

RAJYA SABHA

*Mondav, the 6th December, 1971/the
15th Agrhayana, 1893 (Saka)*

The House met at ten of the clock,
MR CHAIRMAN in the Chair

MEMBER SWORN

Dr Vidya Prakash Dutt (Nominated)

**SUPPLEMENTARY DEMANDS FOR
GRANTS FOR EXPENDITURE OF
THE CENTRAL GOVERNMENT (EXC
LUDING RAILWAYS) FOR THE YEAR
1971-72**

THE MINISTER OF STATE IN THE
DEPARTMENT OF PARLIAMENTARY
AFFAIRS /संसदीय कार्य विभाग मे राज्य मंत्री
(SHRI OM MFHTA) Sir, on behalf of
Shri Y B Chavan I beg to lay on the Table
a statement (December 1971) (in English
and Hindi) showing the Supplementary
Demands for Grants for Expenditure of the
Central Government (excluding Railways)
for the year 1971-72.

**SUPPLEMENTARY DEMANDS FOR
GRANTS FOR EXPENDITURE OF THE
GOVERNMENT OF PUNJAB FOR THE
YEAR 1971-72**

SHRI OM MEHTA · Sir, I also beg to
lay on the Table a statement (in English
and Hindi) showing the Supplementary
Demands for Grants for Expenditure of the
Government of Punjab for the year 1971-72

**REPORT OF THE COMMITTEE ON
THE WELFARE OF SCHEDULED
CASTES AND SCHEDULED TRIBES**

SHRI K P SUBRAMANIA MENON
(Kerala) : Sir, I beg to lay on the Table a
copy of the First Report (in English and
Hindi) of the Committee on the Welfare of
Scheduled Castes and Scheduled Tribes on
action taken by Government on the recom-
mendations contained in the Ninth Report
(Fourth Lok Sabha) of the Committee relat-
ing to the Ministry of Tourism and Civil
Aviation-Reservations for Scheduled Castes
and Scheduled Tribes in Air India

**MOTION FOR APPOINTMENT OF A
MEMBER OF THE RAJYA SABHA
TO THE JOINT COMMITTEE OF
THE HOUSES ON THE ADVOCATES
(AMENDMENT) BILL, 1970**

THE MINISTER OF LAW AND
JUSTICE, विधि और न्याय मंत्री (SHRI H R
GOKHALE) : Sir, I beg to move :

“That Shri D P. Singh be appointe
to the Joint Committee of the Houses of
the Advocates (Amendment) Bill, 1970
in the vacancy caused by the death of
Shri Surajmal Saha.”

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

**THE INDUSTRIAL DISPUTES (SECO
ND AMENDMENT) BILL, 1971**

THE MINISTER OF LAW AND
JUSTICE / विधि और न्याय (SHRI H R
GOKHALE) : Sir, on behalf of Shri R K
Khadilkar I beg to move for leave to
introduce a Bill further to amend the In-
dustrial Disputes Act, 1947.

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

SHRI H R. GOKHALE : Sir, I intro-
duce the Bill

**THE COMMISSIONS OF INQUIRY
(AMENDMENT) BILL, 1971**

THE MINISTER OF STATE IN THE
MINISTRY OF HOME AFFAIRS AND IN
THE DEPARTMENT OF PERSONNEL
गृह मंत्रालय और कार्मिक विभाग मे राज्यमन्त्र
(SHRI RAM NIWAS MIRDHA) : Sir,
beg to move :

“That the Bill to amend the Commis-
sions of Inquiry Act, 1952, as passed by
the Lok Sabha, be taken into considera-
tion ”

The hon Members are aware that the
Law Commission reviewed the Commission
of Inquiry Act, 1952 and submitted the
report on it in 1962. Copies of the report

Shri Ram Niwas Mirdha]

were placed on the Table of the House. Hon'ble Members are aware of the recommendations made by the Law Commission.

I may briefly recapitulate the important ones :

(1) If a Commission of Inquiry is appointed at the initiative of the legislature, it should be necessary for both the Houses of the Legislature of a bicameral legislature to pass resolutions to that effect.

