the Supreme Court, to the High Court, to any other court for punishment and then the punishment will be given by that court. This is the arrangement.

I would like to say that the media today, in our country, is not having any sanctioning authority, power to punish anybody. And yet, how powerful it is! Because it creates public opinion. The United Nations is an international body which is presiding over the matters relating to the most powerful nations in the world. It has no power to punish. Yet, it has the power to create the public opinion. And that public opinion is more powerful than the authority which is given to any body to punish anybody.

The Human Rights Commission is something like this. It is something which can be treated at a very, very high level. But as far as the actual functioning is concerned, it is the Supreme Court, and other courts, which are punishing and is seeing that the orders passed are implemented. But, to the extent it is necessary and possible, we would not just brush this aside saying that the Human Rights Commission should not be given more power. We will again consider it and examine it, and wherever necessary and possible to do something in this matter, we will be happy to do that.

There was a point made by Smt. Brinda Karatji about the appointment of DGs. Generally, we consult the Human Rights Commission. How the appointments of DGs and highest police officials are made? They

are not done by the Ministry alone. It is DoPT, the Home Ministry, the Cabinet Secretariat and the Prime Minister consider the appointments.

The ACC is the competent authority. ...*(Interruptions)*... The matters go to ACC and generally we try to see that the recommendations made by a particular Minister are not brushed aside. We do take them into consideration. For certain reasons if he has certain information or we have certain reasons, it is not binding on the ACC and yet we do consult them and we will certainly keep this in mind whenever any appointment is made for this purpose. The Chairman of the Minorities Commission it is asked why should he not be the member of the NHRC. Well, I am not immediately in a position to reply to this question. We are going to have the Chairman of the Scheduled Castes Commission and the Scheduled Tribes Commission as members. About Chairman of Minority Commission we have to decide. The decision can be taken after examining the relevant facts. One of the greatest difficulties which is faced by us is that there are many commissions created, established in order to look into particular areas of activities and they have a lot of authority. How many Chairpersons can be accommodated has to be examined. We will definitely look into it without promising anything at this stage. Do not treat it as an assurance given on the floor of the House. But we will definitely look into it and whatever is necessary we will do after looking into it. ...*(Interruptions)*... Sir, I am really grateful to all hon. Members who have shown great interest...*(Interruptions)*...

SHRIMATI BRINDA KARAT: What about the woman member? ...*(Interruptions)*...

SHRI SHIVRAJ V. PATIL: I would like to know whether you are asking for a woman member to be the member of the Commission or whether you are asking for reservation. ...*(Interruptions)*...

SHRI N. JOTHI: Woman as a member. ...*(Interruptions)*...

SHRIMATI BRINDA KARAT: What I had suggested was that you have these five members and you give different qualification very correctly. What I am saying is that within those qualifications, you must say of whom at least should be a woman. That is my request and I am sure the hon. Minister will accede to our request.

SHRI N. JOTHI: We can easily accommodate. ...*(Interruptions)*...

SHRIMATI BRINDA KARAT: For all these 14 years there was one woman member. She did an excellent job. ...*(Interruptions)*... Why don't you make it mandatory? ...*(Interruptions)*...

THE VICE-CHAIRMAN (SHRI KALRAJ MISHRA): Let the Minister say something. ...*(Interruptions)*...

**श्रीमती माया सिंह :** उपसभाध्यक्ष जी। ...*(व्यवधान)*... मंत्री जी आपको सदन में आश्वासन देना चाहिए। इसमें कम से कम एक महिला सदस्य तो होनी ही चाहिए।...*(व्यवधान)*...

**श्री शिवराज वी. पाटिल :** हमने प्राइम मिनिस्टर भी बनाई हैं।...*(व्यवधान)*... एशियन कंट्रीज में प्रधानमंत्री महिला बनी हैं और जहां पर भी हो सके, वह ह्यूमैन राइट्स कमीशन की चेयरमैन भी हो सकती हैं।...*(व्यवधान)*... मगर क्या करना है, क्या नहीं करना है, I am not in a position to say . ...*(Interruptions)*...

