

श्री सभापति : आप लड़ते क्यों हैं। हमने कहा कि वह बोल चुके हैं, आपकी पार्टी के मेम्बर ने कहा है और आप भगड़ने लगे। यह कोई तरीका नहीं है।

श्री नवल किशोर (उत्तर प्रदेश) . श्रीमन्, श्री भूपेश गुप्त ने जो प्रस्ताव रखा है उसकी मैं तारीफ करता हूँ और सिर्फ एक बात और कहना चाहता हूँ कि टीचर्स में असन्तोष है ही और उनमें एक सघर्ष की भावना है, एजिटेशन है और उनकी हड़ताल भी चल रही है मगर उसके साथ साथ मुझे यह भी ताज्जुब हुआ कि वाइस-चांसलर ने भी इस बात का ऐतराज किया कि—माननीय मंत्री जी ने जो हाउस में बयान किया उसके सम्बन्ध में उन्होंने कहा कि उन्होंने कुछ बातें मेरे बारे में कही जो मैंने कभी नहीं कही—तो जब इस तरह की चीजें हैं और आपका इरादा है कि आप बड़ा बिल, काम्प्रैहेंसिव बिल लाये तो फिर इसकी अभी क्या जल्दी है।

श्री ना. कृ. शेजवलकर . मुझे निवेदन करना है।

MR CHAIRMAN : I am not calling you please Only one person from one party.

श्री ना. कृ. शेजवलकर : पार्टी का स्वाल नहीं है। मैं आपसे कहना चाहता हूँ...

श्री सभापति मैं आपको नहीं बुला रहा हूँ।

THE MINISTER OF EDUCATION, SOCIAL WELFARE AND CULTURE (PROF S. NURUL HASAN) : In view of the feelings that have been expressed by the leaders of the various Opposition parties I would be quite prepared to hold consultations with them before taking further action in this regard.

THE MINISTER OF STATE IN THE DEPARTMENT OF PARLIAMENTARY AFFAIRS (SHRI OM MEHTA) Sir, we agree to the postponement of the Bill.

MR. CHAIRMAN : Then both the items will be taken up later on.

THE PAYMENT OF GRATUITY BILL, 1972

THE DEPUTY MINISTER IN THE MINISTRY OF LABOUR AND REHABILITATION (SHRI BALGOVIND VERMA) : Sir, I beg to move :

"That the Bill to provide for a scheme for the payment of gratuity to employees engaged in factories, mines, oilfields, plantations, ports, railway companies, shops or other establishments and for matters connected therewith or incidental thereto, as passed by the Lok Sabha, be taken into consideration."

Sir, the Bill is part of a package of social security measures we have promoted to enable the workers to meet the different contingencies of life. The Provident Fund Scheme has been devised by the Government to give the worker a measure of income security in retirement. The Family Pension Scheme recently introduced provides a measure of protection for his dependents in the event of his death in harness. There has been a demand all over the country for the introduction of a Gratuity Scheme designed to serve the same purpose. The Bill before us seeks to meet this demand.

The Bill was referred by the Lok Sabha to a Select Committee on the 21st December, 1971. The Select Committee presented its Report on the 2nd May, 1972. The Committee has made a number of changes in the Bill designed to improve the benefits available to workers and to ensure that the workers' title is adequately safeguarded and enforced. The more important of these changes—

To widen the coverage of the Bill, the wage limit has been enhanced from Rs. 750/- to Rs 1,000/- per mensem as provided in the Employees' Provident Funds Scheme, 1952 To ensure that a person who is initially employed on wages not exceeding Rs. 1,000/- per month and who has been

employed for a continuous period of five years on wages not exceeding Rs 1,000/- per mensem may not become disentitled to receive gratuity when his wages exceed Rs 1,000/- per mensem, a provision has also been made that gratuity should be paid in respect of the period during which such a person was employed no wages no exceeding Rs. 1,000 per month on the basis of the wages received by him during that period.

Under the Bill as introduced in the Lok Sabha, gratuity was payable at the rate of half a month's wage for each completed year of service subject to a maximum of 15 months' wages. The Select Committee has not altered the rate for payment of gratuity but the ceiling on the quantum of gratuity payable to an employee has been raised from 15 months' wages to 20 months' wages so as to provide an incentive to employees who work beyond 30 years of service.

The Bill as introduced in the Lok Sabha was to apply initially to factories, mines, plantations and such shops or establishments employing 10 or more persons as are covered by State Acts relating to shops and establishments with an enabling provision that the Central Government may also extend it to other establishments by a notification. The Bill as amended by the Select Committee and passed by the Lok Sabha will apply initially to factories, mines, oilfields, plantations, ports and railway companies in addition to shops or establishments employing 10 or more persons which are covered by the State Acts on shops and establishments. No change has been made in the enabling provision for extension of the provisions of the Bill to other establishments.

In case of a dispute with regard to the amount of gratuity payable to an employee, or as to the admissibility of any claim for payment of gratuity, the employee will also have the right to make an application to the Controlling Authority for appropriate action.

In cases of default in payment of gratuity, gratuity will be recoverable as arrears of land revenue together with compound interest at the rate of 9% per annum from the employer.

Where an employer fails to pay gratuity to an employee, he will be punishable with imprisonment for a term which will not be less than three months unless the Court trying the offence, for reasons to be recorded in writing, is of the opinion that a lesser term of imprisonment or the imposition of fine would meet the ends of justice.

Under the proviso to clause 11 of the Bill, a specific provision has been made under which the appropriate Government shall authorise the criminal prosecution of an employer who has failed to pay gratuity within the prescribed time.

The Selected Committee had also requested Government to reconsider clauses 2(c) and 4(6) of the Bill relating to the following matters :—

Whether a strike which is illegal should be considered as interruption of service which will disqualify an employee for gratuity for that particular year.

Whether gratuity is liable to be forfeited in part or in whole if an employee's services are terminated for any act causing damage or loss to or destruction of property belonging to the employer or for riotous or disorderly conduct or any other act of violence on his part or any offence involving moral turpitude. Government have given the most careful consideration to

1 P. M. these two issues. The point that participation in an illegal strike should not disqualify a worker for gratuity was also pressed in the Lok Sabha. Government have agreed that clause 2(c) of the Bill be amended so as to provide that the illegal strike would not be considered as interruption of service for purposes of payment of gratuity. Clause 2(c) has been amended accordingly.

As regards forfeiture of gratuity, the Select Committee has suggested that the entire clause 4(6) may be omitted so that gratuity which an employee earns by virtue of service over a period may not be forfeited for any misconduct on his part. The concept underlying this provision in the Bill is that misconduct on the part of an employee, no matter at which stage of service, should entail consequences either by way of reduction of the gratuity payment or by its total forfeiture. There are degrees and grades

[Shri Balgovind Verma]

of misconduct and forfeiture or gratuity should arise only in the case of misconduct which may be described as grave or serious. I hope the House will agree that a distinction should be made between a technical misconduct and misconduct which entails destruction of employer's property or which involves riotous conduct and use of violence. There should be some deterrent against this class of misconduct and this is what clause 4(6) seeks to provide. This clause is based on the latest judgement of the Supreme Court in the matter.

In the Select Committee several members also expressed anxiety that, since gratuity is a retirement benefit payable when an employee superannuates or resigns, adequate safeguards should be laid down to ensure that the employer does discharge this obligation at the time it arises. Various suggestions were made in this connection, the main one being that there should be set up a trust fund to which the employers may make a required contribution every year. The trust fund will be responsible for paying gratuity to the workers at the time it falls due. The proposal has been considered by the Government and a working group has been set up with an actuary of the Life Insurance Corporation as Chairman and including representatives of the Departments of Insurance, Labour and Employment and economic Affairs and Bureau of Public Enterprises, to consider the matter in depth and to make recommendations on the most suitable and feasible scheme for the purpose. The group has already started its work and necessary further action will be taken in the matter after its report is received.

In the end, I move that the Bill be taken into consideration.

The question was proposed

MR CHAIRMAN The House stands adjourned till 2 P M

The House then adjourned for lunch at four minutes past one of the clock

The House Reassembled After Lunch at two of the Clock

MR DEPUTY CHAIRMAN in the Chair

SHRI S R VASAVADA (Gujarat) :

Mr. Deputy Chairman, it gives me pleasure to support the Bill which the Labour Minister has placed before this House for discussion, as passed by the other House. This is a social security measure which was long overdue, and I am glad to note that the Government at last has found it fit to accept the principle of paying gratuity to industrial workers. The practice of paying gratuity to industrial workers is not entirely new. There have been agreements, settlements and awards in accordance with which the gratuity is paid to industrial workers for a very long time. I have deliberately not moved any amendments for two reasons. Firstly, if the Government were, which I doubt very much, to accept an amendment however reasonable it may be, it would have delayed the passage of the Bill. Secondly, if the observations which I am going to make are made in the form of mild and humble suggestions, I hope and believe that Government will pay sufficient attention to those suggestions. Sir, the first thing that I would request the Government, as soon as this Bill is passed by this House and it receives the assent of the President is to put it into force immediately. Retirement of employees takes place every day by superannuation. We have been thinking of taking up this Bill for the last two years or so. I am not saying that retrospective effect should be given to this Bill. But the Bill says that it will be enforced after notification by the Government. I would suggest that as soon as the Bill receives the assent of the President, such a notification should be issued so that those employees who retire from day to day and every day hundreds of employees retire from the private sector and the public sector—may get the benefit of this measure.

I have also not understood a distinction that has been made in the Bill. The Bill provides for the payment of gratuity to an employee drawing up to Rs. 1000. Anybody who earns more than one thousand is not entitled. So far I have no objection but it is further mentioned in the same clause where an exception is made that those employees who are in the managerial or administrative capacity are to be excluded. I do not understand why this exclusion is made. It is not something like industrial relations that they cannot or should not be

a party to a dispute. It is not something like an entirely different type of contract, between the employee and the employer. Well, there are a large number of people nowadays with the value of the rupee going down, people who receive one thousand or twelve hundreds or fifteen hundreds. They may be called 'administrators' even if they do not administer; they may be said to be 'in the managerial capacity' even if they are not managers. I do not know why they should be denied this benefit of receiving gratuity. I would suggest—as and when the Government thinks that a re-examination of the Act is necessary,—this provision may be taken out from the body of the Bill.

Again, Sir, a limit of 58 years has been put for earning gratuity. Of course, the maximum amount which will be received by the employee will be 20 months. That is all right. But why 58 years? He can continue in service after that also. A man can change the job. I do not know whether there is any provision for this in this enactment. At least I have not seen any provision in this Bill. Even in regard to provident fund, a man may change his employer. Anyway, today, in a large number of industries—particularly in the industries with which I am conversant—the superannuation limit is 60 years. Why this 60 years should not be retained and why you have put 58 years—I fail to understand.

Sir, I am also not able to understand why under the penalty clause an employer is given exemption if he informs the legal authority that he was not really responsible. How can an employer be not responsible? An employer has been defined. He cannot say that he was diligent and still he had made certain mistakes. He cannot divest himself of the responsibility and say that it is not I but somebody else was responsible who should be punished.

If a man wants to employ people to run an industry he has to take all the legal responsibility and liability that exist today in the country under the different Acts like the Factory Act, the Provident Fund Act or the Industrial Relations Act, and not just take the attitude that his business is simply to earn profits. I do not think the exemption given in clause 10 of 'not less than three clear days' notice' that he was not responsible should be given to him.

Sir, I have been talking for the last twenty years about the complaints to be made to the authority or to the court. I am here talking of the court, legal authority that may be constituted to try these cases. Why should an appropriate authority alone take the case? Supposing the appropriate authority does not take the case. Suppose the appropriate Government is very busy. And it actually happens when the appropriate Government does not take action and there is violation of the various sections of the Factory Act, and the worker is entirely helpless. I agree that the word "appropriate Government" should be there whenever violation of this Act takes place such as non-payment of gratuity, delay in payment of gratuity, wrong calculations about gratuity or whatever the nature of violations. But if the appropriate Government does not take suitable action in a limited period, say, a fortnight, a worker or the trade union should be empowered to take action, it should be entitled to go directly to the court so that the payment of gratuity may be made quickly.

Sir, there is no definite date about the payment of gratuity. Today in the case of provident fund it takes sometimes six months or a year. If I am not committing a mistake, there was an amendment in the other House, which was not accepted by the Government, that the gratuity should be paid within three days of the retirement of the worker. It may not be so early but it should be early enough because the worker after leaving the factory does not stay for a long time in the city where the factory is situated. Sir, 7280 per cent of the employees in our country are still coming from the villages and they cannot afford to continue with the costly living in the city after their retirement. It would be really a great benefit if all the dues, wages, arrears, bonus, gratuity and provident fund are paid to him within a reasonable time, say, a fortnight or a month.

Sir, my serious objection to Government not accepting the suggestion which was made to them and also to the Select Committee is about the funds which should be deposited in a trust to insure payment of gratuity. What is happening to the provident fund today? In the first instance, there

are recalcitrant employers who do not pay their share of the provident fund. There are dishonest employers who do not only pay their share but who actually appropriate the share of the workers also. Well, the Government is thinking of penalising such employers by even sending them to jail. Some such rigorous punishment may be meted out to them, but do I get my money? What about the factories which have been closed down during the last five years? I cannot give you the exact figure, Sir, but about 300 to 500 factories have been closed down. What has happened to the provident fund of the employees there? How is the Government going to help these employees? With this rather unhappy experience about the provident fund, on behalf of the National Labour Organisation we made a suggestion to the Government for the creation of a trust where the amount of gratuity may be deposited from month to month, if not from month to month, at least from year to year. If such a trust is created, there will be at least a guarantee for that money. Well, there is no difficulty in assessing the amount of money to be deposited with the trust. We have a number of chartered accountants and we can find out what exactly will be amount to be paid for a worker after so many years. But unfortunately, the Government have not accepted this suggestion. They have a greater and more unhappy experience with the provident fund than I have. We are perplexed now. Workers all over the country ask: "What about our money? We had faith in the Government and we had allowed this money to be deposited as a social security measure." They are to day not getting their money. Are we going to allow the gratuity amount also to meet the same fate? Therefore, we suggested to the Government of India and to all concerned that a trust may be created. Well, somehow this matter has not been taken up seriously by the Government. I hope that immediately after the Act comes into force, the Government will appoint a group or some such body, get all the constructive suggestions in this regard examined and then if they think that something has really got to be done, suitable amendments will be brought to make the Act more workable and of more benefit to the workers. Thank you.

SHRI H S NARASIAH (Mysore) :
Sir, in supporting this Bill, I have a few

salient points which I consider are necessary to be brought to the notice of the hon. mover of the motion and which I think will plug some loopholes, rendering the Bill more effective. The first point that I would like to urge for your consideration is the Explanation to clause 2 (h) which says :

"Where the personal law of an employee permits the adoption by him of a child, any child lawfully adopted by him shall be deemed to be included in his family. . ."

This personal law which empowers a person to adopt a child according to his personal law rather comes in conflict, in my opinion, with clause 3 of the Adoption of Children Bill, 1972, which we recently referred to a Joint Committee for its consideration. Clause 3 of the Adoption of Children Bill, 1972, says :

"After the commencement of this Act, *i.e.* "the Adoption of Children Act, 1972" "no adoption shall be made except in accordance with the provisions of this Act and any adoption made in contravention of such provisions shall be void and of no effect."

If this is the position that has got to evolve and emerge after the passing of the Adoption of Children Bill, 1972 the personal law which empowers anybody adopt a child, probably including a female child, may not be lawful in this connection. To that extent, I would request the mover to consider the legal implications of this Explanation where the personal law is sought to be introduced for the validation of adoption of a child.

That is one point which I would request the honourable mover to consider.

The second point which I would like to bring to the notice of the honourable mover is sub-section (2) of section 4 of this Bill relating to the payment of gratuity. It says :

"For every completed year of service or part thereof in excess of six months, the employer shall pay gratuity to an

employee..."