(2) Persons who by spoken words or words intended to be read, make or publish any statement or do any other act calculated to bring the Commission or any member thereof into disrepute should be penalised with simple imprisonment extending up to two years or with fine or with both

(3) If after the appointment of a Commission of Inquiry by a State Government the Central Government decided that the scope of the inquiry should be extended to two or more States and accordingly appoints a Commission the commission appointed by the State Government should cease to function

(4) A Commission of Inquiry should have jurisdiction to summon a witness from any part of the territories to which the Act applies.

(5) Failure on the part of a person to obey the requisition of the Commission for information should be penalised as an offence punishable under Section 176 I L C

(6) Nothing in the Act should render it necessary for any person giving evidence to disclose any secret process of manufacture.

(7) Recommendations designed to improve the procedure followed by Commissions of Inquiry were also made.

The recommendations of the Law Commission were generally accepted by the Government after consultations with the State Governments and the Administrations of the Union Territories. I may here briefly

refer to the recommendations of the Law Commission which were not found acceptable.

(1) The recommendation requiring resolutions to be passed by both the Houses of bicameral legislatures for the appointment of a Commission of Inquiry on legislative initiative was not accepted. The Constitutional provisions regarding Joint Sittings of both the Houses relate only to legislation and, therefore, in case of difference of opinion between the two Houses on the subject of appointment of a Commission of Inquiry it may not be feasible to resolve the difference. The existing position that the resolution passed by the Lower House demanding the setting up of a Commission of Inquiry should lead to its appointment has been maintained unchanged.

(2) Even after the appointment of a commission of Inquiry by the Central Government, it is open to a State Government to appoint a commission of their own as soon as the Central Government Commission of Inquiry has completed its work. In view of this, it has not been possible to provide for the functioning of the commission of inquiry appointed by a state government on the appointment of a commission by the Central Government.

The Bill which had been prepared accordingly was introduced in the Lok Sabha in November 1969. It was referred to a Joint committee of the two Houses and the report of the Joint Committee was submitted to both Houses of Parliament in November 1970. The Joint Committee largely supported the framework of the Bill as presented by Government. It also made some improvements in the Bill which, however, lapsed on the dissolution of the Fourth Lok Sabha.

The Bill as reported by the Joint Committee has been generally accepted by the Government. The only change which has not been found acceptable is the one which suggests that a commission of Inquiry should not cease to function until after it has completed its task and submitted its report. It is conceivable that under conditions of emergency or otherwise, Government may feel

obliged to terminate the life of the commission of Inquiry, and the power to do so should not be denied to Government. It is, of course, to be expected that no executive Government will terminate the life of the Commission appointed on the recommendations of the legislature except after seeking the approval of the legislature.

The Joint Committee also made the recommendation that either the Commission of Inquiry Act or the Contempt of Courts Act should be amended so as to enable a Commission of Inquiry being treated as a court subordinate to the High Court for the purpose of the Contempt of Courts Act. This recommendation has been considered carefully by the Government and the conclusion reached is that since a Commission of Inquiry is not a court which gives enforceable decisions on disputes involving questions of life, liberty and property, it cannot be treated as a Court for the purposes of the Contempt of Courts Act. Hon. Members will notice from clause 13 of the present Bill that adequate provision has been made therein to penalise acts calculated to bring a commission or any member thereof into disrepute. The quantum of punishment provided for had been determined by the Joint Committee itself after due deliberation.

Before I conclude I would like to mention here an important question connected with the working of the Commissions of Inquiry on which the Chief Justices' Conference had made a recommendation some time ago *ie* in March 1965. It was :

“A convention should be set up that the findings of the Commissions of Inquiry on questions of fact should be accepted by Government”.

The recommendation has been carefully examined by Government. Since the Tribunals of Inquiry Act was passed in the United Kingdom in 1921 there has been a clear disposition in that country to accept the findings of a tribunal appointed under the Act as findings on facts by a High Judicial authority. The Commissions of Inquiry in India like their counterparts in the United Kingdom, have been usually composed of serving or retired Judges of the Supreme Court or the High Courts and the

inquiries are conducted in a judicial manner. If Government do not accept the Judges' finding on facts, the prestige of both the Government and the judiciary suffers and public confidence in the inquiries is shaken. Government have, therefore, decided to accept the recommendation of the Chief Justices' Conference as a general policy, there may, of course, be exceptional cases in which there are clearly good reasons for differing from the Commission's findings. As there is nothing like an appeal from the findings of a Commission of Inquiry, Government cannot possibly commit themselves not to disagree with the findings of the commission irrespective of the merits of the matter.