**श्रीमती माया सिंह (मध्य प्रदेश):** अभी आप सदन में यह आश्वासन तो दीजिए। ...*(व्यवधान)*...

SHRI SHIVRAJ V. PATIL: Assurance is no, sympathetic consideration is yes. ...*(Interruptions)*... It is more equal to an assurance. ...*(Interruptions)*...

SHRIMATI BRINDA KARAT: For women, only sympathy, no assurance. ...*(Interruptions)*...

SHRIMATI S.G. INDIRA: We do not want that sympathetic consideration. ...*(Interruptions)*... We are asking for our right. ...*(Interruptions)*... We did not expect this type answer.

**उपसभाध्यक्ष (श्री कलराज मिश्र) :** मंत्री महोदय, इसके बारे में कुछ बता रहे हैं। ...*(व्यवधान)*...

SHRI SHIVRAJ V. PATIL: We will keep it in mind. ...*(Interruptions)*... It is a very valid suggestion made. ....*(Interruptions)*...

**श्रीमती माया सिंह :** उपसभाध्यक्ष जी, हमको 33 परसेंट रिजर्वेशन तो मिल नहीं रहा है, आप कम से कम यह तो दे दीजिए। ...*(व्यवधान)*... आप यहीं से शुरूआत कर दीजिए। ...*(व्यवधान)*... आप यहीं से शुरूआत कर दीजिए।

SHRI SHIVRAJ V. PATIL: If a lady should be a member ...*(Interruptions)*... If the Chairman is lady, it will be a very good thing. Definitely, we will keep it in mind. ...*(Interruptions)*... Even before you made these suggestions, we did have a very, very erudite member as the member of the Human Rights Commission for five years. ...*(Interruptions)*... She did very well. ...*(Interruptions)*... She did very well.

SHRIMATI BRINDA KARAT: Make it mandatory. ...*(Interruptions)*... One woman member. ...*(Interruptions)*...

SHRI SHIVRAJ V. PATIL: If it has to be done, it cannot be done in this fashion. There has to be an amendment. ...*(Interruptions)*... If they were so keen...

श्रीमती बृन्दा कारत : सर, आप एक आश्वासन दे दीजिए। ...*(व्यवधान)*...

श्री शिवराज वी. पाटिल : मिनिस्टर को ऐसा आश्वासन नहीं देना चाहिए। मगर मैं ...*(व्यवधान)*...

श्रीमती माया सिंह : सर, इसके बावजूद भी आप आश्वासन नहीं दे रहे हैं। ...*(व्यवधान)*...

SHRI N. JOTHI: There is scope for it.

THE VICE-CHAIRMAN (SHRI KALRAJ MISHRA): Mr. Jothi, please take your seat.

SHRI SHIVRAJ V. PATIL: I cannot give an assurance. ...*(Interruptions)*...

SHRIMATI S.G. INDIRA: We do not want only sympathetic consideration. It is a right. ...*(Interruptions)*... Please give it to us. ...*(Interruptions)*...

SHRI SHIVRAJ V. PATIL: Of course, it is a right. ...*(Interruptions)*... I am with you for that right. ...*(Interruptions)*... I am with you for a bigger right. ...*(Interruptions)*... I am with you for a bigger right. Hold it. ...*(Interruptions)*...

SHRIMATI BRINDA KARAT: Do not transpose one right with another. ...*(Interruptions)*...

SHRI SHIVRAJ V. PATIL: We do not want to do all these things through reservation only. Let us do it through understanding also. If there is a person and if she can be appointed Chairman or a Member, you will find us ready.

SHRIMATI BRINDA KARAT: Sir, we have spent 13 years, there is no other woman. Only one was there. What is this logic?

THE VICE-CHAIRMAN (SHRI KALRAJ MISHRA): Now, I put the motion to vote. The question is:

That the Bill further to amend the Protection of Human Rights (Amendment) Bill, 2005, be taken into consideration

*The motion was adopted.*

THE VICE-CHAIRMAN (SHRI KALRAJ MISHRA): We shall now take up clause-by-clause consideration of the Bill.