Here the difficulty which we have experienced in this expression "shall pay" is this. That no doubt renders these payments to be accumulated, and finally when it comes to the realisation of this amount which vests in the custody of the employer very often the experience is there remains nothing to be realised to the detriment of the employee, and the legal machinery which is deterrent, which contemplates deterrent punishment of imprisonment, will not avail it to the practical advantage of the employee. There may be legal satisfaction that the department might have punished, but the employee goes without any practical advantage. This has been the experience which I have come across frequently in the enforcement of the Provident Fund Act also. Very often we find that this legal machinery which is set in motion results in fruitless pursuit of the relief. It is my personal experience which it may not be irrelevant for me to mention here that as a Government Pleader once I had to conduct so many prosecutions on behalf of the Provident Fund Commissioner, and very often the dilatory legal machinery results in a very infructuous manner. So may I suggest that instead of the expression "shall pay gratuity", this question of payment should not be left to the employer; it must be deposited with an appropriate authority as and when it accrues so that the legal and factual custody of this amount may be easily available for the benefit of the employee. I would suggest instead of the word "pay", let the honourable mover consider a method of depositing this amount in the legal custody of the appropriate authority as and when it accrues, and not left to the fag end of service of the employee only to be disillusioned when he finds either the employer has gone bankrupt or he has managed to keep the funds away from realisation. That is my suggestion so far as Section 4 (2) is concerned.

Now, Section 4(6) says :

"Notwithstanding anything contained in sub-section (1),—

(a) the gratuity of an employee, whose services have been terminated for any act, wilful omission or negligence causing any damage or loss to, or destruc-

tion of, property belonging to the employer, shall be forfeited to the extent of the damage or loss so caused".

That is what it provides. Now the question will be : Who shall decide the negligence or the wilful omission and the quantum of forfeiture? All these things remain to be more explicitly made clear in the procedural clauses that follow in this Bill. Finally, section 10 deals with shifting of the employer's liability to some bureaucratic employee further down in the ladder of bureaucracy, that is, where a person is held liable to answer for a punishment, is given an opportunity to show that somebody else is responsible under the bureaucratic arrangement that exists in his own management. This should not be done for the simple reason that this passing of the responsibility from one end of the bureaucracy to another down in the ladder will protract the proceedings and ultimately makes no difference. Whatever may be the internal arrangement between an employer and his own subordinates in respect of liability to the commission of an offence, the employee should not in the least be concerned with that. This opportunity of shelving the responsibility ought not to be there and somebody must be made to take the responsibility for every one of the employees, whatever may be the internal arrangement between the employees and the employer.

These are some of the essential facts which must be taken note of and any loopholes which will come in the way of effective implementation of this valuable Bill for the benefit of the working class must be plugged. With these few observations, I welcome this Bill and support it.

SHRI BALACHANDRA MENON (Kerala) : If the Government had brought forward this Bill some ten years ago, there would have been sufficient enthusiasm among the employees. But today the Bill does not enthuse anybody so much because most of the organised workers have agreements, court awards, etc. and two States have got such Bills with the result that there is nothing which inspires the working class as such. But anyhow you have brought it. It is good because some sections will benefit by it. That is all what I feel.

Actually this is a faulty Bill. I do not know whether the Government itself is sure of what a gratuity is. There is no mention of the word 'gratuity' in the definition clause. It is a payment for the services that a worker has already rendered, each year? I should like to know. Or, is it to be paid at the end of his term? What is its character? That is what I should like to know. If it is a payment made to a worker for every year for his services, then it means that if a worker has already put in 240 days and is permanent, he should get it from that day. There is no question of taking away that right from the worker even if there had been some misbehaviour afterwards because it is already earned. The Minister was saying that he was thinking of some trust. If for one day a worker has earned it and it is paid in the form of a trust then you cannot take it back even if he has committed some misconduct later. His payment which is due to him for his past service cannot be withheld. If you are clear about the term 'gratuity', then there would not be this difficulty. My feeling is that you should have a clear definition of this term 'gratuity'. Gratuity is payment made to a worker for his services and each year he must get it. If it is a new factory, let them not pay for two years. Five year period is too much. I will say that this should be reduced. Everybody who engages a worker must pay something when he retires. There is no question of exempting anybody except small industries which are engaging only four or five people. Otherwise everybody in this country who takes the labour power of another man must be forced to pay him gratuity when that man quits the service because after 20 or 25 years of service if a man goes out without anything, it will be very hard on him.

Here, Sir, what I find is that a large section of the employees will not get it. For example, employees who are in the local bodies, in the transport organisation, in any contract which lasts for five or six years, workers in the construction work, workers in the educational institutions, etc. will not get it. At a time when education has become something like a commodity which is being sold—and that is what is happening in Kerala now—the time has come now when everybody, every employee, in all these institutions must get some sort

of benefit when they retire or when they leave. I would, therefore, say that the term 'workers' should be expanded, more sections of workers should be included and everybody who has put in 240 days of work must get gratuity. Why two years? That I give only for the stabilization of the industry.

Then, regarding the term "employee", I agree with my learned friend who has already stated that even those people who are in the managerial capacity and all that must also get it. Why should they be deprived of it? A man who is put in a managerial or supervisory capacity is still an employee and under today's conditions all these people are employed by the owner of the factory. He himself does not manage it. He buys the middle class intellectuals who are made to do all these jobs and when they retire, they must also get the benefit. I would, therefore, say that this should go to these people also who have some supervisory or managerial role to play. So, this should be extended to that effect. This is my second suggestion. All those who have got some supervisory, administrative or managerial role to play should get it. They should get gratuity when they quit the service or when they retire or when they willingly or voluntarily accept to go away.

Then, Sir, my question is this: Why should it be limited to twenty months' wages?

SHRI DWIJENDRALAL SEN GUPTA
(West Bengal) It is 15 months.

SHRI BALACHANDRA MENON : No. It reads like this: "It shall not exceed 20 months' wages ..".

Now, a boy gets into a factory when he is about 18 years of age and he is in service up to his 58th year or so. So, he puts in nearly 40 years of service. Sometimes he puts in more if he is taken as an apprentice. Therefore, in such cases, when a person puts in more than 40 years of service, if he had been taken as an apprentice, he should also be given because he continues to be working in that factory. So, if people who are 14, 15 or 16 years of age and join the

factory as apprentices, they should also get the benefit. Usually, forty years means twenty months. If there are workers who are put in the factory before they are 18, they must also get this benefit.

Then, Sir, the question of 15 days is there. It is too meagre an amount now. If a worker is getting only about Rs 5/- a day, 15 days' work will bring him only Rs 75/- or, if he is getting only Rs 10/- a day, it will bring him only Rs 150/- for fifteen days. This is all that he will be getting and, Sir, this is the highest wage. If that is so, the gratuity that he will get will be very small and I would say that it should be increased and increased, if possible, to one month.

The next point is about the exemption of an employer from liabilities in certain cases. It is in clause 10. This helps the man to get out. He will surely say that somebody is responsible and the real employer will be able to get away from all his commitments and this should not be allowed. That should not be allowed. More than all this, my one complaint about these things is this: that the Government will not be in a position to get these people have their gratuity because, as we have found already in the case of provident fund by the time the man has to get gratuity the employer will see, "The money is not with me", the factory will be in a crisis and you will not be paying the man. About ten crores of rupees have to go to the workers under the Provident Fund. It is their money. And even in that case when this looting has taken place the Government has kept quiet, they have not been able to take any action.

The other day the Minister was saying that one mine owner has to give about two crores and odd. I am sure that the mine will not be worth Rs 2 crores. By the time it is wound up, this man loses the money. This is what has happened and this is what is going to happen. Most of this money due to the worker will not be paid to him. And then when it is wound up finally or liquidation proceedings take place there will be prior charges. What is a prior charge than this worker's dues? There is no other amount which could have any prior charge than this. At least you

should make it clear that in the case of provident fund, in the case of gratuity, all this will be treated as any other prior charge. Unless that is done, the worker will lose it. And I am sorry the Government is not serious about this. I would, therefore, suggest that time has come now when the whole schemes like provident fund, Health Insurance Schemes and also gratuity, should be entrusted to a Board which will not consist of employers, but only workers' representatives. It is they who are interested in this, they have worked for it. In all socialist countries this is what is being done and it is high time you thought over this. Why should the employer be there? In this case there should be such a body, a trust, which will take up all these things. The entire responsibility should be given over to the workers' representatives. Social security measures at least must be handled by them for the time being. We have come to that stage. Why should we resist? I would like to know.

Then, I would request the Government that in such cases where punishment is given, even if you think that he can be sent to jail, that will not be enough. I would say that there must be some fine and the money must be paid to the worker, he will also be imprisoned for cheating if it is a clear case of cheating, whether it is provident or gratuity or anything.

The policy of the Government has been that in the industrial field every day there is discussion. Mr Kalyan Roy used to ask: How much is the provident fund due? He has found out. But every time by legislation you have been only trying to help the employer. Every time you have been out to help the employers against the spirit of legislations which we have brought here. This is the position. You have trust in the bureaucracy and the result is that the workers are feeling no better than under the private employers even though they are in the State sector industries. There can be no faith in the workers unless this is changed and the whole attitude is changed. There will not be any further progress in the industry. This has been mainly because of the mixed economy, with its reliance on private capitalists, mixed economy only helps the private capitalists. The bureaucratic State sector is no better than the

[Shri Bala Chandra Menon]

private sector. This the sort of industrial set-up that we have and this sort of industrial set-up demoralises the worker. He has absolutely no faith in you. He has lost faith. It is time for you to change and unless you change, even such legislations that are intended to help the worker will not inspire the worker. The great social change which you expect, where the worker must be, if not a leader, a party to bring about industrial peace, will not come up. This is because of your wrong policies, your attempts to support the employers in most of the struggles that we are waging against the employers. The Ministry of Labour has absolutely no policy of their own. Unless we know what is your policy, what amount of faith you have in the worker, unless we know how you are going to help them, we will not be able to understand what the Government proposes to do in the coming years when they adopt such legislations. It is a mere eye wash or something more than that? What is for you to say. Then, from the policy of the provident fund, the worker has now come to understand what the Government's attitude is. We have throughout seen that it is nothing but the Government's help for the employer to rout the worker. Most often, even they do not know the worker's name. The worker goes and joins another factory. He is not able to tell the employer about his previous service and the name of his previous employer. He is afraid, if he does it, the employer might contact the other employer and he might not be given the job. The result is that the provident fund that he has accumulated in his name is not given to him. And the Government gets small savings. I want to know whether it is not an attempt to get small savings of the worker. This is what will happen here also. On the 24th year when he is about to retire you will find out that he has had some rule behaviour and immediately all his past gratuity will go. So I would request you that for every year of his service his money should be safe for him and only during that year when he has been found to have misbehaved should he be made to lose and nothing more than that: what he has earned already should not be lost. This is all that I wanted to say.

DR. K. MATHEW KURIAN (Kerala) :
The Gratuity Bill in the form in which

it has been presented here is a very much watered-down Bill. In all the discussions on gratuity in the past the so-called Socialist Government at the Centre has been making tall claims about what they are going to do for the workers. In fact, if you study the Gratuity Bill presented here it is not only a watered-down Bill but it is a Bill which is intended to fool the people, and particularly the workers, about what this so-called Socialist Government is about to do. I would like to come to the most fundamental question regarding the concept of gratuity itself. The hon. Mr. Balachandra Menon referred to this. The Supreme Court has already declared in 1961 that gratuity is a remuneration for past services and it should not be touched. If this concept of gratuity is accepted, namely, that gratuity is not a dole to be given to the workers at the whims and fancies of the management but on the contrary gratuity is remuneration for the past services of the workers, if that concept is accepted, then the entire Bill and its structure is wrong. You cannot have this Bill on the basis of this concept of gratuity. If gratuity is a right of the worker, if it is remuneration for which he has a right, remuneration for services rendered in the past, then many of the provisions of the Bill will have to be completely nullified. This Bill is only an attempt to fool the workers. I agree that to some extent some workers despite all the watered-down provisions in the Bill might get some gratuity and I am happy about it. I am happy that some workers might be able to get something despite all the loopholes but what is the overall picture that emerges? We know the history of the provident fund about which reference has been made. A total of Rs. 15 crores of provident fund money has been eaten up by big companies particularly in textile industry, in coal mines and in a few other sectors and this Government has not been able to prevent this misappropriation of workers' own money, money which they created by their own sweat and toil. Sir unless we are sure about the concept of gratuity itself we won't be able to have any meaningful discussion. How can a so-called Socialist Government take away the right of remuneration in the form of gratuity in the name of various types of considerations as have been mentioned in the Bill? This Bill has a very limited coverage. The Bill of course

includes workers in factories, mines, oil fields, plantations, shops and establishments and so on but why is it that many other categories which are equally important have been excluded? In the Bill there is no rationality in selecting certain sectors and excluding certain other sectors. Why is it, for instance, that the transport workers have been excluded from the provisions of the Bill? Why is it that construction company employees have been excluded? There is no rationality at all? Is it purely according to the whims and fancies of the Labour Minister or of the concerned officials of the Ministry that they have chosen some sectors while they have excluded the others? In addition many of the allowances and privileges which the workers today get are not included for the purposes of calculation of gratuity. Here again there is no rationality. Why is it that some of the benefits and allowances which the workers actually enjoy are excluded for the purpose of calculation of gratuity? Particularly in view of the fact that these allowances and privileges have not been taken into account there is a very strong case for revising the rate of gratuity. Definitely it must be enhanced, there is no case at all for not enhancing the rate particularly in view of the fact that many of the allowances and privileges have been excluded from the calculation of gratuity. The workmen should not be denied the payment of gratuity for their past services even if the managements argue that for one reason or the other the service has been interrupted, that there has been some misconduct on the part of the workers and so on. Even the term 'misconduct' has not been defined properly. What constitutes misconduct has not been made clear in the Bill. For all we know—the Government which talks about Socialism ought to know—the managements particularly in the big companies have been resorting to all kinds of underhand methods in order to prevent the workers from getting even their ordinary rights which they have got through trade union movement by their struggles. What is the guarantee that the loopholes in this Bill will not be utilised by the managements? For instance, it is very easy for any management to scuttle the entire Bill by terminating the services of the worker and then saying that under the provisions of the Bill he is not entitled. They could again re-employ him after a gap and still

the worker will not get the benefits of this Bill. Action could be taken against workers on all kinds of flimsy charges imagined by the managements purely because they want to scuttle the Bill. The loopholes in the Bill are particularly very serious and unless the Minister assures us that other administrative and execution action will be taken to ensure that these loopholes will not be made use of by the managements I cannot support the Bill in this particular form. What would be considered as misconduct? There is no definition in the Bill. Therefore, the provision regarding this type of exemption should be deleted from this Bill.

Sir, the management today can refuse to give 240 days of work in 12 months and thereby deny the workers all the benefits of gratuity. An employer can discharge a worker after four years of service on some ground and re-employ him after some time. An employer could even discharge a worker after 30 years of service by bringing some allegation of misconduct. What has the Minister to say in all such cases where the managements of these companies will try to scuttle the whole scheme by using these loopholes? There is no guarantee given by the Minister to these questions. Sir, it is possible in the background of serious economic crisis that is enveloping this country that a large number of companies might collapse. What is the guarantee that the workers will get the benefit of gratuity in the mounting economic crisis that is enveloping us? Industrial growth rate is going down. Food production is going down. Prices are rapidly increasing. In such a context there is no guarantee that the provisions built up in this Bill will ever be realisable so far as the workers are concerned. Whenever the companies collapse the workers, under the very provisions of this Bill, will not get the benefit. On the contrary, if the Government had started from the assumption that gratuity is a right of the workers, is a remuneration for his past services, we could find new avenues of ensuring that these benefits really accrue to the workers. For instance, gratuity could be put into some kind of fund to be administered, not by the bureaucrats sitting in the Ministry, not by the representatives of employers but by the workers themselves. Some such fund should be created into which the

[Dr. K. Mathew Kurian]

companies' managements will be forced to pay and out of which the benefits will accrue to the workers, despite the economic crisis, despite the fact that the managements might attempt to scuttle the whole scheme. This fund should be operated by an authority in which the workers' representatives have direct control, not the bureaucrats and so on. Sir, the history of Provident Fund implementation is very disastrous. The whole history of Provident Fund shows how callous Government has been in implementing even the provisions already in the Statute. What is the guarantee that this Government will implement the Gratuity Act with any sincerity? What is the guarantee that the tycoons sitting in the various companies will give the workers the benefit that is their due? Unless these suggestions are accepted by the Minister there is no guarantee that this Bill will really give the benefits to the workers. I have made two important suggestions. Number one is that an authority should be created in which the workers have adequate control and that it should be managed by the workers' representatives rather than by the bureaucrats and the representatives of managements. Number two is that gratuity should be considered as a right of the workers rather than as doles given by the managements. If these suggestions are accepted and if the loopholes of this Bill are removed, there is some guarantee that some benefit may accrue to them. In the absence of these guarantees, Sir, I am very doubtful whether despite all the high-sounding words in the Bill, the benefits will really accrue to the workers.