The recommendation of the Chief Justices' Conference has accordingly been accepted as a general policy rather than an inflexible rule.

Acceptance of the findings of the Commission of Inquiry on questions of fact usually calls for some further follow up action on the part of Government. That action will obviously have to be taken according to the law of the land and the rules regulating such action. In such cases, it should be enough to say that Government should accept the finding on fact as given by the Commissions of Inquiry for further action according to the law, statutory rules, etc. as may be appropriate. The Bill has been passed by the Lok Sabha without any amendment and with these words I commend the Bill to the House.

The question was proposed

SHRI N. R. MUNISWAMY (Tamil Nadu) Mr. Chairman, I commend whole heartedly the changes made in the Commissions of Inquiry (Amendment) Bill. The amendments are no very novel. Whatever amendment they have suggested have already been agitated by several Members who have said that these amendments should be made. They have accordingly been made because of the recommendations given to the Commission.

In this there is one salutary matter which has been brought forward by way of amendment and that is with regard to

[Shri N. R. Muniswamy] appointment of the Commission by a resolution passed by the House of the People or by the Assembly in the local legislature. It is a very commendable one. So far as the appointment of the Commission by the Central Government is concerned, there is some snag in it. After the appointment is made by the Central Government, if they feel that there is no need for the continuance of the Commission, they can terminate the Commission of Inquiry. Wherever the Central Government think that they can appoint a Commission of Inquiry the natural course is that they must place it before the House of the People for ratification. If the ratification is given, then automatically the Commission of Inquiry can go on. Supposing they feel that the Commission need not continue because the circumstances do not permit them, then again it must go to the House of the People for its cancellation. Unless these things are done, anything that is done by the Central Government themselves will be considered arbitrary and not based on any reason. If this principle is not included in the Bill, I only wish that it may form the basis of some convention under which it should be put before the House or Assembly for ratification.

There is another amendment which is also very good. Whenever any member of the Commission dies or is absent, the Commission's work is held up because automatically what happens is that the inquiry ceases to function. Now they have said that the proceedings need not be held up on that score. It is a very good thing. In criminal cases you know under certain circumstances *de novo* trial is ordered. It is always better to continue the work from the point where it is left. As soon as a new member is appointed, the work can start from that point. This is a very salutary thing.

The third point is about the manufacturing processes. Every manufacturer has some secret method. In the process of inquiry that secret method or process is disclosed. Such methods need not be disclosed. Such secret methods should not be probed. But what happens is that during the inquiry, the manufacturing processes and the ingredients that go into a product are all come into the light. But it has been now decided that they cannot go into that. That is a

very good feature. The other thing that has been put in the Bill is—I am very happy—that J and K is included in it. Ordinarily when any Act is passed, it used to exclude J and K. Now I find that it has been included. Similarly, Kohima and Nagaland are also included in it. It is a very good thing that in all cases where a commission of inquiry is held, it should be held irrespective of the places to which the Act is applicable. Therefore, I would say it is a very salutary provision that has been introduced here.

One other thing I want to mention is in those days when a commission of inquiry was seated at a particular place, it could not issue summons for witnesses residing anywhere outside the State. Now I am very happy to see that when an inquiry is held, two or three more States could also be included and the commission of inquiry can invite witnesses from any part of India. This is also a very salutary feature which has been included in this Bill.

With these remarks I commend this Bill for the acceptance of the House.