*Clause 2 was added to the Bill.*

THE VICE-CHAIRMAN (SHRI KALRAJ MISHRA): In Clause 3, there are four amendments, no. 3 and 4 by Shri Shivraj V. Patil, No. 8 by Shri Arun Jaitley and No. 11 by Shrimati Brinda Karat.

Clause 3: Amendment of Section 3

SHRI SHIVRAJ V. PATIL: Sir, I accept the amendments proposed by Shrimati Brinda Karat and Shri Arun Jaitley. And I move the amendments given by myself and by Smt. Brinda Karat and Shri Arun Jaitley:

No. 3. That at page 2, line 20 for the words "a Chief Justice of the Supreme Court" the words "a Chief Justice of India" be substituted.

No. 4. That at page 2, lines 25-26 for the words "as may be delegated to him by the Commission or the Chairperson" the bracket, words and figure "(except judicial functions and the power to make regulations under Section 40B) as may be delegated to him by the Commission or the Chairperson, as the case may be" be substituted.

No. (8) That at page 2, lines 19 to 21 be deleted.

No. (11) That at page 2, lines 19 to 21 be deleted.

*The questions were put and motions were adopted.*

*Clause 3, as amended, was added to the Bill*

THE VICE-CHAIRMAN (SHRI KALRAJ MISHRA) : Now, we shall take up Clause 4 of the Bill. There is one amendment by the Minister.

Clause 4: Amendment of Section 4



SHRI SHIVRAJ V. PATIL: Sir, I beg to move:

5. That at page 2, line 31, the words "or absence" be deleted.

*The question was put and the motion was adopted.*

*Clause 4, as amended, was added to the Bill.*

*Clauses 5 to 8 were added to the Bill.*

(Clause 9: Amendment of Section 12

THE VICE-CHAIRMAN (SHRI KALRAJ MISHRA): There are two amendments, No. 9 by Shri Arun Jaitley and No. 12 by Smt. Brinda Karat. Smt Karat, are you moving your amendment?

SHRIMATI BRINDA KARAT: Sir, as far as amendment no. 12 is concerned, it is about the reference to the court. Now, since the hon. Home Minister very specifically said that he is going to include that in the Rules or somewhere, in compliance to that assurance, I am not moving the amendment.

THE VICE-CHAIRMAN (SHRI KALRAJ MISHRA): I am talking about 9.

SHRI SHIVRAJ V. PATIL: Sir, notices were given for amending Clause 9 by Mr. Arun Jaitley. Smt. Brinda Karat is not moving. Shri Arun Jaitley is not here. We can put it to vote and dispose it off...(Interruptions)...

*Clause 9, as amended, was added to the Bill.*

*Clauses 10 and 11 were added to the Bill.*

THE VICE-CHAIRMAN (SHRI KALRAJ MISHRA): Now, Clause 12 there is amendment (No.6) by the Home Minister and amendment (10) by Shri Arun Jaitley. ...(Interruptions)...

Clause 12 : Amendment of section 21

SHRI SHIVRAJ V. PATIL: Sir, I am moving my amendment as far as the amendment of Shri Arun Jaitley is concerned. I am accepting it. I move:

No.6 That at page 5, after line 16, the following proviso be inserted, namely:-

Provided that every appointment made under this sub section shall be made after obtaining the recommendations of the Committee referred to in sub section(1) of Section 22 in respect of the State for

which a common Chairperson or Member, or both, as the case may be, is to be appointed.

No.10 That at page 5, lines 5-6 the words or a judge of a High Court for at least five years be deleted.

*The questions were put and motions were adopted.*

*Clause 12, as amended, was added to the Bill.*

THE VICE-CHAIRMAN (SHRI KALRAJ MISHRA): In Clause 13, there is one amendment (No.7) by Shri Shivraj V. Patil.