Thank you.

श्रीमती सीता देवी (पंजाब) : उप सभा-पति जी, यह जो ग्रेचुटी का बिल आया है इसके लिए श्रमिक बड़ी देर से इंतजार कर रहे और वे सोच रहे थे कि हमारी सरकार जो सोशलिज्म इस देश में लाना चाहती है जब इस तरह का ग्रेचुटी बिल आयेगी तो उसमें श्रमिकों को बहुत राहत मिलेगी।

सबसे पहले इस बिल को पढ़कर और श्रवणारो में पढ़कर कि यह बिल लोकसभा द्वारा पास हो चुका है, तो श्रमिकों को खुशी हुई,

। गर जब उन्होंने बिल के बारे में अच्छी तरह से मालूम किया तो उन्हें निराशा हुई। मैं पंजाब प्रान्त की रहने वाली हूँ और वहाँ पर ट्रान्सपोर्ट वर्कर हजारों की तादाद में हैं, चाहे वे पब्लिक सेक्टर में काम करते हों, चाहे प्राइवेट सेक्टर में काम करते हों, वे लोग लाखों रुपया कमा करके इम्प्लायर को देते हैं। मैं मिनिस्टर साहब से यह जानना चाहूँगी कि क्या कारण है कि ट्रान्सपोर्ट वर्कर को इस बिल से बाहर रखा गया है। जब आप इस तरह के लेबरर्स को इस बिल के बाहर रखते हैं, तो उसका कारण मेरी समझ में नहीं आता है। हम समझते हैं कि इस तरह के वर्कर्स के साथ बड़ा भारी अन्याय है।

दूसरी बात मैं यह कहना चाहती हूँ कि जब हम इस बिल को अच्छी तरह से पढ़ते हैं तो मुझे ऐसा नजर आता है कि यह बिल बड़ी सद्भावना से बनाया गया है और जिस सद्भावना से यह बिल बनाया गया है उसमें लूप-होल्स भी हैं। जब यह बिल इम्प्लीमेंट होगा तो इसके द्वारा वर्कर्स को बहुत ज्यादा लाभ होने वाला नहीं है बल्कि उनको थोड़ा बहुत जो मिलेगा वह बहुत मुश्किलों के बाद मिलेगा और बहुत से मंजिलों को पार करने के बाद मिलेगा। मैं लेबर में काम करती हूँ और मुझे पता है कि इम्प्लायर कितनी मुसीबतों के साथ अपने मजदूर को चार आना मजदूरी देता है।

जब बिल के अन्दर इतने लूपहोल्स हैं तो उसकी वजह से इम्प्लायर बड़ी आसानी के साथ बचने की कोशिश करेगा और उसको इसकी वजह से बहुत सी सुविधा मिल जायेगी।

एक बात इसमें यह रखी गई है कि जो टेम्परेरी वर्कर्स हैं, जो कंजुअल वर्कर्स हैं, उन पर यह बिल लागू नहीं होगा, यह बात मेरी समझ में नहीं आई? आपको यह पता ही होगा कि इम्प्लायर की यह मैटलिटी होती है कि कोई भी वर्कर चाहे वह दस, दस साल तक

उसके वहां काम करता रहे, तब भी वह उसको टेम्परेरी रखेगा और उसके 240 दिन लगातार कभी भी पूरे नहीं होने देगा। वह कभी 150 दिन के बाद या फिर कभी 200 दिन के बाद उसकी सर्विस ब्रेक करेगा और फिर उसको रख लेगा और कभी भी उसके 240 दिन पूरे नहीं होने देगा ताकि उसके ऊपर ग्रेचुटी की स्कीम लागू हो सके।

मेरी समझ में यह बात नहीं आई कि कैजुअल लेबर को इस बिल के बाहर क्यों रखा गया है। हम सोशललिज्म की बात करते हैं और गवर्नमेंट को यह बात रखनी चाहिए थी कि जिस मजदूर की सर्विस तीन साल से ज्यादा हो जाय उसको कंफर्म कर दिया जाना चाहिये। आज हजारों वर्कर, चाहे वे पी. डब्ल्यू. डी. में हों, चाहे बिजली विभाग में हों, या किसी दूसरे विभागों में हों, हजारों की संख्या में कैजुअल लेबर काम करते हैं, जिनको वर्कचार्ज भी कहते हैं। मैं यह जानना चाहता हूँ कि इस तरह के कैजुअल वर्कर्स को इस बिल के अन्दर क्यों नहीं लाया गया? इस बिल की वजह से तो इम्प्लायर के हाथ और भी मजबूत हो जायेगे, वह अपने मजदूरों के साथ सख्ती करेगा, उनको कभी भी कंफर्म नहीं करेगा, उनको टेम्परेरी और कैजुअल लेबर रखेगा ताकि उस को अपने मजदूरों को कम से कम पैसा देना पड़े।

अभी एक और पाबन्दी इसमें लगाई गई है कि जो स्ट्राईक होगी, लीगल स्ट्राईक होगी या किसी तरह की तोड़फोड़ की कार्यवाही होगी तो वर्करों को कुछ नहीं दिया जायेगा जो कि वर्करों के लिए एक बड़ी दुःख की बात होगी।

जो लोग ट्रेड यूनियन में काम करते हैं उनको पता होगा जब कोई सही स्ट्राईक भी होती है तो उसका कसूर भी मजदूरों के ऊपर डाल दिया जाता है कि यह इल्लिगल स्ट्राईक है। है इम्प्लायर कारखाने में तालाबन्दी जब कर

देता है तो उसका कसूर भी वह मजदूरों के ऊपर डाल देता है। इसमें यह भी लिखा है कि जो मजदूर तोड़फोड़ की कार्यवाही करेगा उस को कुछ नहीं मिलेगा। मैं आपसे कहना चाहती हूँ कि मजदूर कभी भी तोड़फोड़ की कार्यवाही नहीं करता है। उसकी मन्शा तोड़फोड़ करने की कभी नहीं होती है। वह हमेशा सोचता है कि जहाँ पर मैं काम करता हूँ, चाहे वह फैक्टरी हो या कारखाना हो, वह उसका है और अगर वह ठीक से चलेगा तो उसको भी पैसा मिलेगा। अब इस बिल के जरिये इम्प्लायर मजदूर को विक्टमाइज करने के लिए यह झूठा आरोप लगा देगा कि उसने तोड़फोड़ की कार्यवाही की है इसलिए इसको ग्रेचुटी न दी जाय, इसने इल्लिगल स्ट्राईक में भाग लिया है, इसको भी कुछ नहीं दिया जाना चाहिये।

मैं मिनिस्टर साहब से यह कहना चाहूंगी कि आप इस बिल को पास करते वक्त यह करें कि इस बारे में एक इम्पेशियल बोर्ड बना दें और उस बोर्ड का काम यह होना चाहिये कि जो भी स्ट्राईक किसी कारखाने में हो वह इल्लिगल है या लीगल स्ट्राईक है, इसके बारे में फैसला करे। इसके साथ ही साथ वह बोर्ड इस बात का भी फैसला करेगा कि किसी मजदूर ने तोड़फोड़ की कार्यवाही की है वा नहीं और उसके बाद तब यह चीज लागू की जानी चाहिये। इस तरह से आपको इस चीज के बारे में एक न्यूट्रल बोर्ड बनाना चाहिये और इस चीज को इम्प्लायर के ऊपर नहीं छोड़नी चाहिये। अगर आप उसके ऊपर छोड़ देंगे तो इसमें कुछ होने वाला नहीं है।

3 P.M.

इससे श्रमिकों को कोई लाभ नहीं मिलने वाला है। फिर ग्रेचुटी वसूल करने का क्या तरीका है यह आपने कही नहीं रखा है। हमारा यह तजुर्वा है कि प्रबोडेंट फंड जो मजदूर की अपनी कमाई है उसको लेने के लिए भी

[श्रीमती सीता देवी]

श्रमिकों को बहुत परेशानी उठानी पड़ती है, नहीं देते, कमिशनर के पास जाओ, उनको चिट्ठीया लिखो, इधर भागो-उधर भागो, फिर कही जाकर वसूल होता है। आपको पता है, मिनिस्टर साहब, बिहार के अन्दर कमेटी की मीटिंग में आया था कि कोयले की खदान में काम करने वाले जो मजदूर हैं उनके कई लाख रुपए हैं—एग्जैक्ट फिगर तो मुझे याद नहीं—जो उनको नहीं मिल रहे हैं। मैंने वहां भी कहा था कि आप उसके ऊपर सख्ती करें उसको रा मेटीरियल देना बन्द कर दे जिमसे वे दें। लेकिन सालो-साल हो गए और वह लाखों नहीं तो करोड़ों की तादाद में हो जायगा। गवर्नमेंट सख्ती से कोई कानून लाए कि जो मजदूरों का हक है, प्रोवीडेंट फंड है, ग्रेचुइटी है, नहीं देते तो आप एम्प्लायर को किसी तरह से कंट्रोल करे। आप उसको लाइसेंस नहीं दे, रा मेटीरियल नहीं दे। जब तक यह चीज होने वाली नहीं है। तब मैं समझती हूँ कि ग्रेचुइटी वसूल करने का तरीका यह होना चाहिए कि जैसे पेमेंट आफ ग्राफ वेजेन्स एबल के मुताबिक श्रमिक अपनी तनखाह वसूल कर सकता है, उसी तरह से यह भी हो कि हर एक मजदूर इसको वसूल कर सके। जब वह अपनी नौकरी छोड़े तो 48 घंटे के अन्दर उसको ग्रेचुइटी और वेतन भी मिल जाय। अगर आप इस तरह से सख्ती से काम करेंगे तभी कोई ला चल पाएगा।

मैं यह समझती हूँ कि ग्रेचुइटी जो है इसके लिए ऐसा हो जाय कि यह खजाने में अलग जमा हो जाय हर महीने के महीने। जितने वर्कर काम करते हैं उनकी अलग से जमा हो जाय और किसी ट्रस्ट के मातहत उनको कर दे ताकि उमरा जो बचा है वह वर्कर को वक्त पर मिल जाय।

आपने यह स्पष्ट नहीं किया कि ग्रेचुइटी के ऊपर रिट्रैचमेंट कम्पेनसेशन मिलेगा या नहीं। एक वर्कर है उसे किसी वजह से एम्प्लायर

रिट्रैच कर देना है तो बाद में वह यह न कहे कि तुम्हें मैं रिट्रैचमेंट कम्पेनसेशन दे रहा हूँ, ग्रेचुइटी नहीं दूंगा। मैं यह कहती हूँ कि मिनिस्टर साहब इस पॉइंट को भी क्लियर करे कि उसको दो चीजे मिलेगी या एक ही चीज मिलेगी।

एक पॉइंट और है। इसमें कहा है कि 15 दिन का वेतन ग्रेचुइटी मिलेगी। यह बात गलत है क्योंकि कई ऐसी फैक्ट्रीज हैं जहां कितना ही प्रोफिट है और मैं समझती हूँ कि मजदूर का बहुत बड़ा हिस्सा है, मजदूर की मेहनत के बहुत बड़े से हिस्से से आज फैक्टरी में इतना प्रोफिट होता है। सोशलिज्म तभी पूरा होगा जब आप सबको नेशनलाइज कर लेंगे लेकिन तब 15 दिन का वेतन बहुत कम है, कम से कम 21 दिन का वेतन मिलना चाहिए। मैंने जो कमेटी की रिपोर्ट पढ़ी है उसमें उन्होंने भी 21 दिन का वेतन रिक्वेस्ट किया है। मेरी समझ में नहीं आया कि जब सेलक्ट कमेटी ने 21 दिन रिक्वेस्ट किया तो गवर्नमेंट ने 15 दिन क्यों रखा। तो मेरा सुझाव है कि 15 दिन की जगह 21 दिन होना चाहिए।

एक चीज और है। उन्होंने कहा कि जहां पर 10 वर्कर काम करते हैं वहां पर यह लागू होगा। आपको तो एम्प्लायर की मैन्युअल बहुत अच्छी तरह से पता होनी चाहिए। किसी एम्प्लायर के यहां 100 वर्कर काम करते हैं लेकिन वह अलग अलग फर्मों के नाम से एक ही बिल्डिंग में 9-9 करके बना देगा, 10 नहीं होने देगा ताकि उसके ऊपर यह भी स्कीम लागू न हो सके। तो मैं यह जानना चाहती हूँ कि इतने जो लूपडोन है, जो मैंने आपके सामने रखे हैं उनके लिए हमारी गवर्नमेंट ने क्या कंट्रोल रखा है और क्या मन्ही से नियंत्रण रखा है? इस बिल का तो मैं स्वागत करती हूँ श्रमिकों की तरफ से, परन्तु यह बहुत देर के बाद आया।

ये जो आशकाएं हैं, आशंकाएं ही नहीं हैं बल्कि सम्भव दिखाई दे रही हैं उनके लिए आप कोई न कोई प्रोवीजन रखें, सख्ती से नियंत्रण रखें, ये लूपहोल न रखें तब इसमें श्रमिकों को लाभ होगा वरना श्रमिक समझेगे कि यह सुविधा तो दी पर लगड़ी सुविधा दी, उसमें हमें कुछ नहीं मिला और परेशानी ज्यादा हो गई। मुझे आशा है कि इन सुझावों पर मंत्री साहब ध्यान देंगे जिससे वर्कर का लाभ हो सकेगा।

श्री मानसिंह वर्मा (उत्तर प्रदेश) : उप-सभापति महोदय, इस विधेयक के द्वारा श्रमिकों को कुछ राहत देने का प्रावधान किया गया है। बहुत देर से इस प्रकार का विधेयक लाया गया है यद्यपि बहुत पहले ही यह आना चाहिये था। मैं इसका स्वागत करता हूं इस कारण से कि श्रमिकों को इससे कुछ राहत मिलेगी, परन्तु इसके सम्बन्ध में कुछ संशेप में मैं अपने विचार प्रकट करना चाहता हूं।

कई माननीय सदस्यों ने माननीय मंत्री जी का ध्यान इस ओर आकर्षित किया है मुझे भी कहना है कि ग्रेच्युटी कोई रिबार्ड नहीं है, न कोई दान है, न कोई भिक्षा है, न कोई अहसान है, बल्कि श्रमिक का अपना श्रम करने का एक बदला है। उसने 10, 15, 20 साल या जो कुछ भी श्रम किया है उसी के ऐवज में उसको अपने भरणपोषण के लिए यह राशि दी जाती है। इस प्रकार की मनोवृत्ति के विरुद्ध है और किसी को ऐसी बात नहीं सोचनी चाहिये।

जैसा कि अन्य मित्रों ने भी कहा है, यह बात समझ में नहीं आई है और न आप ने इसका कोई कारण बताया है कि जैसे ट्रांसपोर्ट वर्कर्स है, लोकल वाडीज के वर्कर्स है, एजुकेशनल इंस्टिट्यूशंस के वर्कर्स है, हास्पिटल्स के वर्कर्स है या कास्ट्रक्शन कम्पनीज में हजारों की तादाद में जो श्रमिक काम कर रहे हैं उनको इसकी परिधि से बाहर क्यों रखा गया है।

क्या वे श्रमिक नहीं हैं। क्या वे काम नहीं करते हैं। यह तो मैं समझता हूं कि समाजवादी ढांचे के बिल्कुल विपरीत बात है। आप उनमें समा-नता नहीं बरत रहे हैं क्योंकि किसी को आप ग्रेच्युटी दे रहे हैं और किसी को नहीं दे रहे हैं। इसके लिए मैं समझता हूं कि अभी भी समय है कि इन श्रमिकों को भी उसमें शामिल कर लेना चाहिये।

दूसरी बात श्रीमन्, मुझे क्लोज 4 के सम्बन्ध में कहनी है। पांच वर्ष की अवधि के बाद वह ग्रेच्युटी पाने का अधिकारी होता है। श्रीमन्, मैं इसको भी नहीं समझ सका कि पांच वर्ष की अवधि के बाद ही उसको क्या ग्रेच्युटी मिल सकेगी। मैं पूछना चाहता हूं कि अगर कोई श्रमिक दो वर्ष के बाद दुर्घटनाग्रस्त हो जाता है, इन्वेलिड हो जाता है, काम करने योग्य नहीं रहता है तो वह ग्रेच्युटी क्यों नहीं पा सकेगा। उस बेचारे को भी ग्रेच्युटी मिलनी चाहिए। उसने कौन सा ऐसा अपराध किया है कि उसको वह ग्रेच्युटी नहीं मिल सकेगी जो उसको पांच साल के बाद मिल सकती थी। तो इस प्रकार जो दुर्घटनाग्रस्त होने वाले वर्कर्स हैं उनको भी उसमें शामिल होने का अधिकार होना चाहिए ऐसा मेरा मत है।

श्रीमन्, तीसरी बात रेट आफ ग्रेच्युटी के विषय में है। मेरे अन्य भाइयों ने भी इस संबंध में अपने विचार प्रकट किए हैं। इसके लिए 15 दिन एक वर्ष में रखे गये हैं। समय को देखते हुए, महंगाई को देखते हुए, व्यवस्था को देखते हुए और वानावरण को देखते हुए यह आवश्यक है कि इसको कम से कम 20 दिन किया जाय। यदि तीस दिन नहीं तो इसको बीस दिन अवश्य किया जाना चाहिए।

श्रीमन्, सब क्लोज 'ए' आफ क्लोज 4, 6 यह है कि यदि किसी गलती के कारण या मिस कंडक्ट के कारण किसी की सेवाएं समाप्त कर

[श्री मान सिंह बर्मन]

दी जाती है तो उसकी ग्रेचुएटी जवन कर ली जायगी। श्रीमन्, मैं समझता हूँ कि यह प्राविजन न्यायसंगत नहीं है। इसके विषय में पहले भी विचार हो चुका है और विचार ही नहीं सुप्रीम कोर्ट तक ने इस संबंध में अपना जजमेंट दिया है। बहुत ही संक्षेप में मैं सुप्रीम कोर्ट को कोट कर रहा हूँ। उसका 1961 का जजमेंट इस प्रकार है :—

“On principle, if gratuity is earned by an employee following meritorious service, it is difficult to understand why the benefit thus earned by long and meritorious service should not be available to the employee even though at the end of such service he may have been found guilty of misconduct which entails his dismissal. Gratuity is not paid to the employee gratuitously or merely as a matter of boon.”