श्री जगदीश प्रसाद माथुर (राजस्थान) :

सभापति महोदय, इस विधेयक के अन्दर दो मुख्य बातें थीं, लेकिन माननीय मंत्री महोदय ने अपनी बात कह कर इस विधेयक का जो सारा संज्ञा था, जो इस विधेयक का उद्देश्य था वह बिल्कुल समाप्त कर दिया है। एक बात तो यह है सभापति महोदय, कि अगर कोई इक्वायरी कांस्टीट्यूट करती है तो दूसरी गवर्नमेंट उस को समाप्त कर सकती है। इसके लिए कि वह इक्वायरी चलती रहे, इसकी कोई व्यवस्था इसमें नहीं है। अभी श्री० एल० एन० मिश्र जी यहां मौजूद थे। बिहार की सरकार ने, जो एक विरोधी दल की सरकार थी, उसने किसी हाई कोर्ट के जज के अंतर्गत उनके विरुद्ध एक इक्वायरी बिठायी थी। लेकिन चूंकि मिश्र जी बड़े प्रभावशाली व्यक्ति हैं, वहां पर किसी सरकार को वे बना सकते हैं या बिगाड़ सकते हैं इसलिए पिछली सरकार को उन्होंने गिराया और वहां एक नयी सरकार उन्होंने बनायी और

इसका पुरस्कार मिश्र जी को यह मिला कि उनके खिलाफ जो इक्वायरी कमीशन बैठा था वह समाप्त कर दिया गया और आज माननीय मिश्र जी सदन में कहते हैं कि किसी सरकार के द्वारा बिठाया गया इक्वायरी कमीशन दूसरी सरकार द्वारा समाप्त किया जा सकता है। मैं पूछना चाहता हूँ कि आज उन्होंने पंजाब में अकालियों के खिलाफ इक्वायरी कमीशन बैठाया है और अगर कल वहाँ चुनाव होते हैं और वहाँ पर अकालियों की सरकार बनती है तो उस कमीशन का क्या होगा? आज आप मानते हैं कि वहाँ भ्रष्टाचार है और उन की जाच होनी चाहिए, लेकिन केवल वहाँ सरकार बदलने से ही वह इक्वायरी समाप्त हो जायगी। अगर आप इस तरह की व्यवस्था करते हैं तो राजनीतिक लोगों के हाथ में यह एक आखाड़े का दाव रहेगा और इस विषयक का कोई अर्थ नहीं होगा। जिस के खिलाफ मर्जी होगी कमीशन बैठाया जायगा और जिस के खिलाफ मर्जी नहीं होगी, कमीशन नहीं बैठाया जायगा। जिस को माफ करना होगा, उसे माफ कर दिया जायगा और इसके कारण देश के राजनीतिक जीवन में भ्रष्टाचार फैलेगा। इसके कारण देश के राजनीतिक जीवन में अनिश्चितता आयेगी। आज प्रधान मंत्री की मर्जी का कोई आदमी हो, कोई उनका कृपापात्र हो तो उसको सरकार में रखा जा सकता है, कोई उनका कृपा पात्र न रहे तो उसको सरकार से हटाया जा सकता है, लेकिन अगर एक प्रान्त के लोग कमीशन की मांग करें तो कमीशन का अप्वाइंटमेंट नहीं हो सकता और दूसरे प्रान्त के लोग मांग करें तो कमीशन का अप्वाइंटमेंट हो सकता है। इसके अतिरिक्त माननीय मंत्री महोदय इस विधेयक को जम्मू और कश्मीर पर लागू करने की बात कही है मुझे लगता नहीं कि इस विधेयक को किसी प्रान्त पर लागू करने से कोई लाभ होगा या नहीं। क्या आपने इस विधेयक के अंदर इस

बात की कोई व्यवस्था की है। किसी भी प्रान्त के लोग अगर मांग करें तो कमीशन आफ इक्वायरी बिठाया ही जाय? सभापति महोदय, हम लोग कई वर्ष से इस बात की मांग करते आ रहे थे कि कम से कम लोकपाल और लोक आयुक्त बिल पास कर दिया जाय, लेकिन सरकार उसे बचा रही है। सरकार जान-बूझ कर, कमेटी ने जो रिपोर्ट दी थी कि अगर कोई एम० एल० ए० या कोई सदस्य अगर किसी मंत्री के विरुद्ध भ्रष्टाचार का आरोप लगाता है और जाच की मांग करता है तो लोक पाल और लोक आयुक्त बिल के द्वारा उसकी व्यवस्था होनी चाहिए, लेकिन उसको सेल्व गया है, सरकार उसको लाना नहीं चाहती क्योंकि सरकार में डेर के डेर ऐसी मंत्री है, भरे पडे है कि अगर वह कानून बन जाय तो उनके खिलाफ जाच करवाने का हम लोगों को अबसर मिलता है। अब उनके पास एक ही रास्ता है, कमीशन नियुक्त करने का और वह अगर सरकार करना चाहती है तो करेगी और नहीं नियुक्त करना चाहती है। तो नहीं करेगी आपने इसके लिए विधान सभाओं की बात कही है। आज वहाँ जिनका बहुमत है वह अपने खिलाफ कमीशन नहीं नियुक्त करवायेंगे।