CLAUSE - 13 : Amendment to section 22.

SHRI SHIVRAJ V. PATIL: Sir, I move:

7. That at page 5, line 23, the words "or absence" be deleted.

*The question was put and the motion was adopted.*

*Clause 13, as amended, was added to the Bill.*

*Clauses 14 to 19 were added to the Bill.*

THE VICE-CHAIRMAN (SHRI KALRAJ MISHRA): In Clause 1, there is one amendment (No.2) by Shri Shivraj V. Patil.

CLAUSE - 1 : Short title and commencement.

SHRI SHIVRAJ V. PATIL: Sir, I move:

2. That at page 1, line 3 for the figure "2005" the figure "2006" be substituted.

*The question was put and the motion was adopted.*

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

THE VICE-CHAIRMAN (SHRI KALRAJ MISHRA): In the Enacting Formula, there is one amendment (No.1) by Shri Shivraj V. Patil.

### **ENACTING FORMULA**

SHRI SHIVRAJ V. PATIL: Sir, I move:

1. That at page 1, line 1, for the word "fifty-sixth" the word "Fifty-seventh" be substituted.

*The question was put and the motion was adopted.*

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

*The Title was added to the Bill.*

SHRI SHIVRAJ V. PATIL: Sir, I move :

That the Bill as amended be passed.

*The question was put and the motion was adopted*

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### STATEMENT BY MINISTER

#### **Status of implementation of the recommendations contained in the twenty-third report of the Department-Related Standing Committee on Information Technology**

THE MINISTER OF STATE IN THE MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS AND THE MINISTER OF STATE IN THE MINISTRY OF PARLIAMENTARY AFFAIRS (SHRI SURESH PACHOURI): Sir, on behalf of my colleague I lay a copy of the statement regarding the status of implementation of the recommendations contained in the Twenty-third Report of the Department-related Parliamentary Standing Committee on Information Technology.

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### SPECIAL MENTIONS

THE VICE-CHAIRMAN (SHRI KALRAJ MISHRA): Shri Dara Singh. Not here. Shrimati Shobhana Bhartia. Not here. Shri S.P.M. Syed Khan. Not here. Shri Datta Meghe. Not here. Shri Ali Anwar.

#### **Need to protect banarsi saree industry from closure**

**श्री अली अनवर** (बिहार) : उपसभाध्यक्ष महोदय, हमारे हजार साल पुराने बनारसी साड़ी उद्योग पर चीन की बुरी नज़र लग गई है। छह लाख से ज्यादा लोगों को रोजगार देने वाला और पूर्वी उत्तर प्रदेश तथा बिहार के कुछ हिस्सों में फैला बनारसी साड़ी उद्योग इस समय आतंक के साये में है। चीनियों ने अपने कई तरह के सस्ते सिल्क को वाराणसी के बाजार में झोक दिया है। अब उनका इरादा चीन में बड़े पैमाने पर बनारसी साड़ियों का उत्पादन कराना है।

उपसभाध्यक्ष महोदय, एक तरफ चीन ने अपने सस्ते निर्यातों के जरिए यार्न बाजार पर कब्जा कर लिया है, दूसरी तरफ शिफॉन, क्रेप और साटिन जैसे सस्ते फैब्रिक को हमारे बाजार में झोक रहा है। आज बनारसी साड़ी उद्योग पूरी तरह सस्ते चीनी धागे पर निर्भर है। चूंकि बाजार पर उनका कब्जा है, इसलिए वे धीरे-धीरे कीमते भी बढ़ा रहे हैं।

इसके परिणामस्वरूप हस्तकरघा क्षेत्र के हजारों बुनकर व्यापार से बाहर हो गए हैं। इस उद्योग में पारंपरिक रूप से जुड़े छह लाख बुनकरों में से तीन लाख बुनकर, रिक्शा चलाने तथा दिहाड़ी मजदूरी करने के लिए मजबूर हैं। पिछले दो-तीन सालों में बनारस के सैकड़ों बुनकर