बिल्कुल स्पष्ट सुप्रीम कोर्ट ने यह आदेश दिया है कि 20 वर्ष की सर्विस के पश्चात् नी एक लम्बी अवधि की सेवाओं के पश्चात् दे ऐसा उस से हो गया हो तो उस को इतनी ही सजा नहीं मिलनी चाहिए कि उसकी ग्रेचुएटी उस को न मिले। फिर इसको एक रेप्रेजेंटेटिव रूप में भी हम देखें तो हमें पड़े कि इस प्रकार के एम्प्लायर भी प्राप को पंगे और इस प्रकार की शिकायतें हमारे आती हैं कि जिनमें लम्बी-लम्बी अवधि सर्विस के बाद वह इस प्रकार के प्रयत्न में है कि कोई न कोई बहाना उनको इस पार का मिल जाय कि जिसके आधार पर वे ही सर्विस समाप्त कर सकें आरोप लगा कर उसको ग्रेचुएटी न देनी पड़े। अगर आप चाहें तो ऐसी अनेकों शिकायतों में तो बता सकता हूँ। ऐसा होने पर उनको कुछ बल मिल जायगा तो इसके लिए प्रयत्न की आवश्यकता है और अगर इस प्रकार विधान हो सके कि लम्बी अवधि की सेवा

के बाद किसी को भी ग्रेचुएटी से वंचित न रखा जाय तो अच्छा रहेगा।

श्रीमन्, अंतिम बात मुझे कहनी है कि बिल में यह प्राविजन किया गया है कि यदि कोई भगड़ा हो तो राज्य सरकारों के ऊपर उसको छोड़ दिया जाय। राज्य सरकारों को वह रेफर करेगा और राज्य सरकारें कंट्रोलिंग अथारटी रेफर करेंगी और उसके पश्चात् उस झगड़े का फैसला होगा। मैं माननीय मंत्री जी से यह निवेदन करना चाहता हूँ कि इस प्रकार का जो प्रोसीजर है, क्या आप समझते हैं कि उस बेचारे को इससे आसानी से राहत मिल सकेगी अनेक शिकायतें इस प्रकार की आती हैं कि उसको ग्रेचुएटी नहीं मिल पाती है। वह कोशिश करता रहता है और आप जानते हैं कि अदालत के मुकदमों के जो प्रोसेस में पड़ जाते हैं, उसमें कितना समय लग जाता है सालों उसमें निकल जाते हैं और उसको जो राहत, जो बेंनिफिट आप देना चाहते हैं वह नहीं मिल पाता है। तो इस बात को सोचने की आवश्यकता है कि उसका जो प्रोसेस हो वह इतना साधारण और आसान हो कि उसको समय पर कुछ मिल सके।

दूसरे मेरा यह सुझाव है कि इस बात की भी शिकायत हो सकती है कि एम्प्लायर के पास आगे चल कर धन न हो, वह असमर्थता प्रकट करे कि घाटा हो गया है या उसकी स्थिति ऐसी खराब हो गयी है कि वह कहां से पैसा दे तो इसके लिए क्या ऐसा उचित नहीं है कि इस प्रकार का प्राविजन रखा जाय कि एम्प्लायर के पास जैसे, जैसे ग्रेचुएटी का रुपया इकट्ठा होता जाय वह जैसे जैसे रिजर्व फंड में जमा करता रहे और ऐसा करना उस के लिए अनिवार्य हो ताकि आगे चल कर इस बात की कठिनाई न हो कि उसके पास धन नहीं है या वह ग्रेचुएटी का पैसा देने में असमर्थ है।

मैं अपना व्यक्तव्य संपाप्त करता हूँ और जैसा मैंने शुरू में कहा, क्योंकि यह श्रमिकों को राहत देने वाला प्रविधान है, इसलिए मैं इस का स्वागत करता हूँ।

श्री भूपेन्द्र नारायण मंडल (बिहार) .
उपाध्यक्ष महोदय, जो विधेयक अभी सदन के सामने प्रस्तुत है, उसको मजदूरों के हित में लाया गया है, लेकिन मालूम पड़ता है कि आज के जमाने में जहाँ समाजवाद का ढोल इतने जोर से ससार में पीटा जा रहा है और हिन्दुस्तान में भी पीटा जा रहा है उसके प्रभाव में आकर ही यह बिल लाया गया है, लेकिन ऐसा मानूँ पड़ता है कि मन में अभी तक सकोच है, पुराने संस्कार, यह संस्कार जो वर्षों से मन पर जम गये हैं अभी तक छूटे नहीं हैं। अगर ऐसी बात नहीं होती तो जिन कैटेगरी के लोगों को ग्रैचुएटी की सुविधा दी गयी है उन को छोड़कर बहुत ऐसे लोग अभी बाकी रह गए हैं जिनको यह सुविधा प्राप्त नहीं हो सकी है। जब यह बिल सेनैट कमेटी में गया था उस में, उसकी रिपोर्ट में जिन लोगों ने नोट आफ डिफेन्स दिया है, उन लोगों ने भी इस बात की तरफ ध्यान दिलाया है कि इन लोगों को भी इसके दायरे में लाना चाहिये, जैसे कि लोकल बाडीज के लोगों को लाना चाहिये, ट्रांसपोर्ट के लोगों को लाना चाहिये, काट्रेक्ट लेबर को लाना चाहिये, अस्पताल और शिक्षा संस्थाओं में काम करने वाले लोगों को लाना चाहिये, कंटीन और क्लब में काम करने वाले और कोऑपरेटिव सोसाइटीज में काम करने वाले लोगों को लाना चाहिए, धार्मिक संस्थाओं में काम कर रहे लोगों को लाना चाहिये। इनमें बहुत से लोग ऐसे हैं जो कि बहुत ही गरीब लोग हैं, इसलिये इस समाजवादी एटमासफेयर में इनका भी खयाल करके अगर यह बिल बनना तो हम समझते हैं कि अच्छा होता और मैं चाहता हूँ

कि मंत्री जी इस बात पर खयाल करें और चाहे तो नये अम्बेडगेट के जरिये में या जैसे भी जिस तरह से हो इन लोगों को इसमें लाने की कोशिश करें।

एक दूसरा दिमागी सकोच यह मालूम होता है कि कांतिनुअस सर्विस की जो डेफिनिशन दी गई है, उस डेफिनिशन से ऐसा नहीं मालूम पड़ता है कि यह सरकार जो कि समाजवाद कायम करने के ध्येय से बनी है, उस सरकार के जरिये से यह बिल ड्राफ्ट हुआ है। कांतिनुअस सर्विस के सिलसिले में कहा गया है कि किसी भी तरीके से अगर कुछ दिन के लिये उसका काम छूट जाय तो वह ब्रेकेज जो होगा, वह ब्रेकेज उसकी ग्रैचुएटी को खत्म कर देगा।

श्री बाल गोविन्द वर्मा नहीं वह नहीं है, वह नहीं रह गया है। इलीगल स्ट्राइक वाली जो बात थी वह खत्म कर दी गई है।

श्री भूपेन्द्र नारायण मंडल खैर, यह तो अच्छा किया गया है।

इसके अलावा भी और बते हैं। इस बिल में एक लिमिट दी गई है कि पांच वर्ष तक की जिनकी सर्विस होगी, वही इस ग्रैचुएटी के लाभ के अन्दर में आयेंगे, तो हम समझते हैं कि पांच वर्ष की कैद न रख करके एक वर्ष की कैद रखी जाती तो अच्छा होता। एक वर्ष जिसका पूरा हो गया है उसको ग्रैचुएटी कम मिलती लेकिन उसको भी मिलती, ऐसा रखने में कोई हर्ज नहीं था। और इसमें 15 दिन की बात कही गई है कि एक वर्ष में 15 दिन की मिनेगी, इसको भी बढ़ाना चाहिए। इनकी मांग सेनैट कमेटी में भी थी और इस हाउस में भी जितने लोग बोले हैं सभी लोगों को यह मांग है, इसलिये हम समझते हैं कि मंत्री जी को इसको अवश्य मान लेना चाहिए।

[श्री बाल गोविन्द वर्मा]

अब मुकदमा दायर करने का जो प्राविजन है उसके सम्बन्ध में यह है कि जो कानून टूटेगा और इस कानून के टूटने से जिसको तकलीफ होगी होगी वह नहीं दायर कर सकेगा, उस आदमी को हक नहीं होगा कि खुद जा कर अपनी प्रिवासेज के लिये मुकदमा कर सके, उसको सरकार के ऊपर निर्भर करना पड़ेगा या कंट्रोलर के ऊपर निर्भर करना पड़ेगा, वह जब चाहेगा तब तो केस हो सकेगा नहीं तो नहीं हो सकेगा। हमको याद है कि जो दूसरा विश्व युद्ध था उस समय में भी इसी ढंग से कोई कानून बना था कि अगर कोई पूंजीपति बगैर ब्लैकमार्केटिंग वगैरह करते थे और उनके ऊपर अगर मुकदमा लाना चाहे तो उसमें प्राविजियल गवर्नमेंट को संवर्षान को जरूरत था और उसका यह नतीजा हुआ कि कोई भी आदमी नहीं पकड़ा गया था और हम समझते हैं कि शायद वही दिमा। इसमें भी काम रहा है, नहीं तो यह प्रतिबन्ध नहीं लगना चाहिये था। जिसका प्रिवाम है वह प्रिवाम ले करके कोर्ट में जाय तो ठीक है और सरकार भी अपनी तरफ से जाये वह भी ठीक है। कंट्रोलर का तो काम ही है देखना, उसको तो जाना ही चाहिए। तो इस ढंग से यह जो प्राविजन किया गया है, इस प्राविजन में भी दबडीनी आनी चाहिए। हम समझते हैं, ऐसा करना ठीक होगा।

एक प्राविजन यह भी दिया है, जैसे कि बड़े आदमी का काम उसके नौकर के जगह से चलता है, तो अगर कोई गडबडी भी है तो उस गडबडी के लिए जिम्मेदारी जो सार्विक की है, उसकी जिम्मेदारी हटा दी गई है। उसकी जिम्मेदारी तभी होगी जबकि परमनन्ती वह दोषी पाया जाएगा। तभी उसकी जिम्मेदारी होगी नहीं तो एकचुप्रली जो उसका नौकर है उसकी जिम्मेदारी होगी, यानी जो कन्ट्रिब्यूट ल प्रबिलिटी मास्टर की होती है, प्रिन्सिपल और

एजेंट की जो लायबिलिटी होती है, उसकी वजह से जो उम पर रेस्पॉसिबिलिटी आनी चाहिए, इस बात को एक दम खत्म कर दिया गया। मैं समझता हूँ, यह अच्छा नहीं हुआ है। इस पर भी विचार करने की जरूरत है।

बस इतना कह कर मैं समाप्त करता हूँ।

SHRI U K LAKSHMANA GOWDA (Mysore) Mr Deputy Chairman, in the Statement of Objects and Reasons while introducing this Bill in December, 1971 it was clearly stated that this is brought in because as things stand there is no Central Act to regulate the payment of gratuity to industrial workers except perhaps working journalists. And that is why this Bill is being brought in. It is a well-known fact that many of the enlightened employers in major industries had already had their bilateral agreements for payment of gratuity. In South in three States the plantations are having agreements for payment of gratuity for over ten years, and in many other establishments also they are there. So it is not a question of socialism or any radical measure being thought of in bringing this Bill. This provision of retirement benefits to workers who have been working in establishments over a period of years is in vogue in capitalist countries and in socialist countries. And it is being brought in here. It covers now the establishments which have not been covered by bilateral agreements, arguments which have been arrived at between employers and employees. Two State legislations, of Kerala and Bengal, confer additional benefits and also in this Bill I find that it has been a little more liberal than the previous bilateral agreements. In so far as that is concerned, I heartily welcome this Bill. Many of my friends here have referred to the different clauses of this Bill. I certainly agree with them that the amendment which has been effected in the Lok Sabha has been a very useful one because we cannot say that continuous service could be interrupted by a strike. It can be taken into consideration for other disciplinary action, but for the sake of payment of gratuity we cannot make a cut out of that because, after all after the strike the employee, the worker, will be given work and his service has to be considered as continuous service. So that is a welcome amend-

ment which has been accepted by the Government. So far as quantum of gratuity is concerned, it has only accepted what money establishment in their agreements and the State legislations have provided, that is, half a month's wage for every completed year of service. There was some reference here that it should have been more. When the coverage is to be extended even to shops and establishments, which are covered under the Shops and Establishments Act and also various other smaller establishments which employ ten people, I think, to start with it is quite a reasonable one. So far as the limit of 20 years is concerned in the earlier agreements I have found that the limiting factor was 15 months' salary taking into consideration 30 years of a worker's service. Now it has been extended to cover 20 months so as to cover 40 years of service or less. I welcome that provision as well. So far as definition of "employee" is concerned, the point made by Mr. Vasavada and others is very well taken. When we are legislating to cover all the workers whose emoluments come upto Rs. 1,000 there is no justification for excluding the managerial and administrative sections. In many of the industrial establishments what is happening is that many of the salesmen who are given pay and, in addition to it, commission will be considered as discharging administrative or managerial duties. If you take different establishments in the country you will see that there are many people coming under this category and all these people will be debarred from getting the benefit of gratuity if this kind of restriction is sought to be imposed on them. I would, therefore, suggest that there should be some rethinking on this aspect. When we are covering people who earn upto Rs. 1,000, there is no point in making a differentiation between managerial or administrative and other people. All people who are getting upto Rs. 1,000 should be covered. The same thing has been done in the case of the Bonus Act. All those who get upto Rs. 1,600 are entitled to bonus. I join others in their plea that all these people should be covered, including managerial and administrative cadres.

I also support the other provision which says that people who were drawing less than Rs. 1,000 for a period of not less than five years should also be entitled to gratuity because otherwise there is a possibility of a

considerable section of people who have crossed over Rs. 1,000 by the time the Act is implemented and consequently they may not get the benefit of gratuity. I, therefore, welcome that provision.