आखिर देश में कोई व्यवस्था होनी चाहिये आपको क्या अधिकार था कि पंजाब के मंत्रियों के खिलाफ आपने कमीशन बैठा दिया क्यों कि वह विरोधी दल के थे और राजस्थान के मुख्य मंत्री श्री मोहन लाल सुखाडिया और विधान सभा के उनके दूसरे साथियों के खिलाफ भयंकर भ्रष्टाचार के आरोप लगाये गये लेकिन उसका लिए ऐसा नहीं किया। प्रधान मंत्री ने श्री मोहनलाल सुखाडिया जी को हटवा दिया, प्रधान मंत्री ने श्री ब्रह्मानन्द रेड्डुडी को हटवा दिया केवल आप दल की प्रतिष्ठा को बढ़ाने के लिए लेकिन उनके खिलाफ कमीशन नहीं बैठा सकी उनका जाच नहीं करवा सकी। जाच इसलिये न करवाती क्योंकि वहाँ अपनी चमड़ी की ब आती है। जहाँ विरोधियों के खिलाफ हथियार का प्रयोग करना होता है वहाँ इस हथियार प्रयोग करते हैं। अब यह कहा गया है कि

[श्री जगदीश प्रसाद माथुर]

प्रकार का कोई एक कमिशन किसी सरकार ने नियुक्त किया है तो दूसरी आने वाली सरकार उसको हटा सकती है, उसको रद्द कर सकती है। कहा गया की श्री एल० एन० मिश्र और बिहार के दूसरे लोगों के ऊपर जांच बैठायें लेकिन यह नहीं किया। तो इस विधेयक में जो व्यवस्था है वह रद्दी व्यवस्था है और इस नाते मैं इस विधेयक का विरोध करना चाहूंगा। जो व्यवस्था इसमें लागू करना चाहते हैं उसका विरोध करना चाहूंगा।

दूसरी बात इसमें कही गई है कि जजों ने इस बात की रिक्मेडेशन की है, सुप्रीम कोर्ट के चीफ जस्टिस ने इसकी रिक्मेडेशन की है। लेकिन जजेज आज इस बात के लिए तैयार नहीं है कि वह कमिशन में बैठें। किसी भी जज को पूछा जाता है कि किसी के खिलाफ कोई आरोप लगाया गया है और आपकी उसके लिए, जो कमिशन बना रहे है, उसमें नियुक्ती की जा रही है तो जज पहली बात यह कहते हैं कि हमारी रिपोर्ट बनी, हमने सरकार को रिपोर्ट दी तो क्या हमारी रिपोर्ट को माना जायगा या नहीं माना जायगा। आज जजेज रिपोर्ट देते हैं लेकिन उनको माना नहीं जाता है। माननीय मंत्री महोदय ने कहा कि प्रिसिपिल तो हम मानते है, फैंक्ट वगैरह की कोई बात कहते है तो हम मानते है लेकिन प्रिसिपिली, सिद्धांत, तो सरकार का कुछ है नहीं। कह दिया कि प्रिसिपिली मानते है लेकिन फैंक्चुअली आप मानेंगे या नहीं यह बात है। नहीं, आप फैंक्चुअली कार्यान्वित नहीं करेंगे। आज राजस्थान के अन्दर बेरी कमिशन की रिपोर्ट हुई। वहां सारे हिन्दुस्तान के अन्दर सब से बड़ी राजतंत्र की हत्या की गई। गोलियां चला कर अपना राज्य प्राप्त किया। उसमें कमिशन ने जो टी-फूटी रिपोर्ट दी उस रिपोर्ट को भी कार्यान्वित करने के लिये आज सरकार तैयार नहीं। जिस समय भी इस प्रकार की रिपोर्ट आती

है, सारे देश के अन्दर, जो कि आपके हक में नहीं है तो नहीं मानते क्योंकि गवर्नमेंट को डिसक्रिशन है कि कौन सी बात माने और कौन सी बात नहीं मानें। आज आपने कह दिया कि हम सिद्धांत: इसे स्वीकार करते है कि यह बात मानी जाय लेकिन ऐसी बात फिर कह कर माननीय मंत्री महोदय ने अपनी सिद्धांत की बात, अपनी सारी बात समाप्त कर दी है। तो ऐसा लगता है कि इस विधेयक के अन्दर आपने कुछ स्वीकार नहीं किया है, इस विधेयक का कोई अर्थ नहीं है, विल्कुल रद्दी की टोकरी में डालने लायक है। केवल जम्मू और काश्मीर पर यह लागू किया है लेकिन लागू करने मात्र से ही कुछ नहीं होगा। देश में व्यवस्था होनी चाहिये कि जनता को राहत मिल सके, जनता को कोई मार्ग मिल सके जिसके द्वारा न्याय प्राप्त कर सके। कोई व्यवस्था होनी चाहिये। आपने सारी बात, सारे अधिकार, अपने हाथ में ले रखे है।

तो, सभापति महोदय, मैं इस नाते कहूंगा कि इस विधेयक का कोई अर्थ नहीं है। आपने शायद इसके लिये काफी मेहनत की होगी, सरकार ने मेहनत की होगी, लेकिन आप ने जो दो बातें कही कि किसी सरकार के द्वारा नियुक्त कमिशन को दूसरी सरकार रद्द कर सकती है, यह व्यवस्था इसमें नहीं होनी चाहिये और दूसरी बात यह है कि कोई भी कमिशन जो रिपोर्ट देता है उसको आप मानेंगे, उसका पालन होगा लेकिन इन दो बातों को आप कहने को तैयार नहीं है। तो सभापति जी, मैं इसका विरोध करता हूं इस विधेयक का कोई अर्थ नहीं है।

MR. CHAIRMAN : Yes, Mr. Lokanath Misra.

SHRI LOKANATH MISRA (Orissa) : Mr. Chairman, Sir, the hon. Minister, while moving the Bill, read out certain recommendations of the Law Commission. I am sorry, Sir, the Government decided to accept only those recommendations of the Commission which were convenient to them.

If they had accepted *in toto* all the recommendations, they would have done justice

Sir, if political decisions are taken on matters, on all matters, relating to law relating to corruption, then, it seems that the Government is too reluctant to subject itself to any kind of probe or inquiry so far as corruption is concerned. Sir, there has been some improvement over the Commissions of Inquiry Act, 1952, and there is no doubt about that. But the question of deterioration that has been brought in the Bill, because of another clause inserted in it, cannot be compared with the improvement. The deterioration caused is because of the insertion of this particular clause, that is, if the Legislature or the Lok Sabha passes for the discontinuance of the Commission of Inquiry, then it would be withdrawn.

The previous speakers have enumerated the cases where these were withdrawn, and these were political decisions. Political decisions on corruption are inadvisable—more so, Sir, when in our legislatures so many parties come together and form a coalition government. There may sometimes be more coalition governments within the same term. Therefore, once a commission of inquiry is instituted, it must be allowed to go through, and it should only be the public which should be in a position to decide about the political future of those persons who were involved in such commissions of inquiry. If the Government, tries to withdraw the commission of inquiry, which was instituted by the previous Government, there would be utter confusion in the public mind regarding the honesty of the previous Government. Therefore, Sir, I would plead with the hon. Home Minister that at least at this stage he should try to withdraw this particular clause from the Bill.