There is one difficulty I find with regard to the definition. This Act covers every shop or establishment within the meaning of any law for the time being in force in relation to shops and establishments in a State, in which ten or more persons are employed, or were employed on any day of the preceding twelve months. The word 'plantation' has been defined and it has the meaning assigned to it in clause (f) of section 2 of the Plantations Labour Act, 1951. This Act defines plantation as one which employs 30 labourers or has an extent of 25 acres. This might conflict with the other definition and I would therefore request the hon. Minister to look into this particular matter because already plantations are covered under the gratuity agreements. Plantation labour will be one of the beneficiaries of these additional benefits which are available under this Act.

There were many references to the malpractices of the employers. It was said that they will take advantage of the temporary nature of the employees and will resort to unfair labour practices by discharging the employees before 5 years. Some employers may be there like that. We should take into account how some of the gratuity agreements have been working in many establishments. Knowing as I do something about plantation industry, I can say that from 1960 we had three agreements so far and all the three have been working very satisfactorily. There are trade union leaders here from the South and they will vouch that there has been no difficulty in the South with regard to these agreements. Of course there might be some difficulties which are there also in the case of Employees Provident Fund Scheme. I heard that in the coal mines this has not been working satisfactorily and there are huge arrears. But it is not the case in many other industries. So, we cannot say that all the employers in the country are defaulters. That is one point. Now I would like to pose another point. So far as plantations and some other industries are concerned where unskilled labourers are employed,

there is lot of migratory labour. The eligibility of the gratuity benefit being for 5 years service, there is quite a possibility for further migration taking place. In the agreements which are already in existence, a seven-year period has been fixed and even then we find that immediately after seven years people would like to claim gratuity and take the money and go to other establishments and, if it is reduced to five years, this will definitely increase. So in the bilateral agreements what has been provided is that a certain percentage of the people every year are allowed to claim gratuity and this has been accepted by the trade unions and the employers. In the case of plantations, 7 per cent has been accepted and, if it is a genuine case, if it is possible, more than 7 percent of the people are allowed to take their gratuity. Otherwise, what will happen? I will give you an instance. Suppose an establishment has 100 workers which is a small establishment. Then, 50 per cent of the people or 50 people, after five years of service, give notice and ask for gratuity payment and under the law, they are obliged to pay. But, Sir, what about the difficulties of such establishments? Can they afford it? So, this matter has to be looked into. I cannot say in what way you can do it and also I do not know whether in a Central legislation you can prescribe any percentage of people, percentage of the total establishment, who will be eligible for gratuity annually. This has been accepted, to my knowledge, in many of the bilateral agreements which have been arrived at between the trade unions and the employers. This is another matter which has to be looked into very carefully.

Sir, there is another point. I agree with my other honourable friends when they said that it is better to have this gratuity funded and brought under a trust rather than leave it to the individual employers. At present, things might be working satisfactorily in some establishments. But, when it becomes a Central law and covers more establishments than what are covered under the agreements and the State legislation, we might find difficulties. As has been pointed out here, if an establishment incurs a loss, then the collection of the gratuity becomes very difficult and also, Sir, if it is brought under a trust like the Employees' Provident Fund Trust, transfers can be made. As I have

mentioned, in the case of migratory labour, when they want to change over to another establishment from the one where they have put in five years of service, we can transfer the gratuity also from the trust as it is done in the case of the Employees' Provident Fund. Otherwise, what will happen is that they will have to give notice of resignation and take the gratuity and join another establishment. In practice, what is happening is that many people claim their gratuity and provident fund and come back and work in the same establishment. These are the practical difficulties which have to be looked into very carefully at the stage when rules would be framed.

Then, Sir, so far as the clause which relates to the serious misconduct and the matter arising out of any damage or loss of or destruction to property, I think it is very reasonable to retain this clause. Nobody would say that in the case of minor misconduct, a person should forfeit a part of his gratuity. But when it is a question of riotous behaviour and damage to property and all that, I think a certain amount of deterrent is necessary and I am glad that the hon. Minister, speaking in the other House, has referred to that point and I do not think it will interfere so much with the benefits accruing to the labour in normal cases.

Then, Sir, there is yet another difficulty about the claiming of gratuity by the person who tenders his resignation or when his service is terminated. If his services are terminated, straightaway it can be done and the employer will be able to pay. But, in the case of voluntary resignations and the claims made by the worker, at present, it is working very smoothly where there are bilateral agreements, because, as soon as he decides to go, he will give his resignation and then demand his gratuity and the claim will be settled straightaway. In this provision what happens in the case of gratuity is that he has to give notice to the employer and the employer has to write also to the controlling authority. The employer normally, after this Bill is passed into an Act, will not make immediate payment because he will be apprehending that there may be some dispute about the quantum of gratuity. I think, Sir, in the Rules some simplification measures should be found so as to simplify

the formalities like the filling up of the various forms etc. and also for the controlling authority making immediate arrangement for the payment of gratuity. Otherwise the worker will be put into a lot of difficulty, because, I know, as in the case of provident fund, if there is any dispute the provident fund officer has to take up the case before the court. And we know how the Inspectorate and others function. So I suggest that the hon. Minister should try to look into this matter and see how best this can be simplified, when these rules are framed, to provide for immediate payment of the gratuity. (Time bell rings) and settlement of claims.

Sir, I have nothing else to add, except that in so far as it covers additional benefit on the establishments which are not covered by this Act till now, I welcome this Bill, and I hope this will be effectively implemented.

MR DEPUTY CHAIRMAN Mr Chandrasekharan

SHRI K. CHANDRASEKHARAN (Kerala) Mr Deputy Chairman, Sir, it is good that a labour legislation of this nature is brought by the Central Government at least in the 25th year of our independence. Sir, it has already been stated by hon. Members—most of them leaders in the Trade Union field—who have preceded me that several of the purposes sought to be achieved by this legislation have already been achieved at least in part in certain sectors by virtue of bilateral agreements and in certain States by State legislations also. For example, in my State of Kerala, the legislation of this nature was introduced in the Kerala Legislative Assembly and passed some time in 1968.

Sir, this legislation does not cover all the industrial and commercial establishments in the country. This legislation also does not cover all the workers who would be subjected to termination of their services—voluntary or non voluntary—in respect of their establishments it seeks to cover. In regard to the first aspect, it has already been emphasized by hon. Members who have spoken earlier that it should be the approach of the Central Government to

see that more and more establishments, where employees are there, are given the benefit of this progressive legislation. But so far as the second aspect is concerned, it is surprising Sir, that the exact meaning and content of 'gratuity' has not been recognized by the provisions of this Bill, by enabling the benefits of this legislation being given to all employees who are subjected to any type of termination of their services.

Sir, we have got to take note of the fact that ours is a country where it is in very, very few sectors that we have been able to pay a living wage to our employees. And, therefore, it is that most of the payments like gratuity, bonus or even provident fund, are all treated in a sense as deferred wages. Sir, I thought that the hon. Minister, in the course of his speech, particularly in the absence of a definition in regard to the term "gratuity" in the Bill, would tell this House as to what exactly "gratuity" is. So far as the Government speaks, what exactly is the content of gratuity? If only we know what exactly gratuity means and what exactly gratuity contains, we can have a provision of the nature contained in clause 4 in regard to payment of gratuity properly and reasonably made. As early as 1961 the Supreme Court had stated or rather asked the question as to why gratuity payable to an employee who has been there for, say, 20 years in service and whose services are ultimately terminated, may be on account of misconduct should not be paid the amount of gratuity that is his due. It has always been the criticism that the Supreme Court has been making unprogressive judgments—I am not going into that controversial question—but may I ask the Government as to whether the question that was posed by the Supreme Court in its judgment as early as in 1961 was not a progressive enough one and if the Supreme Court had made a progressive suggestion, is it not unprogressive on the part of the Central Government to say that that suggestion would not be incorporated in the provisions of this Bill? The provisions of clause 4, therefore, are unsatisfactory and inadequate, and the loopholes contained in clause 4 in so far as payment of gratuity is concerned, should be plugged and gratuity should be made available to every worker whose services are terminated on account of any reason because, after all, in this country where the

[Shri K. Chandrasekharan]

living wage is not paid we have got to look at gratuity also as something in the nature of a deferred wage.

In clause 3, controlling authorities are mentioned. The State Government and the Central Government are to appoint these controlling authorities. It has been the bane of labour legislation and the working and implementation of labour legislation in the States that the officers in charge of the Labour Department have been somehow incompetent to work out the details and benefits of this legislation to the class of employees which this legislation was attempting to serve. Therefore, I would particularly appeal to the Central Government to give the necessary instructions and advice in this regard to the State Governments in the matter of appointment of controlling authorities as contemplated in clause 3.

Then there are two provisions again in clause 4, one contained in sub clause (2) which states that an employee is entitled to gratuity at the rate of 15 days' wages and another contained in sub clause (3) to the effect that the total amount of gratuity shall not exceed 20 months' wages. I do appreciate and understand the difficulty, particularly of small employers to pay gratuity in bulk at the time gratuity is contemplated to be paid by the provisions of this legislation. But then, if a provision is made that gratuity would be payable in instalments, say, at the end of five years or at the end of ten years or at the end of 15 years of service, the difficulty that is sought to be resolved by sub clause (3) of clause 4 in the matter of limiting of the amount of gratuity to 20 months' wages may not arise at all.

In sub clause (5) of clause 4, the provision is to the effect that in spite of the provisions of this Bill an employee will be entitled to receive better terms of gratuity if there is a contract or an agreement to this effect. It is surprising, Sir, that the rates of gratuity provided by this legislation are extremely low and the provision contained in sub clause (5) of clause 4 is apologetic of that fact and in recognition of that truth.

Sir, in the matter of implementation of labour laws and the grant of benefits to the employees it is not as if the private sector in this country alone is at fault. The public sector in this country, the managements of the public sector industries in this country, which ought to show guidance to the private sector have themselves not really acted in that spirit. The bureaucratically inclined and feudal minded managements of our public sector industries have really done more damage to the labour laws and to the employees who are to be benefited by such laws, than even some of the private sector agencies. It is time, Sir, that Government looks into this matter and sees that such type of discrimination is not practised by at least the managements of our public sector industries.

Sir, the power contained in clause 5 for giving exemption is rather of a sweeping nature and the State Government or the Central Government is taking rather arbitrary powers by virtue of clause 5 for the purpose of giving exemption by notifications that may be issued as contemplated by clause 5.

Again in clause 7 and in the various sub clauses of clause 7 the disputes in regard to the amount of gratuity that may be payable ultimately to the employee and the determination of such gratuity are referred to in detail and I find, Sir, that the procedure that is to be adopted is the procedure that is contained in the Code of Civil Procedure and the proceedings are treated as judicial proceedings and further the decision of the authority concerned is subject to appeal to the Central Government by any party aggrieved. I have no doubt to submit that on a reading of the various sub clauses of clause 7 the provisions of the Payment of Gratuity Bill would create a paradise for the practising lawyer and would give rise to large litigation. Sir, the Supreme Court today, particularly during the last two or three years is flooded if I may say so, with industrial and labour litigation. Most of our industrial awards are being subjected to appeal in the Supreme Court and today the largest sector of litigation in the Supreme Court is probably in the industrial and labour sector. The provisions of clause 7

would lead to unnecessary litigation and inordinate delay in the computation and determination of gratuity and the ultimate payment thereof so that ultimately the employee would feel that it would have been far the better for the employee if there was not this Payment of Gratuity Bill at all and he would have been better off with his trade union leaders and the bilateral agreements that had been there during the last five or ten years.

Sir, I conclude with the statement that under clause 15 (2) subordinate legislation is contemplated by this measure. When ultimately enacted rules are to be framed by the Central Government or by the State Governments as the case may be. The rules made by the Central Government are naturally to be placed before the House of Parliament. I do not find any provision in regard to the rules that would be framed by the State Governments. The notifications in regard to rules that would be issued by the State Governments are not subjected to any scrutiny either by Parliament or by the State Legislatures concerned, and I have no doubt to submit that under such circumstances, when such sweeping powers are given to the Central Government by virtue of Clause 15 (1), the State Governments are likely to enact rules in an arbitrary and discriminatory manner and in a manner which may go outside the very scope of this legislation.

Thank you, Sir.

SHRI JAGAN NATH BHARDWAJ: (Himachal Pradesh): Mr. Deputy Chairman, Sir, I welcome this Bill but I have to point out the following points about this. The first thing is, looking at the fate of the Provident Fund I am constrained to fear that the workmen will find the same difficulty in this matter of payment of gratuity as we find in the matter of payment of Provident Fund. Recently, in some meeting, when we were discussing the Provident Fund accumulations, it was said that there were about 10 lakhs of accounts in the coalmines and that actually there were about 3 lakhs of workers, something like that. So, this means that the ratio between the workmen and the accounts is 1 and more than 3. This means that there were a lot of closed accounts of the work-

men who had gone to their places but they were never paid their Provident Fund dues. I am afraid the same state will happen in the case of this gratuity also. Now, analysing the reasons for this, I am led to think that from the start we move in a haphazard manner and we do not care to collect the funds in a very proper and businesslike manner. First we go on giving concessions, we sleep over things, and when they become a bit sore, then we think about it and move hither and thither. So my suggestion will be that it will be better that we give a start to a correct scheme in a very businesslike manner and in a very strict manner too. For this my suggestion is as was pointed out by Shrimati Sita Devi also, that there should be a separate fund for gratuity and as and when any worker becomes entitled to gratuity after a year, the amount should be deposited in that fund, and that fund should not remain with the employer and he should not be in a position to make use of that fund except that he may get interest for it. But it should be placed in the bank. If the employer has a sufficient amount at his control to pay the gratuity, then this litigation and other difficulties won't arise. So my first suggestion is this that there should be a separate account and it should be in the bank and it should be a statutory obligation of the employer to pay the collected money into that account.

Now my second point, Deputy Chairman, Sir, is that casual labour should also be paid gratuity. Now even the practice is that if any casual labour is sent out of service, he will get the retirement benefits in which the benefit of gratuity is included. In the same way here also casual labour should not be debarred from receiving gratuity. They should also be paid gratuity like the regular employees.

My third point, Sir, is that the number of workers should not be "10 or more persons". It should be even one. Any employee who does not get the benefit of pension should get the benefit of gratuity. There should not be any discrimination that he is a worker under the Factories Act or the Trade Unions Act. Anyone who takes work, or any department or any institution or any establishment or any individual who takes work from another individual, he should be liable to pay gratuity to the one

[Shri Jagan Nath Bhurdwaj]

whom he employs. So in this way there won't be any discrimination and there will be greater social security.

My fourth point is in reference to the amount of gratuity. I have heard my friend saying that the amount of gratuity is small. I think at this stage we should not bother about these things. In the present climate if the workers ask for more gratuity, that will be a burden on the industry. Industry, at this stage, needs the protection of workmen. So, as good citizens of the country, the workers should see first that all the labour laws work in proper shape and later on when the industrial climate improves, they can ask for more things. At present gratuity at the rate of 15 days pay is enough, provided this amount is properly and without hesitation paid to the workman at the time of his retirement or on termination of service. This is all that I have to submit.

SHRI N. H. KUMBHARE (Maharashtra) Mr Deputy Chairman, Sir, I welcome this Bill, but rightly or wrongly my impression is that the Bill is not properly drafted. It has always been the grievance of workers that because the labour laws are not perfect, they have to face a lot of litigation in courts. Those who are concerned with trade unions and those who are appearing for workers in labour courts know that, during the last ten or fifteen years, there have been objections by employers in courts on every point. Take the definition of 'workman'. It is challenged on the ground that the worker concerned is not subject to supervision and hence he cannot said to be employed. Then, take the definition of 'employer'. The party concerned says that he is not the employer and brings in an intermediary to show that he is an employer. So, at every point and on every count there is a dispute. I thought that after about fifteen years of experience, it would have been possible for us to have a piece of legislation perfect in all respects. As I have already said, my impression is that this Bill has not been properly drafted. I would just enumerate a few instances. In the first place, it has been said "In relation to an establishment belonging to or under the control of the Central Government..." In a case where an industry has got two establishments in two States, the Central

Government will be the appropriate Government. However at the time of enforcement of the Act there are two establishments, but later on one of them closes down. What would be the position? I would like to know whether, in respect of that establishment, the State Government will be the appropriate Government or the Central Government will be the appropriate Government. There is no suitable provision to that effect. This need be examined and a suitable amendment made, so that a controversy may not arise and workers may not lose only on the technical ground there is no appropriate Government.