The other thing, about which mention was also made, is regarding the way the Government is picking and choosing the memoranda submitted against different governments for being sent to commissions of inquiry. The case referred to was the commission of inquiry instituted against the Badal Government in Punjab. It took no time almost for the Government of India to institute a commission of inquiry against the Badal Government because it was not a

government to their liking. One of our hon. Members, Mr Sharma, here has submitted a memorandum against one of the sitting Chief Minister — the Chief Minister of Haryana. It seems nothing is moving against the Chief Minister of Haryana because he is in the good books of the Govt of India. If these discriminations creep in then the commission of inquiry would lose completely its meaning. If there is any memorandum submitted by the representatives of people, whether in the Assemblies or in the Lok Sabha, there should be at least an enquiry to find out whether there is *Prime facie* case why such an inquiry should not be substituted. But if any politician says—howsoever eminent he may be—that there is absolutely no *prime facie* case against a Chief Minister, that won't satisfy the public. A sitting judge should only go into it and then find out whether there is *prima facie* case and if he recommends that there is a *prima facie* case, then there has to be a commission of inquiry. Why should the ruling party shirk from it? They are prompt in setting up a commission of inquiry against people who do not belong to the party, but when it comes to their own party—whether it is Mr Sukhadia or Mr Brahmanand Reddy or whether it is Mr Bansal—a different method is adopted. Somewhere a method is adopted to oust Chief Ministers who are not to their liking and one particular memorandum is used as an instrument to oust them out because it is being sent to the commission of inquiry.

Something was said about the appointment of the commission of inquiry. I am definitely in favour of the appointment of commission of inquiry only from retired judges. The retired judges should, as far as practicable, be discouraged from future appointments.

That gives them some kind of a cushion after, their retirement and, therefore, they are liable to go astray while holding office. Whether it is an ambassadorial job or a commission of inquiry or anything else. Judges should not be given any kind of office of an appointment after their retirement.

The case of those who come to office is very different. They risk their reputation, their own money and all that

[Shri Loknath Misra]

they come and fight the elections whether they lose or gain it depends on their reputation and the will of the people. If people want them to come into public life, they are welcome; but so far as appointments which come from Govt. sources are concerned, all patronage and encouragement should be discarded. Therefore, I would strongly recommend that in future if there is any appointment to any commission, it should only be from a sitting Judge and never from a retired Judge.

I feel this Bill has not been sufficiently improved upon so as to make us feel satisfied. If the political attitude which has been brought into the Bill could have been avoided, it would have given me a much better satisfaction. Particularly this clause of continuing Commissions of Inquiry, if it is passed by the Lok Sabha or any of the Vidhan Sabhas appears to me to be extremely political, and I feel this should be avoided. Thank you.

SHRI BALACHANDRA MENON
(Kerala) Sir, most Governments are forced to resort to commissions of inquiry because Ministers and highly placed political men are often found indulging in certain practices which are not quite healthy for our democratic life. This has become a common thing.

Most of the amendments suggested are good, but do they go far enough?—This is what I would like to say. In a commission of inquiry, if there is a vacancy, the Government can fill it up. That is what is stated sometimes the very composition of a commission is changed and, in such a case, if there is a Ministry which wants to put some of its opponents in difficulties, it finds here an opportunity to introduce some one or more into that commission which will give a report favourable for that Ministry. Then it is a very unfortunate thing because then the Ministers who are on the commission will find it difficult to explain their position. I would therefore suggest that in such cases where a commission of inquiry consists of more members, the opinion of the other members should also be taken into consideration. Otherwise, I do not want to deny the right to the Government; the final thing must be by the Government. But, to help the proper functioning of the commission, can we not

try to have some sort of a machinery which will help a new member or members being introduced into it with the assent and permission of the members of the commission?

Now, this commission is not a court. We know it. Often it might be an officer who is put there for the conduct of the inquiry, or it might be a retired Judge. A retired Judge who is anxious to be on the various commissions would hereafter be certainly very happy to oblige the ruling party or the Government. It is not that the Judges are above any sort of influence. Therefore, I would suggest that as far as possible we should not allow Judges who are retired. In the case of officers who are appointed by a Government, if such an officer gives a perverse finding in the name of the commission of inquiry, real difficulties come in when the Government wants to get the perverse report changed. The Officer is the officer of the Government. He takes a decision. It might be a perverse decision. It might be to discredit certain political men or certain high placed people in the Ministry. The Ministry or successive Ministry refers again the matter to a High Court Judge or some other enquiry Court. He gives a judgment and that judgment proves that the Court of Inquiry man has given a perverse finding. Even then you cannot take any action against such a man. He can discredit any Ministry. He can discredit any highly placed Government's servant or any political party and nothing can be done against him, because he is a Commission of Inquiry man or a tribunal. In such cases, I think there should be a provision that such people must be taken to task. There is no appeal. That is the difficulty. Therefore, he is in a position to do harm to anybody. That has to be stopped somewhere. When there is no appeal, this matter may be taken up in the Assembly or in the Parliament, and if it is a perverse finding, he must be dealt with. That can be done if there is provision for the matter being taken up to a High Court. That power should be given to the High Court Judge so that this man can no more tamper with the prestige and interests of an individual concerned or the party concerned. These are new things and, therefore, we will have to find out new methods also to curb the perverse attitude of certain tribunals. That has to be done.