Then, my second suggestion is this. We have got now what could be called a standard scheme of gratuity. According to this scheme, the number of days for which the payment should be made varies. In the case of a worker who retires on his own accord, he is paid gratuity at the rate of 15 days wage for each year of service. In the case of a worker whose services are terminated, he gets gratuity at the rate of 21 days wage for each year of service. In the case of one who ceases to be an employee on his attaining the age of superannuation, he gets gratuity equivalent to one month's earnings.

4 P. M.

Such a standard gratuity scheme are being adopted. Therefore, I have not been able to understand why such a standard gratuity scheme could not find a place, and got incorporated in this Bill. Therefore, it is possible at this stage, such a standard gratuity scheme should be incorporated so that worker will get a higher gratuity depending on made of leave the employment. Here a concern has been expressed, and rightly so, that there will be always difficulty of getting the amount of gratuity. In many cases where the industries are closed on account of losses, there the workers find it very difficult to get the amount of gratuity because the employers will say, "I have no money, my establishment has gone into liquidation, from where should I pay?" That has been the case where the factories have been closed on account of uneconomic working. Even though the worker becomes entitled for payment of gratuity, the poor worker does not get a single naya paisa.

from the employer. Therefore, it is now very desirable to make such a provision whereby the payment of the amount of gratuity could be ensured. Therefore, I have a suggestion to make. Suppose an employer has got 100 workers and for every worker he has to pay equivalent of 15 days wages as gratuity, then every year he must set apart that much amount for 100 workers. The employer be statutorily compelled to build what should be called a Gratuity Reserve Fund, and it would be very easy for the employer also because when he is required to pay, that will entail a big burden, and in a case at a time after the closure of undertaking a factory employs 500 workers and the same is closed, from where he will get the amount? But if that amount is built up bit by bit, that will not entail a big burden on him, and the possibility of the workers being deprived of their legitimate earning would be removed. This will also avoid disputes.

My another difficulty is that there are unscrupulous employers who do not want to pay. They know there is the right of the workers. They know that they are liable to pay. But they do not pay. There are a number of instances. We have got such type of people in our country. They do not want to pay. They say, "All right, you file a claim". The matter will go on for a year or two and they will be able to utilise that amount for their own purpose. There is a provision under the Minimum Wages Act. Under that Act where an employer does not pay the wages when they are due in that case the worker is required to make an application to the concerned authority for recovery of the wages. In that case the worker is paid the wages which are payable to him. Besides this the authority is competent to pay him compensation which may be to the extent of ten times the amount due, by which the employer is made to realise that by withholding this amount he will not only have to pay the amount due but he will also be required to pay much more, then only the employer could be compelled to settle the claim.

Then there is another provision in the Bill by which the controlling authority, which is appointed under the Act, will issue a certificate to the revenue authority. My experience is when such a recovery goes to

the revenue authority, he takes years, and therefore we have got a provision in the Minimum Wages Act under which any amount that is recoverable from the employer has to be recovered as a fine imposed by a magistrate.

If an unscrupulous employer does not pay, the amount it ought to be recovered as an amount of fine imposed by the magistrate. My experience is that whenever such a matter of recovery goes to the magistrate the sub-inspector is issued a warrant of recovery and the moment the sub-inspector goes to the doors of the employer the employer comes out and pays it. What is the hitch in making this provision, especially as it will facilitate the recovery of the amount which is really due to the employee. It is necessary that we should pay him the amount due immediately. Therefore, it is very desirable to make such a provision by which the employer should be made to pay. If he does not pay, he will be in troubled waters.

Then there is another difficulty likely to be created. My request to the hon. Minister is to keep a note of it. There is no provision as to the liability to pay the gratuity in case of a transfer of an undertaking. This eventuality has not been provided for. Suppose the industry is transferred and the worker's service is not dispensed with nor terminated nor he has resigned. He does not become entitled to gratuity. But suppose the amount is required to pay after years then who will pay? Transferor or Transferee. This is not made clear. By that time the earlier employer disappears from the scene. From where will you recover the amount? That is, according to me, is the greatest loophole in this Bill which ought to be seen and a suitable amendment made.

SHRI DWIJENDRALAL SEN GUPTA :
Sir, prior to this Bill we had two enactments on gratuity passed by two States, Kerala and West Bengal. But what I find from this Bill is, far from advancing the cause, it has very much retarded the cause. About the so-called reactionary Supreme Court decisions passed, I have with me relevant extracts from the different decisions of the Supreme Court. I will read those portions for the consumption of this House at the appropriate stage. But what strikes me most is this. Clause 1(2) says —

[Shri Dwijendra'al Sen Gupta]

"Provided that in so far as it relates to plantations or ports, it shall not extend to the State of Jammu and Kashmir "

May I know from the Government whether there is any port in Jammu and Kashmir ? What a strange thing it is ! It is for the first time that I am hearing that there is a port in Jammu and Kashmir . If there is plantation there why should it be excluded at all ? Are not the workers of plantation in Jammu and Kashmir as much workers as those in other parts of India, in West Bengal or in Assam ?

SHRI N G GORAY They will bring in another legislation to extend it

SHRI DWIJENDRALAL SEN GUPTA It has two aspects . If Jammu and Kashmir had been excluded for all types of workers, that is something understandable " Plantations or ports of Jammu and Kashmir " Only are excluded . There is no port in Jammu and Kashmir . Therefore what remains is the plantation . Why is the plantation labour there excluded from the benefit of gratuity ? Mr Deputy Chairman I was drawing your attention to another retrograde step . Here an "employee" has been given a meaning . What will be its scope vis a vis the Industrial Disputes Act ? Here not getting more than Rs 1 000 will be deemed to be an employee . So a man getting more than Rs 1 000 will not be covered by this Act . Under the Industrial Disputes Act workmen have four categories, manual, clerical, technical and supervisory . In respect of manual or clerical or technical workman there was no salary bar . A technical worker getting Rs, 2,000 a clerical staff getting Rs 2,000 or a manual worker getting any amount could become a workman . Only in respect of a supervisory worker the limitation is Rs 5,00 per Month . The managerial and administrative staff are also not workmen . Now a clerk or a technical worker or a manual worker will have limit up to the extent of Rs 1,000 for the purpose of gratuity and nobody getting more than Rs 1000 will be entitled to it . This is another retrograde step which formerly no court including the Supreme Court, allowed to be

Another thing, Mr Deputy Chairman, which is very serious is in clause 2, Explan-

nation I. To qualify for the gratuity a man must work for 240 days . Actually, Sir, you cannot have 240 working days in a year even by ordinary calculation . There are 52 Sundays . There is 30 days' privilege leave, 10 days casual leave, 30 days sick leave, 4 days festival holidays prevalent in many concerns . Thus 122 days are gone out of 365 days . So a man's maximum working days are 243 . Deduct from this the paid festival holidays allowed by the different companies at varying rates . According to this Explanation unless a man works for 240 days he will not get his gratuity for that year . If a man is sick on half pay he is not entitled to gratuity for that year, There are concerns where the casual leave is 14 days . Therefore, it is very difficult for me to understand the meaning of 240 days . It may very well deprive many of the workmen of the benefits of gratuity

Now, Mr Deputy Chairman, you will find sections (a) and (b) of sub-clause (6) of clause 4 on page 5 . So far as section (a) is concerned there is sanction of law according to the Supreme Court decision . It says :

"(a) the gratuity of an employee, whose services have been terminated for any act, wilful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer, shall be forfeited to the extent of the damage or loss so caused".

But so far as clause 4(6) (b) is concerned, it is something novel . The Supreme Court has in so many words condemned it . What was condemned by the so called reactionary judges of the Supreme Court has been incorporated into law by the socialist Government sitting here . It says

"(b) the gratuity payable to an employee shall be wholly forfeited—

(i) if the services of such employee have been terminated for his riotous or disorderly conduct or any other act of violence on his part, or

(ii) if the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment".

Mr. Deputy Chairman, Sir, here at this stage I should place before this House for consideration as well as for the consideration of the Government whether they will give a second thought and withdraw this sub-clause (b). I shall now read from the 1961 Labour Law Journal, page 513 at pages 516 5-17, the Supreme Court decision in the Garment Cleaning Works case, given by Mr. Justice Gajendragadkar and Mr. Justice Wanchoo. The judgment was delivered by Mr Justice Gajendragadkar. They said .

"On principle, if gratuity is earned by an employee for long and meritorious service, it is difficult to understand why the benefit thus earned by long and meritorious service should not be available to the employee even though at the end of his service period, he may have been found guilty of misconduct which entails his dismissal. Gratuity is not paid to the employee gratuitously or merely as a matter of boon. It is paid to him for the service rendered by him to the employer and when it is once earned, it is difficult to understand why it should necessarily be denied to him whatever may be the nature of misconduct for his dismissal.

If the misconduct for which the service of an employee is terminated has caused financial loss to the workers, then before gratuity could be paid to the employee, the employee is called upon to compensate the employer for the whole of the financial loss caused by his misconduct, and after this compensation is paid to the employer, the balance, if any, from the gratuity claimed by the employee is paid to him".

(Time bell rings)

Sir, others spoke uninterrupted.

MR. DEPUTY CHAIRMAN : You have also spoken for 10 minutes.

SHRI DWIJENDRALAL SEN GUPTA
So far as part (a) is concerned, I have accepted it. But so far as part (b) is concerned, you have got to drop it. Mr Deputy Chairman, this judgement was repeated in several cases, in the Motipur

Zamindari case, in the Greaves Cotton Company case and in the Hindustan Times Limited case. I shall read only a portion from the Hindustan Times Limited case. This judgement was given by four judges, Mr. Justice Gajendragadkar, Mr Justice Wanchoo, Mr, Justice K. C. Das Gupta, and Mr Justice J. C. Shah, and has been reported in the 1963 Labour Law Journal page 108 at page 118. They said :

"One provision in the gratuity scheme which ought to be mentioned is that under it an employee who is dismissed for misconduct shall not be entitled to any gratuity. It has been pointed out by this Court in more than one case that having regard to the nature of gratuity, it will not be proper to deprive an employee of this gratuity earned by him because of his dismissal for misconduct, and the proper provision to make in this connection is that where an employee is dismissed for misconduct which has resulted in financial loss to the employer, the amount lost should be deducted from the amount of gratuity due".

"As, however, in the present case, the workmen have not appealed against the award as regards the Gratuity Scheme framed by the Tribunal, it will not be proper for us to make the modification as indicated above".

Here there was no appeal by the workmen. But still the Supreme Court made this observation. Now there is no time. I have got a large number of amendments. If you permit me now, then I shall not read them at the time of moving the amendments, because the whole purpose will be served.

In the Greaves Cotton and Company 1964 LL. p 342 at p. 351, Mr. Justice Wanchoo, Mr Justice Gajendragadkar and Mr Justice Das Gupta formed the Bench and Mr Justice Wanchoo delivered the judgment saying :

"Lastly, we come to the question of gratuity. The attack in this connection is on two aspects of the Gratuity Scheme. The first is about fixation of 20 months as the maximum instead of 15 months which was usual so far. The

[Shri Dwijendralal Sen Gupta]

second is with respect to deducting from gratuity only to the extent of the financial loss occasioned by misconduct in case of dismissal for misconduct. So far as the second provision is concerned, it cannot be disputed that this is the usual provision that is being made in that region. So far as the increase in the maximum from 15 months to 20 months is concerned, it appears that the Tribunal has relied on a number of cases in which the maximum is higher than 15 months wages. In these circumstances, considering that Tribunals have now begun to give a higher ceiling and in the concern, namely, Mackinnon Mackenzie, the ceiling has been fixed even so high as 30 months by agreement, we do not think that any interference is called for in the present case".

In Burhampur 1965 1 LLJ 452, Mr. Justice Gajendragadkar and Mr. Justice Hidayatullah observed on the same lines. I do not like to read it out and take your time. In the case of Bengal Chemicals a similar view was held that when a man is dismissed for misconduct, when there is no financial loss to the company, he should be entitled to full gratuity. Now I have another small point to point out. I have also given an amendment on that question, namely, the clause on penalty. Here in the Bill as is before us, six months jail or Rs. 1000 fine or both has been prescribed for non-payment of gratuity. A man who gets Rs. 20000, i.e., 80 months' wage, who gets bonus—that is, the maximum—Rs. 1000 is the fine prescribed for default. But we find that a man can evade payment of this Rs. 20000 just by paying a fine of Rs. 1000. I am showing you how things happen. There is a similar provision in the Industrial Disputes Act. Even when an award is not implemented, six months jail or Rs. 1000 fine : that is the provision. Here is a report from Hindustan Standard of Wednesday August 2, 1972—very recent—on the second page of it :—

"Convicted for violating industrial award :

The Binani Optical Industries at Bowbazar Street, Central Calcutta, and its partner and manager, Babulal Binani, were sentenced to pay a fine of Rs. 1000 each in default one month's

simple imprisonment by Mr. R. P. Choudhury, Presidency Magistrate, Calcutta, on their conviction under the industrial Disputes Act for failing to reinstate Mohammad Fakraddin, a worker of the firm, and to pay his six months' wage arrears in violation of an award, passed by the Seventh Industrial Tribunal in September, 1968. The Tribunal award was to the effect that the worker should be reinstated and his arrear wages for six months should be paid to him within a month after the publication of the award in the Calcutta Gazette. The entire amount of fine of Rs. 2000, if realised, was ordered to be paid to the worker. The accused paid the fine."

In 1968 there was an award. The man was ordered to be reinstated from a back date i.e., with back wages. Between 1968 and 1972 the employer did nothing. The matter was taken before the Magistrate who find the recalcitrant employer to the extent of Rs. 2,000/-. The Magistrate also ordered that this money when realised should be paid to the worker. The employer at once paid Rs. 2,000/-. This is how things happen. So, they are not afraid of paying fine. But they are afraid of going to jail. Just imagine how this sum of Rs. 2,000/- would be a compensation for the whole situation that developed, because since 1968 or earlier he was out of the job. Sir, you are a Socialist yourself. You are now sitting there. This is a matter which has got to be appreciated. I have given an amendment making jail compulsory for the defaulting employers. It is not jail or fine, but jail and fine.

SHRI NAND KISHORE BHATT (Madhya Pradesh) : Mr. Deputy Chairman, though belated this is a welcome measure and I compliment the Government for bringing this Bill.

Sir, the working class in this country has been agitating for years for the payment of gratuity and it augurs well that in this year of Silver Jubilee of our Independence the Bill has come up before us.

Sir, gratuity is not a reward. As a matter of fact it is payment to labour for past services. We find that in most of the industries there is a system of payment of gratuity

in addition to the benefits which the employees get such as Provident Fund. In some cases it is half month's basic wages for every completed year of service and in some other cases it is one month's salary for every completed year of service after retirement. The Bill provides that the gratuity should be paid on basic wages and Dearness Allowance. In our country for the last almost 30 years, workers have been getting bonus. Bonus has become part of their wages. I would, therefore, humbly submit that in the matter of payment of gratuity, bonus amount should also be taken into account. In other words, gratuity should be paid on the total wages an employee or worker earns.

The Bill provides that in order to be eligible for gratuity, the minimum completed service should be for five years. I feel that this period should be reduced to three years because in a number of cases workers change jobs or go out in search of better employment. If the minimum completed period is fixed at 5 years, a good number of workers may not be in a position to claim gratuity. Therefore it would be appropriate that the entitlement period should be reduced from five years to three years. Workers have been experiencing great difficulties in the matter of payment of either provident fund or gratuity. The payment procedure or method should, therefore, be simplified. The present process is very cumbersome and sometimes, for years together the worker or the employee is kept waiting for the payment of his claims. Therefore, Sir, it would be appropriate to keep in mind the experience we have of the working of the Employee's Provident Fund Scheme or the ESI Scheme. There are huge arrears and the Government is finding it difficult to get back accumulated arrears and they have to prosecute them or take such drastic measures as they think necessary and I am doubtful whether such things will not happen in this case. So, in order to avoid such eventualities, there should be some sort of a Fund where this money should go month by month and it should be managed by the representatives of the workers, the representatives of the Government and also, you can include the representatives of the management, because only under this system the payment to a worker will become easy and the whole process will be simplified and he will not

have to go from door to door and from pillar to post to get his claims settled.