Then, it is said that it is not necessary to start the enquiry afresh, *i.e.*, "Where during the course of an inquiry before a Commission, a change has taken place in the constitution of the Commission by reason of any vacancy having been filled or by any other reason, it shall not be necessary for the Commission to commence the inquiry afresh and the inquiry may be continued from the stage at which the change took place." Here also as far as possible, it must be left to them. We need not say that. If the Commission of Inquiry finds that new matters have come in or because of the new man or men who has or have been appointed, we should leave it to them to decide if the enquiry should start afresh or not. We need not say that it shall not be necessary. I would say that it might be sometimes found necessary.

I am against these people being saved like this that there will be a punishment if there is a contempt. For a Commission of Inquiry there shall be no contempt. If it is a judge I can understand. This clause 38 need not be there. Such a provision need not be there. They must be in a position to stand criticism. Why are they so very sensitive. Even our judges must be able to stand criticism. In the commission of Inquiry or any tribunal there must be an open discussion. Anything can be discussed there and the comrade tribunal or the court of enquiry whoever is there must be able to stand criticism. If he is going to be wrong, we have got the right to say that he is wrong. This sort of feeling that we are wounding the susceptibilities of a tribunal should not be there. It should not be taken in that sense. It should have a democratic point of view. There should be a discussion. The parties are brought together. The concept should be different from the judicial concept which you are having. For example, there is a labour court or a labour tribunal. They do not give judgment on the questions of law. They bring all the parties together. There are heated exchange of views and the tribunal should not be unnecessarily susceptible. *The tribunal should not have the feeling that he is something above par.*

You are not giving any judgments. You are only trying to find out facts and nothing more. So there should not be such a provision that there shall be such a penalty for a

person who says the Tribunal is perverse when it is found to be so. I am also worried that in most cases the CBI officers are being used by certain people to discredit certain honest officials. There should be some strict watch over the CBI activities to see that there is no witch-hunting there because somebody in power will be in a position to influence these agencies.

श्री सीताराम केसरी (बिहार) : अध्यक्ष जी, जांच आयोग संशोधन बिल का मैं भी समर्थन करता हूँ लेकिन चन्द दोस्तों ने जांच आयोग के सम्बन्ध में जो यह संदेह प्रकट किया है कि जो रिटायर्ड जज होते हैं वह पद के लोभ से फैसला करते हैं, जैसा कि मुझे मिश्र जी की बात से पता चला, तो मैं समझता हूँ कि किसी व्यक्ति पर, खास कर के जो रिटायर्ड जज है और जो हमेशा न्याय किये हैं और जिनकी ईमानदारी पर जब वह जज रहे आपको संदेह नहीं रहा, किसी व्यक्ति विशेष पर इस तरह का संदेह प्रकट करने की जो बात है उसके पीछे कोई औचित्य नहीं है। चूँकि जांच आयोग का फैसला आपके अनुकूल हो तो आप कहिये कि जज ईमानदार है और किसी लोभ से उसने फैसला नहीं किया और जब अगर उसका फैसला आपके प्रतिकूल पड़ गया तो आपने कहा कि जज जो है उसने पद के लोभ में ऐसा किया है, ऐसा ठीक नहीं। मैं समझता हूँ कि इस तरह का कोई भी आक्षेप करना या दोष देना किसी भी न्यायपालिका पर या जज पर उचित नहीं है।

दूसरी बात यह है कि जांच आयोग का अर्थ क्या है।

REFERENCE TO RECOGNITION OF BANGLA DESH

SHRI BHUPESH GUPTA (West Bengal): I understand that Bangla Desh has been recognised. A statement should be made here.

MR. CHAIRMAN : The Prime Minister will make a statement.