Sir, clause 4(6) pertains to forfeiture of gratuity. Sir this provision is against the well-established principles governing the subject. Inclusion of the forfeiture clause will be against the interests of the workers and also the general public and I would very humbly suggest that this clause be deleted.

Sir, there is another clause with regard to offences. I am referring to clause 9, I mean, the penalty clause. This clause provides for imprisonment for the offence of non-payment of gratuity. Clause 11 provides that no court shall take cognisance of the offence except under the authority of the Government. There is a strongly feeling, that prior sanction for prosecution of the offence of non payment of gratuity should not be insisted upon. This penal provision is almost a coercive step for the recovery of the dues and the matter is essentially one between the management and the employee, and there is no justification for the Government to come in between.

Sir, a worker out of employment should be given full freedom to take such steps as may appear to him most expedient and effective for the recovery of the dues. He will not have the capacity to go about here and there, go to the portals of the Secretariat for the settlement of his claims.

Sir, much has been said about the public sector by my friends on the other side of the House. Sir public sector is something which has become a matter of faith for us and there is a section in our society which has become very critical of the public sector. There was a time when all our laws were not properly implemented by the public sector. But, Sir, today, the public sector everywhere has become a model employer and whether it is in respect of Provident Fund or it is in respect of payment of bonus they are being treated like rest of the employers and I am sure that on the question of payment of gratuity also they will not lag behind and they will set an example to other employers in this country.

Now, I am coming to the last point and it is about the coverage of gratuity in indus-

tries. This Bill provides for a scheme for the payment of gratuity to employees in factories, mines, oil fields, plantations and several other establishments. There should not be any discrimination in this respect and so, we should include all the industrial establishments, whether under the Central sector or under the State sector. I do appreciate the difficulties which the Government has. But, Sir, I hope the Government will take due note of the protests which they have been getting from all sections of the House that they should take steps to cover as early as possible all the workers employed in all the industries, whether they are under the Central Government or under the State Governments. Thank you, Sir.

SHRI D. THENGARI (Uttar Pradesh). Mr. Deputy Chairman, Sir, firstly, regarding the beneficiaries of this piece of legislation, I would say that the Government is well aware that the definition of the term "workman" needs to be redrafted. But, Sir, I may go a step further and say that the very structural pattern of our industrial laws needs to be altered. I know that the Government is contemplating redefining the term "workman" so as to include probably employees of hotels and educational institutions, etc. Sir, it is a welcome gesture. But, at the same time, it will not be adequate. It is necessary to redefine the term "industry" itself. "Industry" should be redefined as "any activity in which employer-employee relationship persists". There should be no ambiguity about it. Whatever be the nature or type of activity, wherever employer-employee relationship persists that should be defined as 'industry'. So I should like to request the Government that they should re-consider whether our importing the entire structure of industrial law from the West is adequate so far as our requirements are concerned, or whether it would be better if, in view of the peculiar conditions obtaining in our country, we think of replacing the Industrial Disputes Act by 'Employee Relations Act' by defining 'industry' as any activity in which employer-employee relationship persists. Anyway, so far as this particular measure is concerned we should like to insist that every wage earner, to whichever sector he belongs—or even domestic—, every wage-earner, should be given the right to gratuity.

Secondly, Sir, "gratuity" should have been defined. It should have been specifically stated that gratuity is for the past services. In that case, it is obvious that section 4, sub-section (6) would not have been there. Merely for disorderly conduct or any other act of violence on his part or for moral turpitude, his gratuity should not be forfeited. He can be proceeded against in an appropriate court for any moral turpitude or any offence on his part. But it is a general rule, it is a general law, that no one should be punished twice for the same offence. And, therefore, while separate action can be taken against him for moral turpitude, his gratuity should not be forfeited, because it would be second punishment for the same offence.

Then, Sir, gratuity or arrears of gratuity should be treated as a prior charge before all other payments are made.

Gratuity is prescribed at the rate of 15 days. It should be enhanced at least to the rate of 30 days.

There should be no ceiling on the payment of gratuity payable to an employee. The ceiling of 20 months prescribed by this measure should be done away with.

Regarding the administration of this Act, we should like that workers should be allowed to participate in the administration of this Act.

Another point I would like to raise at this juncture is that we have all along been demanding that there should be an integrated socialist security scheme. Now, the Government has also appreciated our view point. But we do not know why piecemeal measures are being brought every now and then. I would again urge upon the Government that an integrated social security scheme should be organised and a comprehensive Bill brought to that effect. And in that case, workers representatives should be allowed to participate in the administration of an integrated social security scheme also. But so long as that is not done, at least in the administration of this Act, workers' representatives should be associated.

Then, Sir, not only Government officials but the affected individual workers, or even the trade union, should be authorised to lodge a complaint in this behalf

I also endorse the view that so far as penalties to defaulting employers are concerned, it should be imprisonment and fine not imprisonment or fine.

Thank you

MR. DEPUTY CHAIRMAN : Mr. Trivedi.

SHRI H. M. TRIVEDI (Gujarat) : I would like to confine my remarks only to labour employed in ports

First and foremost, Sir, in Section 1 (3) of the Act, it says : "It shall apply to (a) every factory, mine oil field, port and railway company. "I would suggest that put a comma after port and leave out the word "and". When you come to labour which is employed in ports, you would find that a major port is defined as one which is governed by clause 8 of section 3 of the Indian Ports Act. Again when you think of the appropriate authority in relation to a major port it is defined in the case of major ports as the Central Government. The Act is also supposed to apply to intermediary and minor ports in which case the administration belongs to the State Government and the appropriate authority is then defined as the State Government. Now, Sir, if this Act is in fact going to apply in this manner, the major port authorities—although the appropriate authority in relation to major ports may to the Central Government—in fact, are independently working as autonomous units created by statutes. The kind of labour which is employed in ports is of two kinds—the one is the shore labour which is engaged in the handling of goods either prior to shipment or subsequent to discharge and the other labour is the one that is employed by individual stevedores who work for ships or the ship-owners. They are under the control of the Port Trust or the port authority which is created by statute—they are in fact wholly under their control. Now, Sir, if you look at the scheme of this Bill, I only wish to be clear as to whose liability it is to pay the

gratuity in the case of shore labour and whose liability it is to pay gratuity in the case of stevedore labour

While going through the scheme, I find that in the definition of the 'employer' you have three definitions in relation to the controlling authority. Now, Sir, I suggest that the Port Trust created by Statute is not an authority appointed by the appropriate Government. Therefore, I am not so sure whether in relation to the shore labour the liability of payment of gratuity belongs directly to the Central Government or to the Port Trust. Unless it is contended that the Port Trust is an authority appointed by the appropriate Government, I suggest, Sir, that the statutory authority is not the one under the scheme of the Act.

Similarly, Sir, with regard to the stevedore labour, I would again like to go to the third part of the definition of the 'employer'. It says : The authority, which has the ultimate control over the affairs of the establishment, port, etc. It does not say over the affairs of the labour or the employees but it says over the affairs of port. In this connection, I want to make it clear that in the case of labour which is employed by individual stevedores who in turn are employed by ships or ship owners, the liability belongs to the stevedores concerned.

I come to the intermediate and minor ports in relation to whom the appropriate authority is supposed to be the State Government. In this case, the labour employed in both cases is really the contract labour. Now, unless you define a person also as an establishment, unless you say that the State Government is going to be responsible for laying down responsibility for payment of gratuity by a contractor both for shore labour as well as for stevedore labour, the scheme of this Act would almost suggest that the State Government would be responsible for doing it. Now, I would like the Government to consider the removal of this ambiguity.

The fourth point which I would like to make is that after the introduction of de-casualisation of labour in ports, the definition of continuous service under this Bill

says : If he has been actually employed by an employer during the twelve months immediately preceding the year for not less than 240 days, in any other case, except when he is employed in a seasonal establishment. In other words, it means : unless he has been employed for 240 days after decasualisation, although the employee is entitled to earn a certain minimum wage for the days on which he does not get employment. It may happen that he is not actually employed for 240 days. Now, what will happen to his entitlement for gratuity ? Then the definition refers : "when he is employed in a seasonal establishment" Port employment is not seasonal. It is the decasualisation which has made it possible for him to earn for the minimum number of days that he is employed at the piece-rate.

Therefore in relation to port labour I am not too sure that 'continuous service' will not lead to some ambiguity.

Thank you.

SHRI BALGOVIND VERMA : Sir, I am glad that the Bill as passed by Lok Sabha has been generally welcomed by all sections of the House. As I told in my speech, this Bill was thoroughly examined in the Select Committee where many suggestions were made in the interests of labour and they were readily agreed to by the Government except in the case of two points which I mentioned earlier. The first point was that gratuity should not be forfeited if an employee indulges in riotous conduct or if he is charged for any misconduct or for an offence involving moral turpitude. All these things were taken into consideration. The second point was that payment of gratuity should not be withheld of the employee takes part in an illegal strike. These two points were carefully considered and as the House is aware in the other House it was decided that gratuity will not be affected because of participation in an illegal strike.

SHRI DWIJENDRALAL SEN GUPTA : You accepted one suggestion in the other House and you accept the other one here.

SHRI BALGOVIND VERMA : Government are however unable to accept the point that gratuity should not be forfeited

in the event of dismissal of an employee for misconduct. The provision in the Bill is based on the latest judgment of the Supreme Court which I read. It says :

"A distinction should be made between technical misconduct which leaves no trace of indiscipline and misconduct resulting in damage to the employer's property which may be compensated by forfeiture of gratuity or part thereof. A serious misconduct . . ."

SHRI DWIJENDRALAL SEN GUPTA : What is that judgment ?

SHRI BALGOVIND VERMA :

"which does not directly cause any damage, such as an act of violence against management or other riotous or disorderly behaviour at or near the place of employment is conducive to grave indiscipline."

In that case the Supreme Court has recommended that the gratuity may be forfeited.

SHRI DWIJENDRALAL SEN GUPTA : What is this case ? Whose judgment is this ?

SHRI BALGOVIND VERMA : It is a Supreme Court Judgment.

SHRI DWIJENDRALAL SEN GUPTA : Supreme Court Judgment all right. What is the case ? Where is it reported ?

SHRI BALGOVIND VERMA : This judgment was given in 1968 and reported in 1970.

SHRI DWIJENDRALAL SEN GUPTA : In which case ? Where is it to be found ?

SHRI BALGOVIND VERMA : It is AIR 70 S C. 919, in Delhi Cloth and General Mills vs. Workmen.

श्री मान सिंह वर्मा : क्या माननीय मंत्री जी का यह कहना है कि 1961 ई. का जो सुप्रीम कोर्ट का जजमेट था उसको रद्द करने के बाद यह दूसरा जजमेट आया ।

बाल गोविन्द वर्मा : यह लेटेस्ट है। The first would involve no forfeiture, the second may impose forfeiture of an amount equal to the loss directly suffered by the employer in consequence of the misconduct and the third may entail forfeiture of the gratuity that is due. So I hope the Members will agree that some distinction may be made in regard to the different types of misconduct as stated by the Supreme Court.

MR. DEPUTY CHAIRMAN : Mr. Sen Gupta, let the Minister continue with his answers without any disturbance. It is a very bad practice. You can go to him after the Minister has spoken. Please go and take your seat.

SHRI BALGOVIND VERMA : Many hon. Members have laid stress, hon. Members like Shri Man Singh Varma, Shrimati Sita Devi and Shri Mandal, and so many others, they have laid stress that this Bill may be extended to local bodies, transport companies, education institutions, hospitals, clubs, canteens, etc. As the hon. Members know, there is an enabling provision in the Bill that it can be extended to other establishments employing 10 or more persons by way of a Notification. Therefore, this Bill, when it becomes an Act, can be extended to any establishment which employs 10 or more persons. They may be transport companies or local bodies or anybody. But because the local bodies and some of the establishments fall within the jurisdiction of the State Governments, therefore it is very necessary that the State Governments must be taken into confidence before extending the provisions of this Bill to these categories. Consultation is very necessary, Sir. Then, among the categories mentioned for extension of this Bill is the category of transport workers. Shri Dwijendralal Sen Gupta laid much more emphasis on this category of workers. This category of workers is being covered by the State Governments. There are also employees of the Local Bodies. Without consulting the States it would not be proper for us to apply the Bill to these categories of workers. As regards teachers and hospital servants, they are not covered by the Industrial Disputes Act and we may wait for some time more before the Gratuity Scheme is applied

to them. All these suggestions will be borne in mind. We are now making a beginning with a Scheme, and if there are any shortfalls we can rectify them later on.

Regarding the definition of 'wages' some Members have desired that other items like House Rent Allowance and other allowances be also taken into consideration. The Select Committee considered this point also in detail and they found, as I have already mentioned, that this is just a beginning. You must consider also the present state of various sectors of our economy and whether it would be proper to burden it further in this manner. At present I would not like to include in the definition of 'wages' payments other than basic wage and dearness allowance as already provided in the Bill.

Suggestions have also been made for enlarging the definition of 'employee' so as to cover additional workers. The definition of 'employee' was carefully considered by the Select Committee and the present definition was agreed to by it. Here some reference has been made that the managerial personnel should also be brought within the scope of this Bill. As the Industrial Disputes Act does not apply in the case of these persons, until that aspect is taken into consideration while bringing amendments to the Industrial Disputes Act, we cannot think of extending this Bill to the managerial staff. The definition of 'employee' was carefully considered by the Select Committee and the present definition was agreed to by it. It already provides for coverage of employees with wages up to Rs 1,000/- per month as in the Employee's Provident Funds Scheme, and workers in higher wage groups may not be covered for the present. Certain suggestions have been made for making the penal provisions more stringent. As I have mentioned in my opening speech, the Bill provides for compulsory imprisonment in the event of default in the payment of gratuity. It also provides for the recovery of the amount of gratuity as arrears of land revenue with compound interest at the rate of 9 per cent per annum. We hope these two measures will be adequate to meet the requirements. The Bill may not fully meet the wishes of all the

[Shri Balgovind Verma]

Members of the House There are some who desire an extension of the coverage of the Bill and others who would like to see larger benefits made available to workers. These may be desirable ends in themselves, but I suggest we may consider them at a later stage after we have had experience of the working of this new statute. We are making a beginning of a new scheme and in the opinion of the Government the provisions of the Bill represent a fair balance between the needs of the workers employed in the productive process and the compelling need for conserving resources for the augmentation of the total national product. Workmen all over the country have been anxiously waiting for this measure to be placed on the Statute Book and I would urge that we should do so as early as possible. Thank you

MR. DEPUTY CHAIRMAN : The question is :

"That the Bill to provide for a scheme for the payment of gratuity to employees engaged in factories, mines, oilfields, plantations, ports, railway companies, shops or other establishments and for matters connected therewith or incidental thereto, as passed by the Lok Sabha, be taken into consideration."

The motion was adopted

MR. DEPUTY CHAIRMAN : We shall now take up the clause by-clause consideration of the Bill. Clause 2—there are seven amendments.

SHRI DWIJENDRALAL SEN GUPTA : Sir, I move —

3. "That at page 2, line 31, for the figures '240' the figures '200' substituted"

4. "That at pages 2 and 3, for lines 39 to 45 and 1 to 3 respectively, the following be substituted, namely —

(a) 'employee' means any person (other than an apprentice) employed on wages, on hire or reward any workman as defined in the Industrial Disputes Act, 1947 and shall include

gerial staff, drawing wages not exceeding one thousand rupees per mensem in any establishment, factory, mine, oilfield, plantation, port, railway company or shop"

6. "That at page 3 for lines 4 to 11, the following be substituted, namely —

Explanation — The Gratuity shall be determined on the basis of the last-pay drawn by an employee"

8. "That at page 4, for lines 29 to 34, the following be substituted, namely —

(s) 'wages' means all emoluments which are earned by an employee while on duty or on leave in accordance with the terms and conditions of his employment and which are paid or are payable to him in cash and includes dearness and all other allowances."

SHRI K. P. SUBRAMANIA MENON : Sir, I move —

9. "That at page 4, lines 32 to 34, the words 'but does not include any bonus, commission, house rent allowance overtime wages and any other allowance' be deleted."

The questions were put and the motions were negatived.

MR. DEPUTY CHAIRMAN : The question is —

"That clause 2 stand part of the Bill."

The motion was adopted.

Clause 2 was added to the Bill.

Clause 3 was added to the Bill.

Clause 4 — Payment of gratuity.

SHRI DWIJENDRALAL SEN GUPTA : Sir, I move :

10. "That at page 4, line 41 for the words 'five years' the words 'three years,

13. "That at page 5 :—

(i) in line 2, *for* the words 'five years' the words 'three years' be *substituted*, and

(ii) in line 4, *after* the word 'disablement' the words 'or termination of service by way of retrenchment or discharge by the employer' be *inserted*."

15. "That at page 5 :—

(i) lines 19-20, the words 'and for this purpose, the wages paid for any overtime work shall not be taken into account' be *deleted*; and

(ii) in line 23, *for* the words 'seven days' the words 'ten days' be *substituted*."

18. "That at page 5, *for* lines 26 to 31, the following be *substituted*, namely :—

"(4) For the purpose of computing the gratuity payable to an employee who is employed, after his disablement, on reduced wages, his wages for the period preceding his disablement shall be taken to be the wages received by him during the whole period."

19. "That at page 5, line 32 *for* the word 'an' the words 'any individual' be *substituted*."

21. "That at page 5, lines 1 to 9 be *deleted*."

31. "That at page 5, line 14, *for* the word 'fifteen' the word 'twenty' be *substituted*."

SHRI K. P. SUBRAMANIA MENON :
Sir, I move :

11. "That at page 4 line 41, *for* the word 'five' the word 'one' be *substituted*."

12. "That at page 4, line 43, *after* the words 'resignation, or' the words 'discharge, dismissal and retrenchment, or' be *inserted*."

14. "That at page 5, line 14, *for* the word 'fifteen' the word 'thirty' be *substituted*."

16. "That at page 5, line 23, *for* the word 'seven' the word 'fifteen' be *substituted*."

17. "That at page 5, lines 24 and 25 be *deleted*."

20. "That at pages 5 and 6 lines 35 to 40 and 1 to 9, respectively, be *deleted*."

The questions were put and the motions were negatived.

MR. DEPUTY CHAIRMAN : The question is :

"That clause 4 stand part of the Bill."

The motion was adopted.

Clause 4 was added to the Bill.

Clauses 5 and 6 were added to the Bill.

Clause 7—Determination of amount of gratuity

SHRI DWIJENDRALAL SEN GUPTA:
Sir, I move :

23. "That at page 7, at the *end* of line 5, the following be *added*, namely:—

"and such payments shall also be made within a period not exceeding one month from the date of termination of the employment."

24. "That at page 7, lines 6 to 8 be *deleted*."

The questions were put and the motions were negatived.

MR. DEPUTY CHAIRMAN : The question is :

"That clause 7 stand part of the Bill."

The motion was adopted

Clause 7 was added to the Bill.

Clause 8—Recovery of gratuity.

SHRI DWIJENDRALAL SEN GUPTA:

Sir, I move :

25. "That at page 8, at the end of line 46, after the words 'entitled thereto' the words 'besides being black listed for all purposes in relation to Government' be inserted"

The question was put and the motion was negatived

MR DEPUTY CHAIRMAN : The question is

"That clause 8 stand part of the Bill"

The motion was adopted

Clause 8 was added to the Bill.

Clause 9 -Penaltie

SHRI DWIJENDRALAL SEN GUPTA

Sir, I move :

26. "That at page 8,—

(i) in line 21, for the words 'six months, or' the words 'two years, and' be substituted, and

(ii) in line 27, for the words 'or with both' be deleted"

SHRI K P SUBRAMANIA MENON .

Sir, I move

27 "That at page 8, (i) in line 21 and 22, the words 'or with fine which may extend to one thousand rupees, or with both' be deleted,

(ii) in lines 26 and 27, the words 'or with fine which may extend to one thousand rupees, or with both' be deleted "

28 "That at page 8, lines 28 to 33 be deleted "

The questions were put and the motions were negatived

MR DEPUTY CHAIRMAN . The question is :

"That clause 9 stand part of the Bill "

The motion was adopted.

Clause 9 was added to the Bill,

Clause 10 was added to the Bill.

Clause 11—Cognizance of offences

SHRI K P SUBRAMANIA MENON :

Sir, I move :

29 "That at page 9, lines 10 to 18 be deleted "

The question was proposed.

SHRI K P SUBRAMANIA MENON :

Mr Deputy Chairman, this is a very important amendment I just want to make a submission on this amendment The problem is that according to this clause, "No court shall take cognizance of any offence punishable under this Act save on a complaint made by or under the authority of the appropriate Government" Here is the crux of the problem Here in this country a number of labour laws have been existing ; for example, the question of provident fund But as things are, you know the State Governments are the creators of the capitalists and those Governments are not going to take any action in this matter.

AN HON. MEMBER What about the Central Government ?

SHRI K P SUBRAMANIA MENON :

The Central Government is worse So, if a port employee at Cochin has to get action against a particular employer or somebody else far away, if he has to come to the Central Government to take action against the employer, this is something which is not going to happen Therefore, the employers will go scotfree and no action will be taken against them As a matter of fact the law should have provided that *suo motu* when any employer refuses to pay money to the employee, the matter should come before the court, any employee, any trade union, anybody, any interested party, should have been able to haul up a defaulting party before the court. But here it is the Central Government or the State Government. Which means that no action

will be taken against the defaulting employers because the Central Government machinery or the State Government machinery is under the iron grip of the capitalists and the landlords. That is why I oppose this clause. What action did you take in regard to provident fund ?

MR DEPUTY CHAIRMAN : Mr Balgovind Verma, do you want to say anything ?

SHRI BALGOVIND VERMA : No, Sir.

MR DEPUTY CHAIRMAN : The question is

29 "That at page 9, lines 10 to 18 be deleted"

The motion was negatived.

MR DEPUTY CHAIRMAN : The question is

"That clause 11 stand part of the Bill"

The motion was adopted

Clause 11 was added to the Bill.

Clauses 12 to 15 were added to the Bill

Clause 1—Short title, extent, application and commencement

SHRI DWIJENDRALAL SEN GUPTA : Sir, I beg to move :

1. "That at page 1, lines 5 and 6 be deleted"

The question was put and the motion was negatived

SHRIMATI SITA DEVI . Sir, I beg to move :

30. "That at page 1, for lines 8 and 9, the following be substituted, namely :—

"(a) any factory as defined in clause (m) of section 2 of the Factories Act, 1948, workers of any local body, any transport, any contract labour, society and of any solicitor firm,"

The question was proposed

श्रीमती सीता देवी उपाध्यक्ष महोदय, मैं आग्रह नहीं कर रही हूँ, पर मैं मिनिस्टर साहब से आशा करती हूँ कि वे स्टेट्स को लिखें कि ट्रांसपोर्ट के वर्कर्स, जिनके सबन्ध में मैंने अमेन्डमेंट दिया है, उनको वे जहाँ इसमें शामिल करें।

The amendment No. 30 was, by leave, withdrawn.

SHRI K. P. SUBRAMANIA MENON : Sir, I beg to move .

2 "That at page 1, line 9, after the word 'company' the words 'workers of any local body, any transport, any contract labour, any construction industry, any educational institution including college and school, technical institution or university, any hospital and clinic, any club, canteen or cooperative society and of any solicitors' firm' be inserted."

The question was proposed.

SHRI K. P. SUBRAMANIA MENON : Sir, this Bill actually does not affect a large section of the workers, that is construction workers. As you know, Sir, it is these workers who are suffering most. They do not have any benefit, they have no retrenchment benefit or no other benefit, and after seven or eight or ten years of labour in the construction of a dam or an electric power station or some other big project, they are just thrown out by the contractors, and precisely, such a Bill was necessary for that section of the workers who are the most exploited. They do not have any protection under the existing laws. This law also does not give any protection to the construction workers, especially those workers who are engaged in the construction of dams, tunnels or on a very dangerous work like that of the construction of electric power stations or steel mills. It does not require the State Government's sanction because the Central Government undertakes most of the projects like steel mills and therefore I hope

[Shri K. P. Subramania Menon]
that the Central Government will immediately notify so as to include the construction workers also, especially those engaged in the construction of irrigation dams, power stations, steel mills, etc. and they should be afforded protection under this Act.

SHRI U K LAKSHMANA GOWDA:
The Central Government is the largest employer.

SHRI DWIJENDRALAL SEN GUPTA : Mr. Deputy Chairman, you would have noticed that I have not made any speech in connection with the various amendments I had tabled. But still I am standing to support my friend, Mr. Subramania Menon, though I know that this amendment will not be accepted. When a Bill comes from the Lok Sabha after having been passed there, hardly any amendment of this House is accepted. I do not know of any instance where any amendment of this House has been accepted. Either this House should be abolished ..

SHRI U K. LAKSHMANA GOWDA :
Yes, I agree.

SHRI DWIJENDRALAL SEN GUPTA : or we can go to other business or this attitude of the Government should change. The Government should get things on its own merit. If a matter goes back to the other House what is wrong about it? Wisdom is not the monopoly of either this House or that House. It is a House where things can be created. I have also this experience that even when there is a whip issued to the other side, some from this side vote with them. Everybody knows that. Even the Resolution on Simla Pact brought by this side was accepted by that side by asking for division from that side. That has been our experience. What is the good of making speeches? For whom to make speeches? Are we here to hear reason? Nobody is here to hear reason. If they are slaves to their party, what can I do? Thank you.

THE DEPUTY MINISTER IN THE MINISTRY OF LABOUR AND REHABILITATION (SHRI BALGOVIND VERMA) : Sir, as the hon'ble Members know there is an enabling provision in the Act by which this Act can be made appli-

cable to any section of the workers by notification.

SHRI K. P. SUBRAMANIA MENON :
Are you going to do it for construction workers because they suffer most?

(No reply)

THE DEPUTY CHAIRMAN : The question is :

"That at page 1, line 9, after 'company' the words 'workers of any local body, any transport, any contract labour, any construction industry any educational institutions including college and school, technical institution or university, any hospital and clinic, any club, canteen or co-operative society and of any solicitors' firm' be inserted."

The motion was negatived.

THE DEPUTY CHAIRMAN : The question is :

"That clause 1 stand part of the Bill."

The motion was adopted.

Clause 1 was added to the Bill.

The Enacting Formula and the Title were added to the Bill.

THE DEPUTY MINISTER IN THE MINISTRY OF LABOUR AND REHABILITATION (SHRI BALGOVIND VERMA) : Sir, I move :

"That the Bill be passed."

The question was proposed.

SHRI DWIJENDRALAL SEN GUPTA : Sir, our Prime Minister, Mrs. Indira Gandhi, has done many good things. I have great appreciation for her. The first thing she started with was "vote according to conscience". That was how she acted in the Presidential election. I wish the Members had followed their leader according to the dictates of their conscience.

SOME HON'BLE MEMBERS FROM THE CONGRESS BENCHES : Certainly.

SHRI DWIJENDRALAL SEN GUPTA : But I find that the conscience has been mechanised. Everybody's conscience has been whipped. Now the whip is being followed.

THE MINISTER OF STATE IN THE DEPARTMENT OF PARLIAMENTARY AFFAIRS (SHRI OM MEHTA) : No whip has been issued for this Bill.

SHRI DWIJENDRALAL SEN GUPTA : The Bill has been passed. But I wish the Government could see that at least there is a fund where this gratuity amount is deposited; otherwise what will happen is no employer will keep any fund. The workers will be told that there is no money and the company will be closed and the workers will ultimately say that they would much rather run the company than ask for gratuity. Let not that situation come. There are occasions when people say, "I do not want charity. Let me be saved of the dog." A poor man went to somebody's house for charity. The dog was after him. He said, "Call back your dog. I do not want charity." That will be the way in which this gratuity will function. So, Mr. Deputy Chairman, through you I want the Government to take note of that at least.

I was trying to understand the implication of the 1970 judgment delivered by the Supreme Court in the case of the Delhi Cloth Mills as reported in the A. I. R. I am sorry the judgment was not with me and you asked me not to disturb the Deputy Minister while he was speaking. And like a good boy I obeyed. Afterwards I went there to find out because it is common etiquette even in a court that if you rely on something you have to show it to others. He quoted some case but there was not a line of judgment. When I quoted certain judgments before the House, I cupiously quoted from them. I gave them to the Reporters here. They got them from me. Let the Reporters have it from him. I went to him and he said it was with the staff. I went to his staff also. They said it was in the office and they would give it to me later. What shall I do by getting it the day after tomorrow?

Nothing. So, I do not know whether he misled the House. I do not know whether he has himself read that judgment. I do not even know whether the judgment is there or not. Anyway this is not the way to treat the House.

SHRI MAN SINGH VARMA : It may be in a different context.

SHRI D. THENGARI (Uttar Pradesh) : Sir, I just want to make one point. We are about to celebrate the silver jubilee of our independence. On the eve of that historic occasion, I would like to suggest that the most appropriate way of celebrating the silver jubilee of our independence is to declare unequivocally that every wage earner in this country would be given the right to gratuity and a minimum bonus of 8.33 per cent. I would like to know whether the Government is in a mood to do it.

SHRI N. H. KUMBHARE : Mr. Deputy Chairman, Sir, I want to draw attention to one lacuna in the Bill. In the Bill as it stands, the definition of an employee covers only those who are employed in an establishment as against those who are not working in any establishment but are working in their own houses, who are called out workers. Now there are 20 lakhs of workers employed in bidi industries. There are factories also where the work of wrapping and packing is done. But 90 per cent of the workers roll bidis in their own respective houses. Now if this Act comes into force, then only those who are working in the factories will get the benefit of gratuity, and those who are working in their respective houses will be deprived of the benefit of gratuity because in their case the employer will contend that since they are working in their respective houses, they are not under his supervision and control and so they are not 'employees' within the meaning of this Act. There is a decision of the Supreme Court where it has held that those who are working in their respective houses are not 'employees' within the meaning of the definition of the Industrial Disputes Act. Therefore, in spite of the good intentions of the Government, lakhs of bidi workers will not get the benefit of gratuity. So this lacuna has to be removed.

SHRI MAHAVIR TYAGI (Uttar Pradesh) : Sir, I think this is a good occasion when both the Houses of Parliament may justly enjoy the pride of having given protection to the labourers and workers. They deserved it. For long they had been expecting something. I think we have done justice to them. I must congratulate the Government on having brought this Bill. The House has practically agreed to all the clauses. I hope the Government will see to it that this Bill is well availed of by all the labour classes. At the same time, the labour relations should be so conducted that they are not conscious only of their rights. To-day they always claim their right to strike, and this is the only thing which the political parties are now inclined to exploit. I hope that after passing this Bill after having done justice to the labour class the Government will conduct labour relations in such a manner that the labour class will be conscious of their duties also so that with the co-operation of labour, we can produce wealth and the country may prosper. The country will not prosper with strikes and strikes. Always there is strike, there is struggle. These struggles must now end and it must be the duty of all those political workers who are working among the organised labour class that they see to it that the labour class is made fully conscious of their duties towards their jobs. I hope this will establish a good relationship between the employer and the employees.

SHRI K. CHANDRASEKHARAN : Just one word, Sir. Even though the bidi establishments may not come under the definition of "factory" in Clause 3 (a), the power to notify as establishments—and that would include a bidi establishment also—has been taken by the Central Government under Clause 8 (c). I would, therefore, particularly request the Central Government to notify all bidi establishments—and the number of establishments is very large and lakhs and lakhs of workers are employed in these establishments—as coming within the ambit of this Act.

SHRI BALACHANDRA MENON : While the labour is fully conscious of its responsibility, I would like to say that the employers who have defrauded the workers of their provident fund, the employers who might defraud the workers of their gratuity, they must really be shown their place. It is time that we did it; otherwise we will again play into the hands of those who want to scuttle the democratic movement of our workers. For 30 silvers Christ was betrayed. For these 15 days the workers will not be betrayed.

SHRI BALGOVIND VERMA : I would not like to add anything except a few words regarding bidi industry. As the honourable Members know the Ministers of all those States which are concerned with the bidi industry, met some time back and they have made certain recommendations regarding the bidi workers. We have circulated those recommendations to the various States which are concerned with it. They have covered each and every aspect. At the moment we have yet to receive their comments.

Sir, I move.

MR. DEPUTY CHAIRMAN : The question is :

"That the Bill be passed."

The motion was adopted.

MR. DEPUTY CHAIRMAN : The House stands adjourned till 11 A. M. tomorrow.

The House then adjourned at twenty-five minutes past five of the clock till eleven of the clock on Tuesday, the 8th August, 1972.